Financial and Legal Do’s and Don’ts

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AWC Annual Conference – 2019
Spokane, WA

MRSC By the Numbers

Quick Recap of 2018:
- 6,300 inquiry requests answered for more than 600 local governments
  - Over 4,500 (72%) of those inquiries came from cities and towns
- 60,000 research hours logged by 1.8 million web visitors
- 142 training sessions conducted for over 7,500 attendees
- 85 e-newsletters sent out to 22,000 subscribers
- 110 blog posts written for 250,000 readers
Fiscal Legislative Updates 2019 -

State Budget (ESHB1109)— State shared revenues

Note: Per-capita forecasts will be available in Budget Suggestions publication – end of July

- Marijuana excise tax – distributions remain at $15 million for cities, towns and counties
- Liquor Excise and Liquor Profits (licensing) percentage distributions remain unchanged
  - Liquor Profits (there are no provisions within the legislation to account for increased revenues or inflation)
  - Liquor Excise tax (distribution formula is 35% of liquor tax collected subject to $10 million deduction to the state general fund and the remaining balance split 80/20 between cities and counties)
- Criminal Justice distributions – remain unchanged (primarily a per capita distribution)
- City-County Assistance Distributions – remain unchanged
- Transportation
  - Multi-modal
  - Motor Vehicle Fuel Tax and Increased Motor Vehicle Fuel Tax
2SHB 1087 – Long-Term Care Services

- Mandatory employee deduction of 0.0058% from gross wages.
- No mandatory contribution by local government – however requires employer to collect and remit beginning 1/1/22

HB 1913 – provides occupational disease presumption for firefighters and certain emergency medical technicians for additional cancers. Creates a presumption for heart problems and infectious diseases for law enforcement officers. Requires L&I to create an advisory committee made of specified scientists.

New legislative authority –

- HB 1219 – Extends use of REET for homelessness projects until 1/1/2026
  - Expands definition to include Affordable housing projects as of 7/28/2019
  - Requires documentation within the CFP for use of funds for Affordable housing & homelessness projects and city’s ability to maintain its current CFP schedule (excluding parks) for 2 years.
- HB 1406 – Authorizes cities and counties to impose a local sales tax (credited against the state tax) for affordable or supportive housing.
  - AWC – has Factsheet and additional training planned
- SSB 5894 – Firefighter’s Pension Levy – amends statute to allow use for LEOFF 1 medical benefits when city no longer has pre-LEOFF beneficiaries.
How many hearings must local governments have on budgets?

- We believe that number is a minimum of three (3)
  - RCW 35.33.057, RCW 35.34.090, RCW 35A.33.055, and RCW 35A.34.090(2) all provide that prior to the final hearing on the budget, the legislative body or a committee thereof shall schedule "hearings" on the budget or parts thereof, and may require the presence of department heads to give information regarding estimates and programs.
  - RCW 35.22.288, RCW 35.23.221, RCW 35.27.300, and RCW 35A.12.160 require the council to "establish a procedure for notifying the public of upcoming hearings," but they do not specify a particular kind of notice.
  - If a city council holds workshops at which citizens may comment and ask questions, it is likely that these workshops would satisfy the hearings requirement for the preliminary budget.

- A final budget hearing for cities is required by RCW 35.33.071, RCW 35.34.110, RCW 35A.33.070, and RCW 35A.34.110 and has specific publishing requirements.
**Frequently Asked Questions**

**Budget - Amendments**

Do cities need to have a public hearing to amend the budget?

- With the exception of certain emergency expenditures (see RCW 35A.33.090), the city council is not required to hold public hearings when amending the budget.

- RCW 35A.33.120 is the basic statutory authorization for a code city to amend its budget, and it contains no public hearing requirement.

It may be good public policy, but there is no statutory requirement for cities to have a hearing.

**Frequently Asked Question**

**Budget – Amendment or Adjustment?**

What’s the difference between a budget amendment and a budget adjustment?

- A reallocation of budget appropriations within a department and/or fund.
  - RCW 35.33.121 and RCW 35A.33.120.
  - “Transfers between individual appropriations within any one fund may be made during the current fiscal year by order of the city’s or town’s chief administrative officer subject to such regulations, if any, as may be imposed by the city or town legislative body.”

There is no statutory requirement for cities to have a hearing on budget adjustments due to the fact that the fund level appropriation is not being increased.
**Frequently Asked Question**  
**Finance - Interfund Loans**

**Does an interfund loan need to be approved by ordinance or resolution?**

- You do need to pass an ordinance or a resolution to make an interfund loan. The ordinance or resolution should include all the procedures listed in the BARS manual (www.sao.wa.gov) consisting of:
  - Indicating funds involved (lending fund and borrowing fund clearly identified)
  - Repayment schedule including dates due
  - Interest rate to be applied to loan
  - Borrowing fund must be able to repay
  - Term of loan must be temporary in nature (3 year rule)

**What if the loan is from an enterprise fund to a governmental fund?**

- There are no special rules for loans from enterprise funds to a governmental fund but........

**Frequently Asked Question**  
**Real Estate Excise Tax**

- **May a city use real estate excise tax revenues to pay debt service on a councilmanic bond?**
  
  - Yes, as long as the project is one for which these revenues may be used. For example, revenues from the second quarter percent (REET 2) can only be spent on projects listed in **RCW 82.46.035(5)** -- street, water, sewer, and parks (excluding land acquisition) projects.
  
  - Therefore, these revenues could not be used to pay debt service on a new city hall or county courthouse.
Finance – What’s New

Explore Topics

Popular Topics

Open Government  Purchasing & Contracting  Marijuana Regulation  Recent Court Decisions

Budgeting  Growth Management

Finance  Governance

Legal  Management  Parks and Recreation  Personnel

Planning  Public Safety  Public Works and Utilities  Transportation

What’s New in the Area of Finance? Expansion of Budget Info

2019 Budget Calendar for Cities and Towns

March–August
Pre-Budget Items
- Council selects
- Update and/or adopt financial policies
- Public hearings for capital facility plan updates
- Public forums on community outreach (for community property)
- Mayor/Manager communicate budget objectives to CAC

September
Sept 10: Budget request to all department heads
Sept 10-22: Department heads prepare estimates of revenues and expenditures
City-proposes estimates for capital expenses and all other estimates
Sept 24: budget estimate from department heads filled with clerk

October
Oct 1: Clerk provides estimates filed by department heads to Mayor/Manager showing complete financial program
Mayor/Manager provides Council with estimates of revenues from all sources including:
- ordnance, property tax, and other sources for consideration of setting property tax rate
- Public hearing on property tax rate

November
Nov 1: Mayor/Manager prepares preliminary budget and Budget message: Revisions due to Council
Nov 3-20: Public hearing on preliminary budget
Nov 3-29: Public hearing on preliminary budget
Nov 30: Copies of budget available for public

December
Dec 3: Final budget hearing
Dec 11: Budget adoption

Budget Calendar for Outlook

Click for larger version

1 More Options

1 Back to top

Get calendar for Outlook is now available!
2019 State Shared Revenue Estimator

This tool helps cities, towns, and counties in Washington State estimate the per capita shared revenues they can expect to receive from the state government, including liquor, criminal justice, gas tax, and multimodal distributions.

It is part of MRSC’s series on Budgeting in Washington State.

Overview

The State of Washington shares revenues from several sources with counties, cities, and towns across the state. These revenues come from a variety of sources and are often distributed on a per capita basis, although some shared revenues are distributed according to other criteria.

In our effort to assist local governments develop their budget forecasts, we provide estimates of the per capita revenues that the state is expected to distribute to cities and counties. This tool provides an easy way for your jurisdiction to see the expected amount of state shared revenues they will receive in the upcoming budget year.

Historic distribution amounts, back to 2013, can be found on the Washington State Fiscal Distributions to Local Entities website.

Select Jurisdiction

- 2019 Per Capita Estimates for Cities

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<tr>
<th>Revenue Source</th>
<th>Estimates Per Capita</th>
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<td>Liquor Profits</td>
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<td>Liquor Tax</td>
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<td>Criminal Justice - Population</td>
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<td>Criminal Justice - Special Programs</td>
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<td>Gas Tax</td>
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<td>Total</td>
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Finance – What’s New
Tax and Population Data

Ask MRSC
Legal -Overview

Frequently Asked Questions by Cities and Towns

Ask MRSC – Submit Your Question!

Staff and officials from eligible government agencies can use our free, one-on-one “Ask MRSC” inquiry service. With one call or click you can get a personalized answer from one of our trusted attorneys, policy consultants, or finance experts! Use the form below or call us at 1-800-993-4773 toll-free) or (206) 425-1300.

Who Is Eligible?
Officials and employees from the following government agencies within Washington State may use our Ask MRSC service free of charge:
- Cities, towns, counties, and state agencies
Question: Can a city or town issue criminal citations to individuals who sleep or camp on public property?

Answer: It depends.

• Last September the Ninth Circuit Court of Appeals decided Martin v. City of Boise.

• “We consider whether the Eighth Amendment’s prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to. We conclude that it does.”

Anti-Camping Ordinances

Martin v. Boise—a Broad or Narrow Ruling?

“[A]s long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”

But the Martin decision contains many limitations:

• A city is not required to provide shelter for the homeless;
• A city need not allow individuals to sit, lie or sleep on the streets at any time or at any place.
**Martin—Limitations on the Holding**

*Martin* elaborated further on the limits of its holding in footnote 8:

- It does not cover individuals who *do* have access to shelter, but choose not to use it.
- An ordinance prohibiting sitting, lying or sleeping outside at certain times and in certain locations may be permissible *even when shelter is otherwise unavailable*.
- An ordinance may prohibit right of way obstruction or the erection of certain types of structures for shelter.
- The key is whether a city’s ordinances punish a person for lacking the means to live out the “universal and unavoidable consequences of being human.”

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**Use of Vehicles for Habitation**

Question: Can a city or town prohibit individuals from using their vehicles for habitation in the right of way?

Answer: It’s risky and may not be a good idea.

- Such an ordinance was struck down as overly vague in *Desertrain v. City of Los Angeles*.
- The *City of Tacoma* adopted a more specific vehicle habitation ordinance, but it has not been tested in court.
- Parking duration restrictions (such as 72 hours) are valid.
**Public Records**

**Question:** If a councilmember wants to review city records, is he or she required to make a public records request?

**Answer:** Councilmembers need not submit a formal public records request or pay for copies if the city record is to assist him or her in fulfilling the job of councilmember, unless the city has adopted its own policy regarding such requests.

**Follow-up question:** What if the request is for private purposes and not related to his or her role as councilmember?

**Answer:** If the public records request is made in his or her role as a private citizen, then the PRA, including the charging of any fees, should apply.

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**OPMA—Executive Session**

**Question:** A city want to contract for City Attorney services. Can a city council meet in executive session (ES) to evaluate the qualifications of the candidates?

**Answer:** This is a gray area.

- RCW 42.30.110(1)(g) allows an executive session to “evaluate the qualifications of an applicant for public employment.”
- This language clearly applies to an in-house position.
- Many attorneys take the position that public employment = public office, and that an ES is allowed, but that is not what the statute says.
**Use of Public Facilities--Endorsements**

Question: Can a councilmember endorse a candidate for elected office and indicate that he or she is making the endorsement as a “Councilmember of the City of _____?”

Answer: Yes, so long as no public facilities are used in the process.

- In addition, the Councilmember should clarify that the endorsement is made individually and not on behalf of the City.
- For more information, please see our [Use of Public Facilities](#) webpage.

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**Eligibility to Hold Office--Residency**

Question: How long must a candidate reside in a town before he or she is eligible to run for mayor or council?

Answer: There is no specific duration requirement so long as the candidate is a resident and registered voter at the time of filing as a candidate. See [RCW 35.27.080](#).

Follow-up question: Does the answer change for other types of cities?

Follow-up answer: Yes!

For code cities the is a one-year requirement from election day. See [RCW 35A.12.030](#). For first class cities, see the city charter.
**Animal Regulations—Service Animals**

Question: What kind of animals are eligible to be service animals under state law?

Answer: Under SHB 2822 (2018), only dogs and miniature horses fall within the definition of “service animal.”

Follow-up Question: Is an animal that provides comfort or emotional support a “service animal?”

Answer: No. “The crime deterrent effects of an animal’s presence and the provision of emotional support, well being, comfort or companionship do not constitute work or tasks.” See MRSC blog article on this topic.

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**Animal Regulations—Dog Breeds**

Question: Can a city or town regulate dogs by breed—such as banning or placing additional restrictions on pit bulls?

Answer: Technically yes. A few cities have regulations that regulate or ban certain breeds, including pit bulls, wolf-hybrids, and others. The city of Yakima’s pit bull terrier ban was upheld in American Dog Owners v. Yakima, 113 Wn.2d 213 (1989), but Yakima repealed its pit bull ban in August 2018 (see Ordinance No. 2018-029). The trend appears to be away from breed-specific regulations in favor of regulating “dangerous dogs,” regardless of breed.

Ordinances that prohibit specific breeds can be difficult to enforce since it can be hard to establish what breed or mix of breeds a particular dog is. See MRSC’s Dangerous Dogs webpage for more.
**Nuisance Abatement—Court Orders**

Question: Are there any circumstances under which a city may abate a nuisance on private property without a court order?

Answer: Yes. A warrant of abatement is normally required before a city can enter onto private property to abate a nuisance, but there are at least two exceptions to that rule:

1. Consent of the property owner, but get it in writing and be clear about what the city is allowed to do;
2. Imminent danger to the public, such as a tree in danger of falling on a busy street. Thoroughly document the basis for the danger and only do what is necessary to protect the public.

Other remedies may be more appropriate—e.g., stop work order. See MRSC's [Nuisance Abatement](https://www.mrsc.org/research-and-resources/nuisance-abatement) webpages for more.

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**Conflict of Interest--Contracts**

Question: Can a business owned by a councilmember contract with a city to provide website management services if it will not be paid more than $18,000 in any calendar year?

Answer: It depends. RCW 42.23.030(6) provides an exception for such contracts, but it does not apply to cities with a population of 10,000 or more.

Also, even if the exemption applies, the councilmember’s interest must be disclosed to the council and the councilmember must recuse themselves.

For more, see MRSC’s [Ethics and Conflict of Interest](https://www.mrsc.org/research-and-resources/ethics-and-conflict-of-interest) webpage.