

# Cityvision

THE ASSOCIATION OF WASHINGTON CITIES MAGAZINE



## LOCAL TWIST

Aligning levels of authority in  
an age of preemption



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Aaron Alvarado  
Former U.S. Marine Lance Corporal  
WM Fleet Director, PNW/BC

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CITYVISION MAGAZINE VOL. 10 / NO. 6

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**Preemption.** Defined by Webster’s dictionary, in part, as “a doctrine in law according to which the legislation of a superior government (such as a state government) supersedes that of an inferior government (such as a municipal

government),” i.e., the loss of local control for cities.

While preemption is sometimes necessary due to protected rights, most times it is not. Loss of local control means that you, the cities that AWC represents, cannot manage your work, influence your mandates, heed the will of your constituents, or preserve the ability to manage your city’s affairs.

One recent attempt at preemption from our state legislators was related to legalization of recreational marijuana. The voters in some cities supported this industry, while other cities overwhelmingly opposed it. Legislators attempted to pass legislation that would have forced those cities that opposed this type of business to allow it, regardless of what the city’s voters wanted. One bill in particular would have had cities forfeit their share of the liquor tax and profits if they did not allow recreational marijuana in their city. Moneys distributed from these taxes help cities pay for police, fire, and emergency personnel.

Can you imagine if this bill had passed and fathom the negative impact it would have

had on those cities if those moneys were withheld? I spoke with a legislator who supported this bill at the time, and his thoughts were that he knew this would be good for all cities. The legislation failed, in part due to AWC’s opposition.

We cannot allow legislators from outside our own legislative districts to mandate what we as cities are allowed to do. Local decision making is the best practice; legislating cities from Olympia is not. At our recent AWC Board retreat in September, it was agreed to be more proactive with our legislators, to engage them to pass bills that bring positive impacts to cities, not negative. Let local leaders govern.

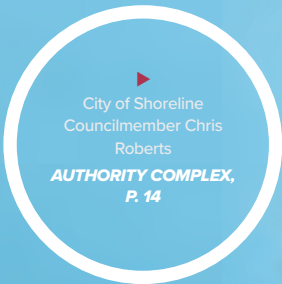
I would like to wish everyone a Merry Christmas and happy holiday season.

Sincerely,

**Don Britain**  
Mayor, Kennewick

# Cityvision

11/12.18



City of Shoreline  
Councilmember Chris  
Roberts  
**AUTHORITY COMPLEX,**  
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News on the home rule home front, from simplifying business licensing to communicating with all residents and bringing health care to where people need it. And in our popular **NOTED** feature, we drink in the recent soda tax initiative.

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Military veteran and Steilacoom Mayor Ron Lucas talks about his town's successes and challenges with local control.

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### **AUTHORITY COMPLEX**

Recent initiatives, court rulings, and legislative actions present complications as Washington cities endeavor to best serve their communities.

BY TED KATAUSKAS

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Preserving the potential of cities means communities can pursue their own paths to success.

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# Citybeat



## Local Options

Cities find a middle way on preemption for business licensing solutions.

**I**N THE STATE OF WASHINGTON, 230 of 281 cities have established business license requirements, and 46 also impose business and occupation (B&O) taxes. For businesses active in multiple jurisdictions, registering and complying with the requisite local paperwork can be a challenge. To remedy that situation, businesses began lobbying the state Legislature several years ago to enact a law that would streamline the local business licensing process, requiring cities to adopt a single set of standards and administer business licenses through the Washington State Department of Revenue Business Licensing System (BLS) online portal.

At around the same time, responding to business concerns and seeking to provide an alternative to a full state preemption of cities administering business licenses, four Puget Sound-area cities—Bellevue, Everett, Seattle, and Tacoma—partnered to create FileLocal, a city-administered web portal designed to provide a “one-stop-shopping” experience for anyone seeking to register a business and pay local B&O taxes in multiple jurisdictions.

Yet FileLocal wasn’t included as an option for the administration of business licenses in early drafts of the business licensing bill that began to gain traction in the state Legislature in 2017.

“Some of the largest cities in the state **CONTINUED ON P.10** ▶



SLICE OF LIFE

# Be Preparado

Renton lays the groundwork for multilingual emergency communication.

BY TRACY HOWARD GARTON

**IMAGINE THIS** literal disaster scenario: A wildfire burns on the horizon and is quickly moving your way. You're frantic to leave, but no one can tell you which direction to safely evacuate. While this may sound like a story from a remote locale lacking even basic infrastructure, it's a real-life example of what happened during wildfires in eastern Washington before the passing of SSB 5046 in 2017.

"We heard stories of Latino families lined up along highways, not knowing which way to go to escape the fire because they couldn't understand the

directions," says Deborah Needham, emergency management director for the City of Renton. But thanks to the bill—which requires any city with more than 1,000 residents or 5 percent of its population with limited English proficiency to provide public messaging in multiple languages notifying citizens of emergency or disaster information, such as where to evacuate and find shelter and how to obtain food and water—it's hopefully not a situation that will recur. "If you don't speak English or speak it very well, it can literally mean

the difference between life and death," Needham says. "That's why this legislation was put forward."

But it also had to be doable for cities. From Renton's perspective, that meant making sure the intent of the legislation could be accomplished while also ensuring that local emergency managers could fulfill the mandate. "Things needed to be worded in a way that didn't put people in a place of noncompliance with an impossible demand," says Needham.

To that end, per the law's stipulations, each jurisdiction gets to decide how they're

**"IF YOU DON'T SPEAK ENGLISH OR SPEAK IT VERY WELL, IT CAN LITERALLY MEAN THE DIFFERENCE BETWEEN LIFE AND DEATH. THAT'S WHY THIS LEGISLATION WAS PUT FORWARD."**

going to comply. "Today's technology for getting voice and text messages out there is pretty limited," says Needham. "We just don't know who speaks or needs which language, and the technology isn't ready to absorb it." For Renton, that means relying a lot on preemptive communication by community liaisons in peer groups, phone trees, and grant-funded school bulletin boards affixed with multilingual disaster info. "Right now, we depend on networking and social connections between people," says Needham. "A lot of that work is reaching out to those communities now to make sure they know where to get information when an emergency happens."

Still, it's all a work in progress. As technology advances, Needham has visions of launching an app, and shifting demographics require constant reevaluation of which languages her community should include. But what remains most important is keeping people safe—and regions are banding together to meet that goal.

"In King County, there's a coordinated push to pool resources and help each other so we're not duplicating effort," says Needham. "We're chipping away at it, but there's a lot of work to be done." **C**



# STATES' WRITES

State legislative preemption can cover all policy areas. The National League of Cities recently analyzed seven of them.

No. of States with Preemption	Policy Area
42	Tax and expenditure limitations
41	Ride sharing
28	Minimum wage
23	Paid leave
20	Municipal broadband
5	Home sharing
3	Anti-discrimination

## Washington Preemptions



Ride sharing



Municipal broadband



Tax and expenditure limitations

## Most to Least



Arkansas, Florida, North Carolina, Wisconsin



Connecticut, Vermont

## Other Popular Preemptions



Plastic bags, guns/firearm safety, nutrition, inclusionary zoning & rent control

Source: National League of Cities, "City Rights in an Era of Preemption: A State-by State Analysis 2018"

FRESH  
IDEA

## ON TRACK

Moses Lake's mobile needle exchange helps combat the local opioid crisis.

BY TRACY HOWARD GARTON

**YOU READ ABOUT** it every day: We're in the midst of an opioid epidemic. And no community is immune. For Moses Lake, perched just north of I-90 in rural Grant County, the impact on the community has felt especially intense.

"For a small community like Moses Lake, any opioid-related deaths or overdoses impact us pretty greatly," says public health nurse Jill McCullough. So when a nurse practitioner student proposed creating a progressive needle-exchange program for the city as her final project, the Grant County Health District jumped at the opportunity to take part.

Launched quietly this past May, the program parks its big red van—borrowed from Grant Integrated Services—in front of the food bank for two hours each week, exchanging used needles for new ones and giving away wound care and injection kits, sharps containers, and Narcan (the overdose reversal nasal spray). The services are anonymous, and clients don't need to worry about getting picked up by police—a partnership with the local PD means that patrol cars won't scan the area while the van is there.

"It's not just a needle exchange," says program coordinator Laina Mitchell, likening the program to lifejackets or seatbelts. "We're about harm reduction. We meet these individuals wherever they are at in their journey."

"At the end of the day, if we can help people make decisions about using a new needle instead of sharing one and get used needles off the streets, then we

## "WE'RE ABOUT HARM REDUCTION. WE MEET THESE INDIVIDUALS WHEREVER THEY ARE AT IN THEIR JOURNEY."

know we've reduced harm," adds McCullough. The program even offers rides to treatment for those who are ready—and every once in a while, someone will say yes.

"I'll never forget the first time we had someone agree to go to treatment," says Mitchell. "We all looked

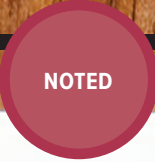
at each other and said, 'Right now?' and the client responded, 'Yeah, I'm ready to go.' We were a little frazzled and like, 'OK, today is the day!' We had our mobile unit take them to treatment and get the ball rolling."

And other users have followed suit; studies show that over half of the people who attend a syringe service program on a regular basis will eventually go into some kind of treatment. Additionally, McCullough and Mitchell ask clients questions like where they slept at night in hopes that the answers will support bringing the program into other communities and help guide their work to identify potential gaps in services in Grant County.

"We are on a mission to reduce the spread of disease and create opportunities for individuals to gain access to the care they need in our community," says McCullough. Yet although they've exchanged almost 9,000 syringes, hosted some 200 visits, and shepherded over a dozen users to treatment, meeting the community's needs is going to take more than six months. "We are making slow and steady headway," she continues, "though it's definitely a marathon and not a sprint." **C**



For more information:  
[granthealth.org](http://granthealth.org)



# KEEP GROCERIES AFFORDABLE ACT OF 2018

INITIATIVE MEASURE NO. 1634

The measure was also referred to in the news as the "soda tax initiative." The PDC reports show that the major contributors to the initiative included Coca-Cola Co, PepsiCo, Keweenaw Dr. Pepper, and Red Bull.

As of Nov 30, 2018, I-1634 was passing with 56% of the statewide vote. Final voting results were to be certified on Dec 6, 2018. A similar ballot initiative, Measure 103, failed in Oregon.

I-1634 preempts taxes, fees, or other assessments on groceries. Other than one city's sugary beverage tax that is grandfathered in by the initiative, AWC was not aware of any city that had been considering a tax or fee specific to groceries or beverages.

RCW 49A.010 defines local governments as a county, city, town, special district, municipal corporation, quasi-municipal corporation, any joint municipal utility services authority, any entity created by public agency, or a public hospital.

This date grandfatheres the sugary beverage (soda) tax imposed by the City of Seattle in 2018, but it preempts any changes, and the preemption applies retroactively to any local tax, fee, or assessment imposed after this date.

The general powers in the RCW for all classes of cities provide for licenses for the purposes of revenue or regulation (RCW 35.22.280(32); RCW 35.23.440(8); RCW 35.27.370(9); RCW 35A.82.020).

The initiative does not impact local sales taxes applied to grocery items other than food. Food and food ingredients were first exempted from the sales tax by initiative in 1977 and again by the Legislature in 1982.

General business licenses and taxes would still be allowed as long as they are not based on a separate classification of groceries and do not impose a higher rate.

**Sec. 1. Short Title.** This chapter may be known and cited as the "keep groceries affordable act of 2018."  
[...]

### Sec. 3. Definitions.

For purposes of this chapter:

- (1) "Alcoholic beverages" has the same meaning as provided in RCW 82.08.0293.
- (2) "Groceries" means any raw or processed food or beverage, or any ingredient thereof, intended for human consumption except alcoholic beverages, marijuana products, and tobacco. "Groceries" includes, but is not limited to, meat, poultry, fish, fruits, vegetables, grains, bread, milk, cheese and other dairy products, nonalcoholic beverages, kombucha with less than 0.5% alcohol by volume, condiments, spices, cereals, seasonings, leavening agents, eggs, cocoa, teas, and coffees whether raw or processed.
- (3) "Local governmental entity" has the same meaning as provided in RCW 4.96.010.
- (4) "Marijuana products" has the same meaning as provided in RCW 69.50.101.
- (5) "Tax, fee, or other assessment on groceries" includes, but is not limited to, a sales tax, gross receipts tax, business and occupation tax, business license tax, excise tax, privilege tax, or any other similar levy, charge, or exaction of any kind on groceries or the manufacture, distribution, sale, possession, ownership, transfer, transportation, container, use, or consumption thereof.
- (6) "Tobacco" has the same meaning as provided in RCW 82.08.0293.

### Sec. 4. Keeping Groceries Tax Free—Protecting Traditional Local Revenue Streams—Continued Authority.

Notwithstanding any other law to the contrary:

- (1) Except as provided in subsections (2) through (4) of this section, a local governmental entity may not impose or collect any tax, fee, or other assessment on groceries.
- (2) Nothing in this section precludes the continued collection of any existing tax, fee, or other assessment on groceries as is in effect as of January 15, 2018; but no existing tax, fee, or other assessment on groceries may be increased in rate, scope, base, or otherwise after January 15, 2018, except as provided in subsections (3) and (4) of this section.
- (3) Nothing in this section prohibits the imposition and collection of a tax, fee, or other assessment on groceries if:
  - (a) The tax, fee, or other assessment is generally applicable to a broad range of businesses and business activity; and
  - (b) The tax, fee, or other assessment does not establish or rely on a classification related to or involving groceries or a subset of groceries for purposes of establishing or otherwise resulting in a higher tax rate due to such classification.
- (4) Nothing in this section prohibits the imposition and collection of a local retail sales and use tax pursuant to RCW 82.14.030 on those persons taxable by the state under chapters 82.08 and 82.12 RCW.

[...]



THE QUESTION

WHEN WORKING ON A CHALLENGING ISSUE, HOW HAVE YOU FOUND COMMON GROUND WITH YOUR LEGISLATORS?



We focus on building relationships with our legislators through frequent communication and sharing of detailed information. Often, legislators who do not have a local government background may not understand the unique challenges we face at the city level; sharing our story with them typically brings results. Additionally, we focus on the areas of agreement and mutual benefit to our shared constituents.

—JERRY SMITH  
Mayor, Mountlake Terrace



Whether it is transferring a new road as a limited access state highway or resolving potential legal issues with DRS related to contracting out work to retirees, the key has always been communication, persistence, and the subsequent work of our state reps, senators, and their aides. Amazing people from both sides of the aisle, both in and out of our district, have helped us find resolution in the past.

—BRENT KIRK  
City Manager, Granite Falls



The City of Brewster has had a few opportunities to work with our legislators on issues recently. Fortunately, the communication has been great! By working closely with our legislators, we have been able to secure small amounts of state funding, which allowed us to secure larger amounts of federal funding. The projects we have been able to complete as a result are far beyond anything we could have achieved on our own.

—MISTY RUIZ  
Finance Director/City Clerk, Brewster

TRAININGS

DEC

12 **RMSA Anti-harassment Training**  
DuPont

13 **RMSA Anti-harassment Training**  
Gig Harbor

JAN

23 **Mayors Exchange**  
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FEB

13–14 **City Action Days**  
Olympia

MAR

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20–21 **Healthy Worksite Summit**  
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TRAINING HIGHLIGHTS

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## Citybeat

### Local Options *continued from page 5*

had started a system that wasn't being recognized in the bill," says Doug Levy, a cities lobbyist whose firm represented Everett, Kent, and Renton on the business licensing issue. "The bill as it started was all about, 'We have a state system; we want to get everybody on our system in an orderly manner.' That's not a terrible goal, but it didn't fully recognize the fact that cities [wanted to have] more than one option."

For one thing, FileLocal allows businesses to both register for a license and pay local B&O tax via a single online portal, unlike the state's BLS system, which only processes business licenses. Some cities without B&O taxes also prefer FileLocal because it allows cities to maintain local control over information that is gathered during the licensing process.

FileLocal "allows cities to accommodate the local business community and to really be asking the questions their citizens want them to be asking businesses, rather than the default questions that are in the state system," says Briahna Murray, a vice president at Gordon Thomas Honeywell Government Affairs, a Tacoma lobbying firm that represented Tacoma and Bellevue in advocating for including the system in the final bill. EHB 2005, which the Legislature approved in 2017, was a compromise, requiring cities to adopt uniform licensing standards on a staggered schedule starting January 1, 2019, and to begin administering business licenses using either the state's BLS by 2022 or FileLocal by 2020.

### "FILELOCAL ALLOWS CITIES TO ACCOMMODATE THE LOCAL BUSINESS COMMUNITY AND TO REALLY BE ASKING THE QUESTIONS THEIR CITIZENS WANT THEM TO BE ASKING BUSINESSES."

"I think it was an eloquent solution that honored local control in allowing a city-run portal to exist, but it also met the business community's needs of wanting to have reduced administrative burden," says Murray, who adds that there's a lesson for cities to learn from FileLocal. "When an industry raises concerns and presents a solution that is preemption, it's worthwhile to listen to what their concerns are ... and work collectively to provide a local solution to respond to those concerns without having to resort to preemption."

Levy offers another takeaway for cities.

"Too often, we have cities and chambers working together in local communities, and yet 'business' and 'local government' end up sparring in the legislative arena," he observes. "This bill showed it doesn't have to be that way—and that we can find thoughtful ways to address business concerns in the hallways of Olympia."

—Ted Katauskas



For more information:  
[filelocal-wa.gov](http://filelocal-wa.gov)

# Cityscope

Q&A

## Model Manager

Military veteran and Steilacoom Mayor Ron Lucas talks about his town's successes and challenges with local control.

Steilacoom Mayor  
Ron Lucas

### **You grew up in Oregon; how did you end up settling in Steilacoom?**

After college, I served in the military for 30 years. I was in the Army, in field artillery, and did what several million people did in Vietnam, Europe, and the US. My last assignment was as inspector general at Fort Lewis. My wife had set up 17 homes and taught at 11 schools around the world. She was teaching at a school in Lakewood, which is adjacent to Steilacoom, so rather than move again, we stayed.

### **Describe Steilacoom.**

We're the oldest town in Washington. When Steilacoom was incorporated in 1854, there were 250 people, and zero in Seattle and Tacoma. That had a lot to do with Fort Steilacoom, a military outpost that's now the site of Western State Hospital just across the street from us in the City of Lakewood. We're basically a bedroom community to Olympia and Tacoma, less than two square miles in size, with a very small business district, but that's OK with us.

**CONTINUED ON P.12** ▶



**You've been mayor for 18 years; what's your proudest accomplishment?**

Out of 281 cities in Washington, we're very fortunate to be one of 16 that run of our own utilities, so we pretty much have control over what goes on here. We have no debt, and in all of our accounts we have about \$18 million in reserve, most of which is programmed out over the next three to five years for infrastructure projects.

**How'd you accomplish that?**

With the help of [Town Administrator] Paul Loveless and our council, we pretty much set that path 18 years ago, and that's where we are today.

**Did your career in the military prepare you for your leadership role in local government?**

When I was stationed in Germany, there were some 300,000 military dependents living in Europe. One of my titles was deputy community commander, and I had responsibility for about 10,000 people, the facilities, infrastructure, contracting, and so forth. So I came here with a little more background than the average resident would have, but by no means was I prepared to be a town administrator.

**What's one experience Steilacoom's had with local control versus state preemption?**

When the state set up the Special Commitment Center [to house up to 500 men who met the state's definition of "sexually violent predator"] on McNeil Island, which is serviced through Steilacoom,



**“OUT OF 281 CITIES IN WASHINGTON, WE’RE VERY FORTUNATE TO BE ONE OF 16 THAT RUN OUR OWN UTILITIES, SO WE PRETTY MUCH HAVE CONTROL OVER WHAT GOES ON HERE.”**

there was a huge hue and cry from our residents. The state could put anything they want on McNeil Island—they could put nuclear weapons out there if they wanted to—because they don't have to have a vote or comments by the local residents around it. The state has housed some McNeil Island offenders at Western State Hospital and built out homes for others in Lakewood—that's also a preemption. Folks from Western State and these homes escape and wander into our community, and we apprehend them and return them to where they need to be by court order, so it puts a strain on our police resources.

**You also have some experience with preemption and the telecommunications industry.**

I've been on the Rainier Communications Commission for 20 years. I can remember

when, almost 20 years ago, there was a procedure to expand broadband nationally about the siting of cell towers. Many cities weren't prepared for it, and providers, the cable guys, wanted to put towers in to provide service. It was a local debate on who controls what, on preemption, and it led to model franchise agreements for how you build out a system.

**And that's occurring again with the rollout of new 5G cellular service and "small cell" equipment. What's the issue there?**

The role of right-of-way, community planning documents, and local control being eroded. Recently, just as in the past, one of the leaders is the National League of Cities; they have put out a model ordinance on small cells. I would encourage all cities to go onto their website, because it gives

us some guidance that will allow us to get ahead of this.

**What's one takeaway?**

There's probably going to be a protracted litigation battle, nationally and statewide, because what you're talking about isn't cell towers, it's suitcase-size devices being placed on poles. . . . Cities are going to need to structure individual codes about right-of-way permits, franchise agreements, zoning buildings, and aesthetics.

**Bottom line?**

This train has left the station. Residents of our communities want more data; people don't talk anymore, they're on their phones, they're on their iPads. But on the other side, we need to be prepared: how do we shape this within our communities, what's the best way to do it? It is time to do your research. **C**

# Steilacoom

Cityvision looks at how Steilacoom strives to drive its own development destiny.

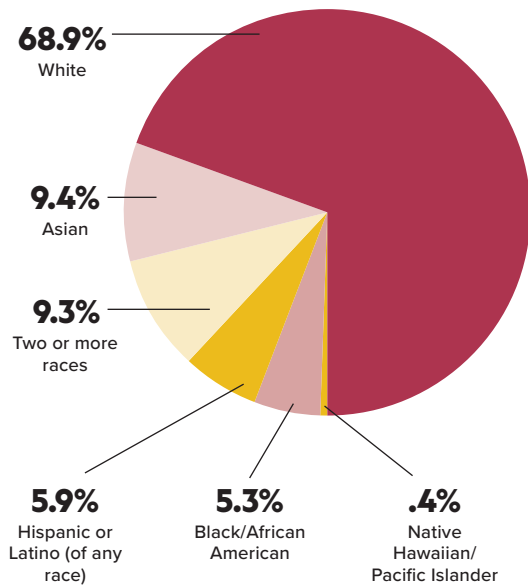
## POPULATION

POPULATION DATA FROM THE 2010 US CENSUS, UNLESS OTHERWISE INDICATED

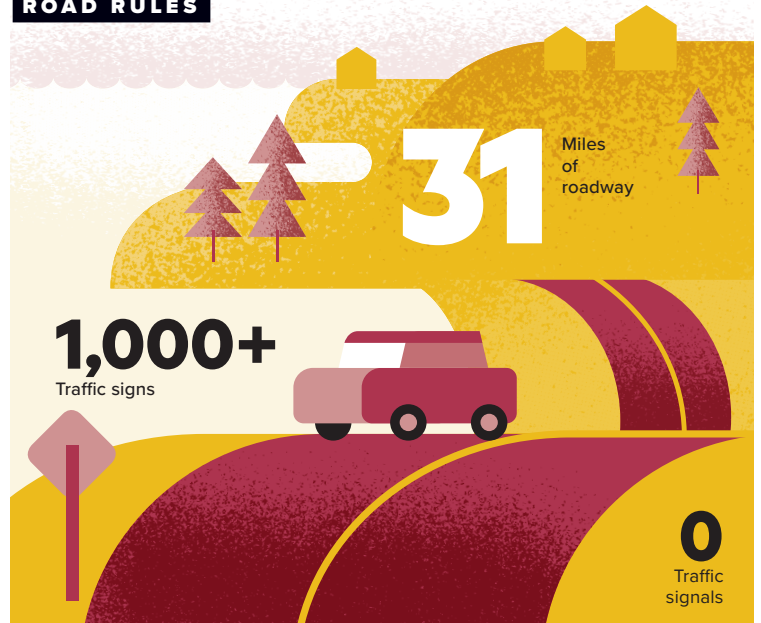


2018 SOURCE: WA OFM

## DEMOGRAPHICS

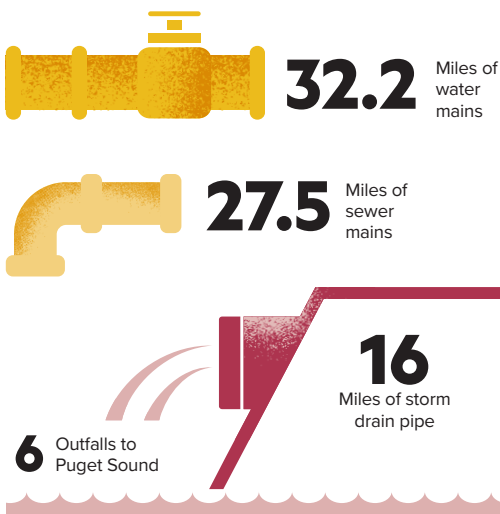


## ROAD RULES

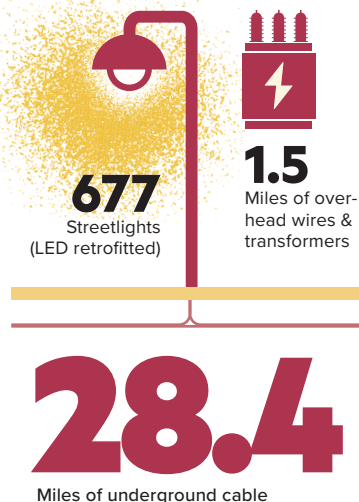


SOURCE: TOWN OF STEILACOOM

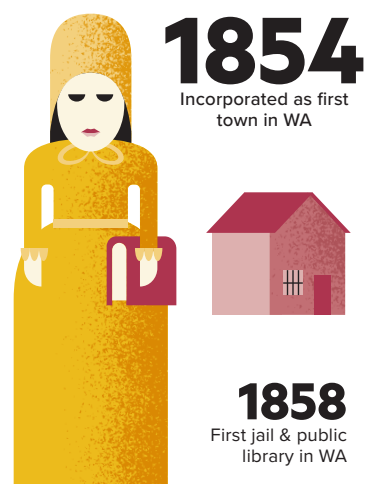
## PIPE DREAMS



## ELECTRIC AVENUES



## O PIONEERS!



SOURCE: TOWN OF STEILACOOM



# AUTHORITY COMPLEX

RECENT INITIATIVES, COURT RULINGS, AND LEGISLATIVE ACTIONS PRESENT COMPLICATIONS AS WASHINGTON CITIES ENDEAVOR TO BEST SERVE THEIR COMMUNITIES. **BY TED KATAUSKAS**

SIGNATURE OF QUALIFIED VOTER  
ALL MUST BE WRITTEN BY THE VOTER IN PERSON

	PRINT NAME	RESIDENCE ADDRESS	CITY, TOWN OR VILLAGE	COUNTY AND STATE
1 JOHN Q. CITIZEN <i>Emilia Osorio</i>	John Q. Citizen	71 All the Way	PORT ANGELES	CLALLAM, WA
2 <i>Emily Mallett</i>	Emily Mallett	7726 Sandpoint 1514 1st S.W.	PORT ANGELES	CLALLAM, WA
3 <i>Diana B. Mallett</i>	D. Mallett	7134 MUNISEN RD SW	PORT ANGELES	CLALLAM, WA
4 <i>Gyenia Dewitte</i>	Gyenia Dewitte	541 Hidden Forest Dr. SE	PORT ANGELES	CLALLAM, WA
5 <i>Diane Upton</i>	Diane Upton	3222 Johnson Pt Rd	PORT ANGELES	CLALLAM, WA
6 <i>Karen Veidixer</i>	Karen Veidixer	2315 Cooper Creek NW	PORT ANGELES	CLALLAM, WA
7 <i>Stephanie Brashear</i>	Stephanie Brashear	2025 Wilbur St	PORT ANGELES	CLALLAM, WA
8 <i>Richard Holmes</i>	Richard Holmes	2027 Wilbur St	PORT ANGELES	CLALLAM, WA
9 <i>James Carter</i>	James Carter	2014 Wilbur St	PORT ANGELES	CLALLAM, WA
10 <i>Betty Collins</i>	Betty Collins	2022 Wilbur St	PORT ANGELES	CLALLAM, WA
11 <i>Frank Adams</i>	Frank Adams	2021 Wilbur Street	PORT ANGELES	CLALLAM, WA





## ON MAY 4, 2016, ELOISE KAILIN, A 97-YEAR-OLD RETIRED PHYSICIAN REVERED AS THE MATRIARCH OF

North Olympic Peninsula's environmental community, walked into the clerk's office at the Port Angeles city hall bearing a citizens' petition. Signed by more than 1,000 residents, it demanded a ballot measure seeking to demote Port Angeles from a code city with home rule privileges to a second-class city with limited ability to self-govern.

Rewind to 2003. On February 18 of that year, on advice of the board of commissioners of the Olympic Medical Center, Port Angeles's council passed a motion approving fluoridation of the city's water supply, deciding that the public health benefits of fluoridation outweighed the objections of Kailin and like-minded citizens who, at contentious public hearings, had urged a "no" vote on the grounds that the practice violated the personal freedom of those who believed fluoride was a harmful drug and did not want to be forced to ingest it.

In 2005, the city signed a 10-year contract with the Washington Dental Service Foundation (WDSF), a nonprofit that paid for the design, construction, and installation of a fluoridation system that became operational in 2006. That same year, Kailin and Protect the Peninsula's Future (a nonprofit she had founded in the 1970s to halt construction of a nuclear power plant on Miller Peninsula) sued the city to stop fluoridation, unsuccessfully arguing that the practice posed an environmental risk to the community. In 2010, Kailin's Our Water, Our Choice! and another anti-fluoridation PAC sued the city for not referring to the ballot two initiatives calling for a local vote to end fluoridation, on two distinct grounds. Both measures lost on appeal to the State Supreme Court, which declared that the administrative authority of a code city's elected council trumped the power of local initiatives.

The community's antipathy to the council's embrace of fluoridation only amplified as time passed, reaching a crescendo at a packed council chambers on the night of December 15, 2015, when Port Angeles's council voted 4-3 to renew its contract with WDSF for another 10 years, despite the release of a survey showing that nearly 57 percent of the city's water customers opposed continuing fluoridation. A month later, when the four councilmembers who had greenlighted the WDSF contract extension elected one of their own bloc (Patrick Downie) as mayor on another 4-3 split decision, they were shouted down with a chorus of boos, derided as the "Fluoride Four."

Attempting to address, and quell, the community's discontent, on January 19, 2016, the city's senior staff drafted a memo to the Port Angeles council, recommending that the city cease fluoridation of the municipal water supply after May 18, 2016, and as an alternative, launch an oral health care initiative that would target the underserved populations of Port Angeles, particularly children and adolescents.

"The city recognized that for many of its citizens, water fluoridation was the primary issue, if not a singular issue," explains Nathan West, who served as the city's community and economic development director at the height of the fluoride crisis and in July was appointed city manager. "Furthermore, fluoridation was a minor matter compared to the extensive

negative consequences that would result from the backward change to second-class-city status."

Unable to break the pro-fluoride majority on Port Angeles's council, which declined to act on the staff's memo, Our Water, Our Choice! instead delivered its petition in May 2016, taking advantage of a legislative tweak to the state's home rule statute. In 1967, seeking to underscore its preference to grant code cities home rule authority, the Legislature drafted and approved a law granting first-class cities "the broadest powers of local self-government consistent with the Constitution of this state." As part of that rule-making, the Legislature provided an escape hatch, giving code cities the option to revert to second-class status. Our Water, Our Choice! seized on that provision as an unorthodox means to oust the Fluoride Four.

"If the council is going to act in a manner that the people feel is undemocratic and not reasonable," Our Water, Our Choice! attorney Gerald Steel told the *Peninsula Daily News*, "then the people have a right to throw the council out, and this is the way to do that."



### BUT NOBODY KNEW FOR SURE

whether the tactic was sound—Port Angeles would be the first in state history to attempt to relinquish its code city status.

"The anti-fluoride group had tried a variety of means to convince at least one councilmember to switch [sides], and they were not successful, so they came up with this idea of changing the classification of the city," explains City Attorney Bill Bloor. "It was an end-run attempt to do a recall of the entire council."

Publicly, Our Water, Our Choice! and other anti-fluoridation proponents advanced other ideas and claims, arguing that even as a second-class city, Port Angeles would retain the authority to do things like levy taxes and issue debt—only, they argued, that power would be transferred from the city's council to its citizens.

"Of course, that's not true," says Bloor. "If the city were to switch back to a second-class city, it would lose its home rule authority, and the citizens wouldn't have that authority either. The anti-fluoride group themselves thought that this was such a horrendous idea that the council would not allow that to happen."

That reasoning proved to be sound.

At a council meeting on August 4, 2016, Mayor Downie broke from the Fluoride Four and voted with three anti-fluoride councilmembers to approve a compromise measure to cease fluoridating the city's water supply until the November 2017 election, when an advisory vote would guide the council's ultimate decision about whether or not to continue the practice. Our Water, Our Choice! had achieved its primary objective, yet for more than a year its referendum jeopardizing the city's home rule status hung over Port Angeles like the sword of Damocles.

Finally, on November 7, 2017, Port Angeles's electorate overwhelmingly rejected Our Water, Our Choice!'s ballot measure, with 78 percent





Port Angeles City  
Attorney Bill Bloor

## IT'S IMPORTANT TO REMIND THE COURTS THAT THE LEGISLATURE HAS GRANTED TO THIS PARTICULAR CLASS OF CITIES THE RIGHTS OF HOME RULE. THOSE ARE VALUABLE RIGHTS.

**BILL BLOOR** CITY ATTORNEY, PORT ANGELES

opposed to changing the city's government. On the advisory vote, residents reiterated the 2015 water customer survey, with 57 percent opposed to resuming fluoridation. With that, the controversy and turmoil that had embroiled Port Angeles for more than a decade, and had threatened the city's ability to govern itself, was put to rest—or so it seemed.

Two weeks after the November 2017 election, King County Superior Court Judge John Ruhl struck down a 2.25 percent local income tax on high-wage earners that the City of Seattle had approved that July to raise an estimated \$125 million a year to fund public transit, affordable housing, and other critical capital projects. Arguing that Dillon's Rule (a legal precedent named for Iowa State Supreme Court Justice John Forest Dillon, who in 1868 declared that local governments only possess powers that are explicitly granted by state legislatures) applied to city tax measures, Ruhl challenged the interpretation that Washington's Constitution granted code cities broad taxation power to provide for essential services. Seattle, arguing that cities had been expressly granted sufficiently independent taxing authority from the Legislature, appealed the decision to the Washington State Supreme Court.

In a 5-2 decision in October 2018, Port Angeles's council voted to add the city's name, and cautionary tale, to an amicus brief in support of Seattle's Supreme Court appeal seeking to overturn Judge Ruhl's decision.

"Port Angeles provides its citizens with a full range of municipal services and is struggling to meet the demands increasingly placed on it to deal with needs unmet by state and federal authorities," Bloor wrote in the amicus brief that Port Angeles (along with Port

Townsend and the Association of Washington Cities) filed this past October 17. "The prospect of losing home rule authority is an issue of utmost importance to the City of Port Angeles and a significant majority of its residents."

Rather than weigh in on the merits of Seattle's controversial tax measure, Bloor notes that given its brush with reverting to a second-class city, Port Angeles's council felt an obligation to support Seattle's right, shared by code cities, to write its own local rules without sign-off from Olympia.

"It's important to remind the courts that the Legislature has granted to this particular class of cities the rights of home rule," explains Bloor. "Those are valuable rights."

Hugh Spitzer, a state constitutional law scholar at the University of Washington School of Law who is advising Seattle on the case, agrees.

"It's a concept that was developed in the late 19th and early 20th centuries as a movement to try to disburse power and flexible authority to as low a level government as practicable," explains Spitzer, who notes that the Washington Legislature's preference for local home rule dates to the drafting of the state's Constitution in 1889. "The rule's pretty straightforward: Article 11, Section 11 of the Constitution says cities have all of the powers of the state Legislature to make local regulations, as long as they're not in conflict with general law. . . . The danger in trying to take that power away is then you don't have the flexibility locally to figure out policy approaches that are fit for a particular city. In any event, in this instance code and first-class cities were given express taxing power by the lawmakers.



## CASE IN POINT: THE CITY of Shoreline.

In 2008, voters approved the Lynnwood Link Extension, an expansion of Sound Transit’s light-rail network that called for two station stops to be operational in Shoreline by 2023 (currently slated for 2024). In May 2013, the city’s planning department initiated a public outreach campaign to solicit citizen feedback about how development around the two new stations would occur. For the next four years, the city facilitated visioning and design workshops, hosted walking tours of both station areas, developed environmental impact statements, and conducted public hearings.

“The level of interest was definitely high,” says Shoreline Senior Planner Miranda Redinger. “Any time we had a meeting with ‘light rail’ in the title, 300 people showed up. Opinions were mixed. This was a big change; changing from single-family to high-density is one of the more controversial things a city can do.”

To realize goals embodied in the Growth Management Act, Shoreline proposed concentrating development around the two stations, doubling the city’s capacity to handle its growing population over the next century by rezoning only 8 percent of its land instead of spreading all of that anticipated growth uniformly throughout the city and changing its entire character. Initially, Shoreline’s vision for rezoning five neighborhoods in the two station subareas to substantially increase their density was decidedly at odds with those of many of its residents, who preferred to maintain the single-family-home status quo that defined the cityscape.

“Staff spent a lot of time talking to the community,” says Redinger. “We said there are two growth management philosophies. One, we can just peanut-butter spread it through the entire city, or two, we can create nodes of density near transit. As a strategy, nodes of density near transit has benefits: it concentrates the density, which can create the walkable communities, the sidewalks, the bike lanes, the connectivity that people say they want and also support neighborhood-serving businesses: the coffee shops, the bookstores, the gathering places that people also say they want.”

Over time, as residents and city staff met and listened to one another, areas of compromise were identified. In exchange for rezoning 500 acres around the two stations from single-family housing (with a maximum of six units per acre) to high-density mixed-use development (with a minimum of 12 to 48 housing units per acre), the city required that all new housing be green and affordable, and required developers to pay impact fees that would fund an array of improvements like bike lanes and pocket parks and mitigate impacts that development would have on local schools and public safety services. The process culminated with a council meeting at 7 p.m. on March 16, a standing-room-only session that stretched nearly six hours as, one after the other, residents approached the podium to have their say. Nearing midnight, after councilmembers had addressed the litany of concerns with dozens of amendments, Shoreline’s council voted, and approved, a final plan that created a trio of mixed-use residential zones where maximum building height and minimum density would taper in concentric circles away from the stations.

“It was the longest meeting we’ve had in 10 years,” recalls Shoreline Mayor Will Hall. “We had more than three dozen amendments that we fought through over five and a half hours:

## Cause and Effect

Q&A JENNIFER KARAS MONTEZ

*Jennifer Karas Montez, a social demographer at Syracuse University, explains how state preemption laws limiting the power of cities may be impacting the health of local communities.*



**You recently released a demographic study suggesting that state preemption laws may be harmful to public health. What initiated this study?**

I recently came across an article by a few public health lawyers that sounded alarm bells about the consequences of preemption for public health. So my colleagues and I decided to start looking into this issue to see if preemption was part of what was driving some really troubling trends in life expectancy in certain US states.

**What trends exactly?**

The differences in life expectancies across US states are bigger than the differences across other high-income countries. We have more inequality between states than between countries. That is remarkable, and it hasn’t always been the case. This is something we can trace: something happened around the early 1980s that caused this major divergence.

**And that “something” includes state preemption laws. You traced preemption to local smoking ordinances in the 1980s, followed by laws limiting**

**local authority on gun control in the 1990s and an uptick in other types of preemption starting in 2012.**

We started to see a really rapid proliferation of preemption laws in domains we never anticipated: state legislatures taking away local authority to enact fracking bans and plastic bag bans, to mandate minimum wage and paid family leave, to put nutrition labeling on restaurants, to require smoke alarms in new housing. It’s really spread like a cancer to other policy areas.

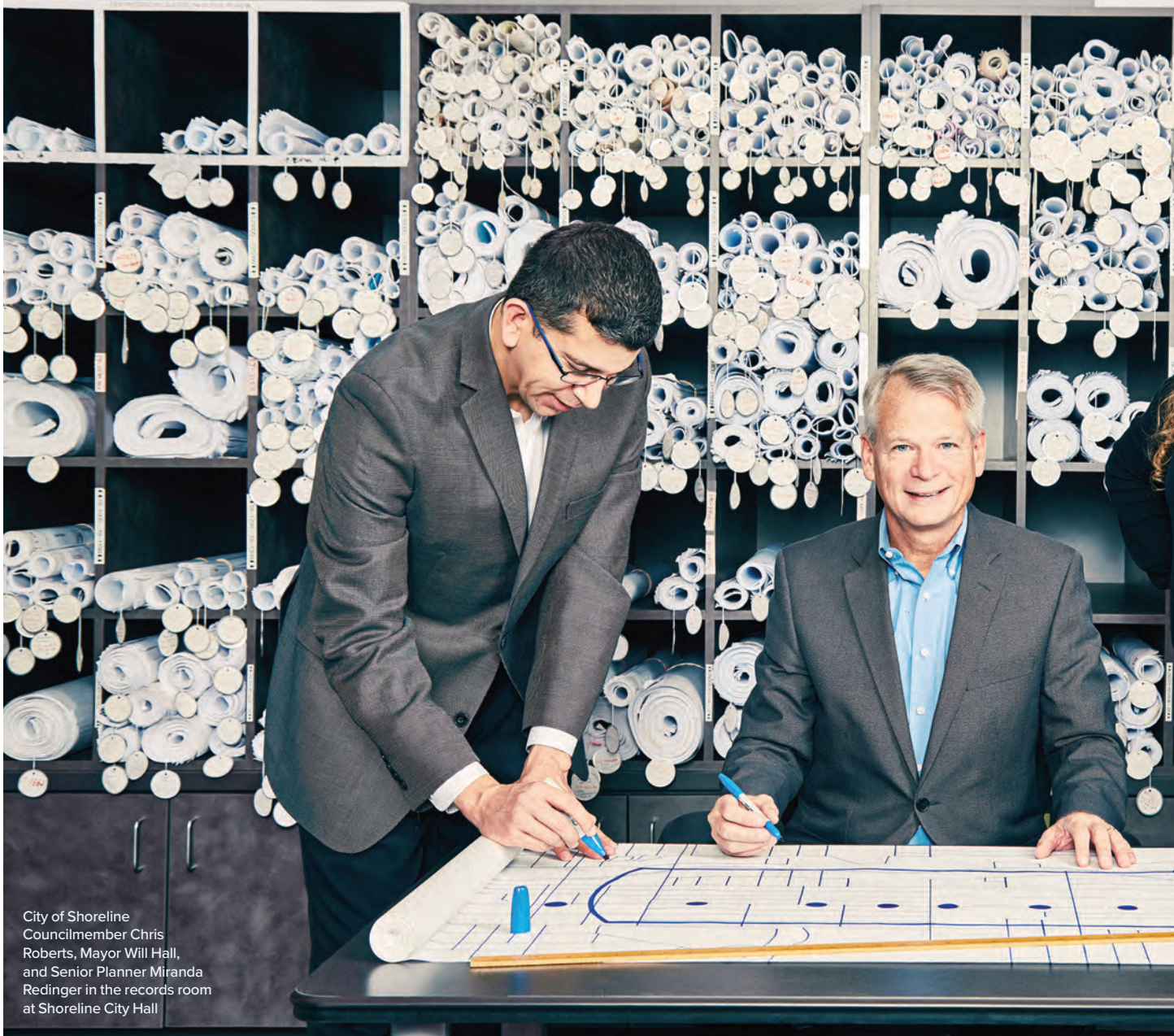
**What impact did that have?**

In a state that has not implemented preemption laws in any of the eight domains we looked at—such as preemption in discrimination, firearms, paid sick days, and e-cigarettes—life expectancy was 80.3 years. At the other extreme, in a state that’s implemented preemption in five or more of those domains, the life expectancy is 77.9 years.

**That’s a big difference.**

We can roughly estimate that with every additional preemption domain that a state gets involved in,

CONTINUED ON P.19 ►



City of Shoreline Councilmember Chris Roberts, Mayor Will Hall, and Senior Planner Miranda Redinger in the records room at Shoreline City Hall

‘Should we add this block? Should we make this one higher or lower?’ There’s no way that we want senators in Olympia taking that ability away from us, the ability for us to look at it block by block, street by street, neighborhood by neighborhood, with the people who are affected to decide where the density goes.”



**IN THE NEXT LEGISLATIVE** session, Sen. Guy Palumbo plans to introduce a local zoning preemption bill that would establish statewide minimum housing density requirements around high-frequency public transit hubs as a strategy that would compel cities to contain urban sprawl as mandated by the Growth Management Act.

“You’ve got these two things inherently in conflict,” says Palumbo, whose legislative district northwest of Seattle has become a haven for urbanites priced out of Seattle’s real estate market, which has driven up housing prices and strained infrastructure. “You’ve got the Growth Management Act saying you need to put density in cities, and cities responding to constituents who say, ‘Don’t upzone my neighborhood!’ ... We’ve to figure out a way to resolve this.”

At first glance, Palumbo’s proposed resolution—updating zoning regulations to allow infill like Accessory Dwelling Units, concentrating the densest development around public transit hubs—looks a lot like Shoreline’s, but for that city, the devil is in the details. A draft of the senator’s bill would require minimum densities within a half mile of high-capacity transit stops (including not just light-rail stations but all stops where buses arrive every 15 minutes or



less) that would more than double the density in more than half of the city.

“This would completely undermine assurances that council made to the community, and the growth philosophy espoused during station subarea planning, that creating nodes of density surrounding transit would prevent having to absorb growth throughout the entire city, and therefore preserve single-family zoning elsewhere,” Shoreline’s senior planner wrote in a markup of the draft bill. “It would damage trust between residents and the city, and between the city and the state.”

Palumbo says his proposed legislation isn’t meant to be a one-size-fits-all solution; he’s willing to amend it to address the local concerns of cities like Shoreline that already have taken significant steps in addressing and containing sprawl. But, he says, his bill

life expectancy in the state declines by 0.4 years. To be clear, that’s a correlation, and a lot of work needs to be done to validate that. But it signals to us that there’s a really strong relationship here that warrants further investigation.

**So what’s your next step?**

Several of my colleagues and I have just received funding from the Robert Wood Johnson Foundation to look at preemption laws across the US and quantify how many deaths are associated with certain types of preemption laws, a really objective and powerful criterion by which we could judge the likely consequence that implementing a preemption law will have on population health.

**When will that study begin, and when do you expect to have results?**

We’ll be starting the study in December, and it will last two years.

**What’s your hypothesis?**

That the state that has been more active in preemption is going to have worse health than the state that has been less active. And we want to look within that state to see whether preemption might be creating large disparities in health between cities and non-cities. We just don’t know.

**What types of preemption will you study?**

From careful robust studies, we know that minimum wage and paid family leave policies shape infant mortality

rates and working-age adult mortality rates. Based on that information, we want to quantify what happens when a state implements preemption in those areas: how many deaths will be saved or increased? We’re also going to look at preemption related to fracking.

**Why fracking?**

Studies show that if you live within a certain radius of a fracking site, you are more likely to experience adverse health outcomes, such as low birth weights. We’re going to be sharpening the pencil and seeing how many deaths are associated with each of these preemption domains. We know that preemption matters; we just don’t know how much it matters.

**What’s your advice to state legislators?**

Absolutely consider the public health impacts of preemption, because they could be large. Realize that policies we don’t think are related to health—labor, gun control, fracking, public transportation—all have impacts on health, for better or for worse. So why not make sure your population has what it needs to create a healthy lifestyle and avoid expensive health conditions later down the road?

**Bottom line?**

If you are preempting local jurisdictions from improving these laws, you are limiting the gains local jurisdictions can make in terms of improving population health.



City of  
Shoreline  
Mayor Will Hall



**THERE'S NO WAY THAT WE WANT SENATORS IN OLYMPIA TAKING THAT ABILITY AWAY FROM US, THE ABILITY FOR US TO LOOK AT IT BLOCK BY BLOCK WITH THE PEOPLE WHO ARE AFFECTED TO DECIDE WHERE THE DENSITY GOES.**

**WILL HALL  
MAYOR, SHORELINE**

should also serve as something of a wake-up call for cities that have yet to devise a workable solution.

"If every city in the area was upzoning and taking adequate growth, we wouldn't be having this conversation," stresses Palumbo. "I'm willing to work [with cities] to find a win-win, but if the red line is going to be 'we will never be OK with losing even a modicum of local control,' then it's going to be hard to find a compromise."

Shoreline knows a thing or two about the art of compromise.

"There is no issue that my community and my council worked on harder or longer than how to accommodate greater density in Shoreline," says Mayor Hall. "We could not have done it without taking that time. The state just can't impose that from the top down and have it be successful."

Shoreline Councilmember Chris Roberts, a political consultant who serves on the executive board of the Puget Sound Regional Council and worked as a legislative assistant to Oregon Rep. Bill Garrard, makes clear that Shoreline, like most cities, shares common ground with Sen. Palumbo.

"We want to see transit-oriented development; we want to see mixed-use construction happen near light-rail stations; we want people to get out of their cars; we want to see more housing built," he says. "The citizens of Washington state see and turn to local officials to make appropriate zoning decisions for their community and for their future [because] fundamentally, local councilmembers know what's happening on the ground or under the ground."



## OR IN THE WATER

A year ago, on December 7, 2017, Port Angeles's council (in a 5-2 vote) approved a resolution to honor the outcome of the citizen advisory vote that November, cancelling its WDSF contract and directing staff to surplus and dispose of the city's fluoridation equipment.

"It saddened me deeply," said Mayor Downie. "We had some very contentious meetings here. We weren't very civil with one another."

At a December 21 council meeting presentation that year, honoring Downie on his retirement from public service, the community already had begun to heal itself, and the mayor seemed at peace.

"I've never regretted a moment.... I never tried to be a politician. I'm just me," Downie, who died on May 17 after a long battle with cancer, said in a farewell address to his city. "Working with you all day after day, year after year, for eight years or more has been life-sustaining.... I want this to be known as the best small town in America. I think we're on our way."

Thanks in no small measure to Downie, who made a difficult decision at one of the most pivotal moments of his city's history, Port Angeles retains the power to chart its destiny.

"We could have done some things differently," says City Attorney Bill Bloor, looking back on the entire episode. "But the real lesson we took away from all of this was to recognize how important it is to preserve home rule."

For City Manager Nathan West, the episode reiterated the importance for cities of listening carefully to both sides on any contentious issue—and maintaining a status that's often taken for granted.

"At the end of the day, we're really grateful, because this reminded us about how important it is to remain a code city and value the rights that we currently have under home rule," he stresses. "It enables us as a local government to essentially foster an approach that directly improves the community in a way that our citizens want to see it improved. That really drills down to what good local government is all about: recognizing the unique characteristics of our community, that we are creating ordinances and rules that are in the best interests of our citizens and not just relying on the state telling us what to do."

# Citywise



“

Beginning in June 2018, first responders such as law enforcement officers, firefighters, and EMTs who file work-related PTSD claims will receive workers' compensation coverage that presumes the condition is work-related.

— CITY 101 P. 24 ▶

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**22** MAKING THE MOST OF CITIES' POWERS TO EXPERIMENT LOCALLY  
**24** COPING WITH PTSD PRESUMPTION **26** UNDERSTANDING UTILITY TAXATION

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# HOME TEAMWORK

Using city powers in a powerful way

HUGH SPITZER PROFESSOR OF LAW, UNIVERSITY OF WASHINGTON

## Within Limits

Sometimes Washington cities looking to implement innovative local solutions get reined in by the courts. Some telling examples include:



Bellingham's tough restrictions on barbershop operating hours in 1934



An unconstitutional Wenatchee downtown redevelopment program in 1978



City power purchase deals with the WA Public Power Supply System in the late 1970s



Seattle's ill-fated street utility in 1995



Seattle streetlight charges in 2005

**W**ASHINGTON CODE and charter cities have quite robust “home rule” powers. This means

that state law lets cities make local choices and experiment with solutions shaped to each community’s needs. It also means that cities get to make their own mistakes, so it’s important to use those strong local powers thoughtfully and strategically, remembering that the Legislature always holds a trump card in the event that lawmakers think city officials have gone “too far” in one way or another.

Our state’s 1889 Constitution allowed charter cities to shape their form of government in any way local voters choose. It also gave cities, towns, and counties all of the police powers (regulatory powers) of the state, except where clearly denied by statute. This latitude is what allows SeaTac to set its own minimum wage, or Seattle to enact an ordinance protecting hotel workers from sexual harassment, even if the Legislature hasn’t passed a law doing the same thing.

Moreover, the State Supreme Court in the early-20th-century Progressive Era determined that local powers should be viewed expansively. Our court recently relied on century-old cases to sustain Seattle’s new tax on gun and bullet sales. Further, since passage of the “Optional Municipal Code” in 1967, code cities joined charter cities to enjoy “the greatest power of local self-government consistent with the Constitution of this state ... [to] be construed liberally in favor of such cities.”

But just because cities have strong local powers doesn’t mean that it always makes sense to wield them in ways that

might backfire in the Legislature, with statewide voters, or with the courts. For example, hints of local enactment of rent controls caused the Legislature in 1981 to preempt city and county powers over residential rent. Seattle’s soda tax led to the recent initiative measure barring other cities from using the same revenue source in the future; I-1634 may have been misleading and vastly funded by the bottling industry, but the soda pop manufacturers were able to convince voters that cities were overreaching. And although the State Supreme Court has generally been sympathetic to local powers, occasionally it decides that cities have gone too far over their ski tips (see “Within Limits,” at left).

Seattle’s recent enactment of a groundbreaking local income tax promptly drew a successful superior court challenge that’s now on appeal to the State Supreme Court. The challengers have grounded their attack on a broad challenge to city home rule flexibility, leading AWC and a group of municipal lawyers to file a focused amicus brief urging the court to make sure that if it fails to uphold Seattle’s authority in this instance, the judges should make sure they don’t throw the home rule baby out with the income tax bathwater.

One takeaway is that as individual cities develop trailblazing solutions to their local challenges, they should consult with other cities through AWC or regional groupings to get a sense of the potential political impact of an innovation that might backfire on cities as a group. Individual cities should also coordinate their legislative agendas with one another and with AWC to avoid







**AS INDIVIDUAL CITIES DEVELOP TRAILBLAZING SOLUTIONS TO THEIR LOCAL CHALLENGES, THEY SHOULD CONSULT WITH OTHER CITIES THROUGH AWC OR REGIONAL GROUPINGS TO GET A SENSE OF THE POTENTIAL POLITICAL IMPACT OF AN INNOVATION THAT MIGHT BACKFIRE ON CITIES AS A GROUP.**

confusion in the Legislature or, still worse, blowback from lawmakers.

This doesn't mean that communities should quit experimenting with new approaches. On the contrary, I have frequently counseled cities to actively wield the broad powers they possess—and not to shy away from a solution just because it might be challenged in court or in Olympia. But when an individual city decides on a cutting-edge technique to deal with a regulatory, social, or fiscal problem, it should bear in mind that its choice could have an impact on other localities and on city powers generally. Prior consultation and consideration of a broad range of other cities' views might temper an innovative tool or at least lead to coordinated efforts to educate

legislators and the public in advance. Such steps would help minimize the likelihood of reactive legislation or initiative measures that reduce city powers across the board.

It is also worth considering a couple of tactical measures: (1) When developing an innovative approach that might stretch the boundaries of city powers, it is important to build both the factual and policy case and the legal case for the action. Data and analysis detailing the underlying problem need to go into the record, with city council findings regarding the problem and the rationale for choosing the new solution. Judges are less likely to reverse an action when elected officials have laid out a sensible rationale, and judges are less likely to “make up the

facts” when those important facts have been determined by the city council and placed in the record. (2) If the council is about to pursue an innovative approach that might cause interest groups to run to the Legislature for relief, it is worth contacting key legislators in advance and educating them about the issue, the need for the solution, and the city's legal authority to take the contemplated action. These proactive measures will reduce the effectiveness of opposition lobbying. AWC staff can be helpful in suggesting the best lawmakers to contact.

Cities should be creative, innovate, and pioneer new solutions to urban problems. They should use their constitutional and statutory powers. But it's also important to be collaborative and strategic to prevent opposing forces—or simply confused legislators—from cutting back on the robust tools that cities possess. **C**

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**Hugh Spitzer** is a law professor at the University of Washington, where he teaches local government law and state constitutional law.



## Action Plan

Together with representatives from firefighters and law enforcement, municipal risk management, and the medical profession, AWC is assembling a work group to explore proactive approaches to the PTSD workers' compensation presumption for first responders. The group will:

- Review Washington's new law and the response from local governments
- Look at claims data from L&I and self-insured governments
- Identify best practices for early identification and intervention
- Evaluate preventative ways to help an employee with treatment
- Bring in other partners who want to make PTSD health and safety a priority

# STRESS TEST

Why cities need to be proactive about first-responder PTSD

MICHAEL D. HARRIS PACIFIC REHABILITATION CENTERS

**A** **SIGNIFICANT CHANGE** in the law about work-related Posttraumatic Stress Disorders (PTSD) was made recently. Beginning in June 2018, first responders such as law enforcement officers, firefighters, and EMTs who file work-related PTSD claims will receive workers' compensation coverage that presumes the condition is work-related.

In contrast to the process for other workers with PTSD claims, that presumptive coverage puts the burden on the employer to prove that the condition was not related to work, which is a very difficult task. There are several specific qualifying situations related to this change, but there is little doubt that the treatment and financial burdens associated with PTSD will increase dramatically.

Little can be done to avoid the traumatic nature of the situations to which these individuals are exposed. Their core duties and responsibilities put them in harm's way repeatedly over time. Furthermore, a single traumatic event can be so significant that the individual begins to experience the symptoms necessary for a diagnosis by a professional. Much is known about the development and course of PTSD; 911 callers and responders, soldiers, and terrorism victims have been well-studied.

The scientific literature provides evidence for several effective treatments for PTSD once it is diagnosed, including medication, cognitive behavior therapy, and sophisticated cognitive reprocessing techniques. More recently, some employers have experimented with at-work programs that range from single debriefing conversations following a traumatic event (generally not effective) to regular

preventive discussion and education groups. Resiliency training has shown promise but needs additional research. Furthermore, effective work-related accommodations for these individuals have been published by both labor and government and can keep the worker at work.

The major challenge before employers now is to bring changes to the workplace that can prevent or at least minimize the emotional suffering and life disruption from frank PTSD. There are also enormous possible financial benefits involved. These preventative approaches have already shown us that continuous support from important friends and family, disclosure about the trauma to loved ones, seeing oneself as a survivor

## THE MAJOR CHALLENGE BEFORE EMPLOYERS NOW IS TO PREVENT OR AT LEAST MINIMIZE THE EMOTIONAL SUFFERING AND LIFE DISRUPTION FROM FRANK PTSD.

rather than a victim, searching for some positive meaning in the trauma, getting involved in helping others, and holding the belief that one can manage the emotions and cope with the situation are effective preventative activities.

We need the invaluable services provided by these individuals, so we would be wise to do everything possible to prevent suffering and keep them at work. **C**

*Michael D. Harris, PhD, is chief operations officer, clinical director, and a psychologist at Pacific Rehabilitation Centers and a part of AWC's PTSD work group.*





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## In Brief

A city can charge a utility tax up to 6 percent on electric, gas, and telephone businesses, unless a voted ballot proposition authorizes a higher rate. Utility tax on cable TV is more complicated because cable companies now deliver TV, internet, and telephone. There is no limit on the utility tax rate for your own city's municipal water, sewer, and storm utilities. If a water/sewer district operates within your boundaries, your city can impose a utility tax, without rate limitation, on the district's "proprietary" functions—typically revenues from metered service.

The utility tax authority discussed in this article is subject to exceptions. Before making any change to your city's utility taxation policies, consult with your city attorney and chief financial officer.

# EXERCISE IN UTILITY

Where cities are and aren't limited in certain taxing authority

TOM BRUBAKER LIGHTHOUSE LAW GROUP

**L**AWS GOVERNING UTILITY tax aren't that complicated, once you grasp the basics. Some utilities are subject to caps or limits on the utility tax rate; others are not.

In general, utility taxes are considered excise taxes, and they can be imposed only if specifically authorized by statute. A utility tax is considered a "gross receipts" tax, which means the tax applies to the gross revenue received by the utility, without regard to the cost of doing business or a utility's profits (though limited exceptions apply when computing gross receipts). Last, and perhaps most important, utility tax revenues are *general fund* revenues. Generally speaking, they can be applied for any municipal purpose.

For specific types of utilities, here are the additional basics:

■ **Electric, Gas, Steam, and Telephone Utilities.** Washington cities can impose a utility tax at any rate up to 6 percent on electric, gas, steam, and telephone utilities. Your city can set the utility tax rate on these utilities anywhere from 0 to 6 percent. Your city can exceed the 6 percent cap, but only if a majority of your city's voters approve a proposition to increase the rate to a specific amount greater than 6 percent.

■ **Cable TV.** Cable TV is unique, because most cable companies now provide not only a television signal but also internet access and telephone service. Here's how the rules apply: (1) for the cable TV revenue, there is *no limit* on the amount of utility tax (however, federal law states that the tax may not be "unduly discriminatory"); (2) for revenues from telephone service, the *same 6 percent limit* addressed above applies; and (3) for internet service revenues, federal law *prohibits* any local utility tax.

■ **Water, Sewer, Storm, and Solid Waste Utilities.** There is no cap on water, sewer, storm, and solid waste utility taxes. Cities can set any rate on these utilities, but cities should exercise caution to keep the tax reasonable so as not to be seen as overly burdensome on the ratepayer. Still, some cities have imposed utility taxes on these municipal utilities in amounts up to 18 percent or more. Again, these revenues go straight into the general fund.

■ **Special Purpose Water and Sewer Districts.** Some cities have special purpose water and sewer districts operating within their boundaries. These water/sewer districts may operate within all or part of your city, and there may be more than one of these districts operating within your city boundaries.

For years, these special purpose districts asserted—and cities believed—that cities did not have the constitutional authority to impose a utility tax on their

## WASHINGTON CITIES CAN IMPOSE A UTILITY TAX AT ANY RATE UP TO 6 PERCENT ON ELECTRIC, GAS, STEAM, AND TELEPHONE UTILITIES.

utility business. This belief was based on a 1984 Washington Supreme Court decision holding that Algona could not impose a B&O tax on King County's operation of a solid waste transfer station within city limits. The court decided that solid waste collection constituted a governmental, not proprietary, function, and that governmental immunity would not allow one municipality to impose a tax on another.

Thirty years later, the Washington Court of Appeals shifted this analysis.



In a 2014 decision, that court held that a city can impose a utility tax, without limit, on the “proprietary” functions of a special purpose district but not on its “governmental” functions. The logic behind court cases trying to distinguish what exactly is proprietary and what is governmental is a little hard to explain or understand, but with water/sewer districts, a good guideline would be that all costs related to metered service are likely proprietary and, hence, can be subject to utility taxation, whereas water for firefighting (and streetlights, which some water/sewer districts also provide) are generally non-metered, governmental, and not subject to utility tax.

The important takeaway here is that, right now, any city can impose a utility tax on the proprietary revenue earned

by a special purpose district, whether or not the district agrees—but note that this decision is from an appellate court. Washington has three appellate court divisions, and the other two divisions, if presented with the same issue, might rule differently. In that case, the issue would likely go up to the Supreme Court, and the law on a city’s utility taxing authority over special purpose districts might change.

■ **Franchise Fees.** Just a quick word here. A city’s right to impose a utility tax on a cable TV company (cable TV revenue only, not telephone or internet) exists *in addition* to a city’s right to impose a utility tax. They are not mutually exclusive. However, although municipalities may impose a utility tax

greater than 6 percent, going beyond the 6 percent ceiling allowed for electric, gas, etc., utilities will likely invite an immediate challenge that your city’s cable TV tax rate is “unduly discriminatory” under federal law.

Last, many cities, rather than impose a utility tax on special purpose districts, are instead negotiating franchise agreements with these districts, receiving a franchise fee by authorizing a district to operate using city streets in exchange for the city’s promise not to assume the district within city boundaries. **C**

*Tom Brubaker was an attorney for Kent for 27 years, the last 15 as its city attorney. He is now a shareholder with Lighthouse Law Group.*

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# Cityscape



## All Governance Is Local

Preserving the potential of cities means communities can pursue their own paths to success.

**THE YAKIMA-TIETON IRRIGATION DISTRICT** was the first in the nation to pay off its \$1M construction cost obligations to the United States under reclamation laws. The 1947 final payment signaled party time for the agricultural community—it had secured a measure of local independence, made possible by the federal government. The payment also marked the advent of productive new relationships, allowing local decision-makers to ease acreage limits that the district could take on for agricultural purposes.

People in cities—large and small, urban and rural—want control over their own destinies, and local leaders work hard to reflect their communities' values. When local decision-making is preempted, cities can't focus on the critical economic, social, and health and safety issues that drive community growth and

stability. Innovation is thwarted, and blanket policies may neglect or contradict core local needs and wants.

State preemption is often associated with lobbying by special interests, a spatial sorting of political preferences between urban and rural areas, and single-party dominance in state government, according to a recent National League of Cities study. Of course, it can at times be unavoidable or even have a positive impact. The key for local officials is to communicate early with their legislators to minimize negative effects and shape the legislation in the best way possible. Reframe the narrative to focus on how cities can help the state.

Bottom line, choose your battles wisely. Sustainable, community-based decision-making helps everyone move forward—and that's a payoff worth cultivating. **C**

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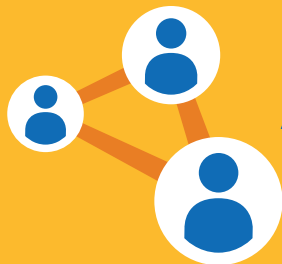


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