



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>[Signature]</i>	John Q. Citizen	71 All the Way	PORT ANGELES	CLALLAM, WA
2	<i>[Signature]</i> DWAYN B. MALLETT Dwain B. Mallett	D. Mallett	7726 Sandpoint 115th St S.W.	PORT ANGELES	CLALLAM, WA
3	<i>[Signature]</i> Gynetha Dewitte	Gynetha Dewitte	7134 MUNISEN RD SW	PORT ANGELES	CLALLAM, WA
4	<i>[Signature]</i> Diane Upton	Diane Upton	541 Hidden Forest Dr. SE	PORT ANGELES	CLALLAM, WA
5	<i>[Signature]</i> Karen Veidixer	Karen Veidixer	3222 Johnson Pt Rd	PORT ANGELES	CLALLAM, WA
6	<i>[Signature]</i> Stephanie Brashers	Stephanie Brashers	2315 Cooper Creek NW	PORT ANGELES	CLALLAM, WA
7	<i>[Signature]</i> Richard Holmes	Richard Holmes	2025 Wilbur St	PORT ANGELES	CLALLAM, WA
8	<i>[Signature]</i> James Carter	James Carter	2027 Wilder St	PORT ANGELES	CLALLAM, WA
9	<i>[Signature]</i> Betty Collins	Betty Collins	2014 Wilbur St	PORT ANGELES	CLALLAM, WA
10	<i>[Signature]</i> Frank Hopkins	Frank Hopkins	2022 Wilbur St	PORT ANGELES	CLALLAM, WA
11	<i>[Signature]</i> Adam Tani...	Adam Tani...	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.

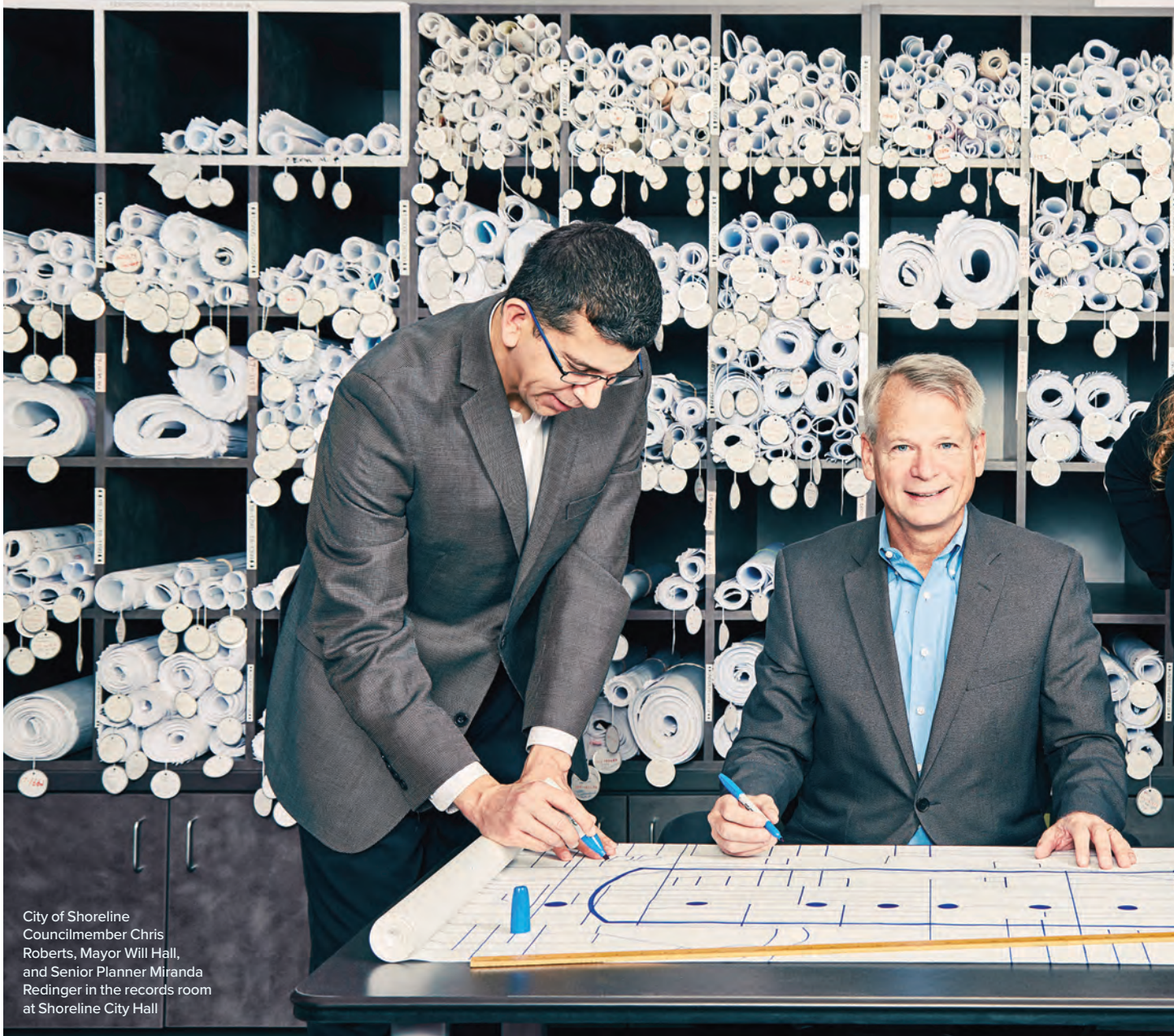
What impact did that have?

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,

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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



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**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." 