

# Public works and infrastructure

## chapter 9

Public works—such as streets, water and sewer systems, and parks—are so fundamental to daily life that most people take them for granted. When turning on the shower, driving to the store, or emptying the trash, we rarely think about who provides the service. Yet it's the availability and reliability of such services that often attracts residents and businesses to cities. City infrastructure underpins the economy and our quality of life, while protecting the environment.

### Utility services

Many small cities own and operate utility systems, which can include drinking water, sewer, and stormwater management. Some collect garbage, recycle, and compost. A few even operate electric and natural gas utilities, cable television, or broadband services.

Utilities operate as enterprise funds. This means the revenues collected from that service (such as hookup fees and user fees), must be accounted for within that fund and cannot be commingled with other funds. See Chapter 6 for more information and resources.

### Public works partnerships

Cities can choose to provide utility services themselves or through a partnership via contract. Partnerships often provide innovative services, more effective service delivery, cost savings, and greater efficiency. Cities can contract with their county, another city, a special purpose district, or a private company.

### Utility maintenance and infrastructure development

Keeping up with the development and maintenance of your city utilities can be an overwhelming task, but several state agencies and nonprofit organizations are available to help. They provide training, technical assistance, and funding to support small cities with rate-setting, capital facilities planning, budgeting, grant writing, and small system management plans.

### Setting the right rates for your users

The goal of every public utility is to provide customers with uninterrupted, safe, affordable service while balancing the books at the break-even point or better. Setting rates is crucial, as are periodic reviews and adjustments to those rates.

Cities have broad authority to establish rules and regulations for the operation of utility systems, including the ability to establish rates and classify different types of customers (business, residential, etc.) who will pay different rates. Cities rely heavily on user rates, hookup fees, and system development charges as the primary funding sources for utility infrastructure improvements.

Infrastructure costs have long been rising faster than inflation. This can have devastating effects on cities that don't index utility rates to an inflator or

don't raise rates every year. Cities should also establish a reserve account for unforeseen emergencies.

### **Utility billing and collection**

If a city has established utilities, the city must bill and collect for services. There are many potential headaches associated with utility billing and collection practices, such as delinquent accounts, utility liens, penalties, and interest. These topics and others should be spelled out in the city's policies and communicated clearly to those who use the services. State law regulates many of these processes and procedures.

## **Streets and transportation**

State law requires cities to adopt uniform definitions and design standards for streets. Uniform design standards apply to all new construction on major arterial and secondary arterial streets, and to major reconstruction of old streets (as much as is practical).

The city revenues used for street construction, repair, and maintenance mostly come from a city's general fund. For major construction projects, there are several state grant and low-interest loan programs. However, depending on the type of project, to receive funding from these programs, projects must be included in the city's six-year transportation plan.

### **Transportation benefit districts**

RCW 35.21.225 authorizes cities to form transportation benefit districts (TBDs). TBDs are quasi-municipal corporations and independent taxing districts that can raise revenue for specific transportation projects, usually through vehicle license fees or sales taxes. Over 100 cities and towns in Washington have established TBDs.

Transportation benefit district revenue may be used for transportation improvements included in a local, regional, or state transportation plan. Improvements can range from roads and transit service to sidewalks and transportation demand management. Construction, maintenance, and operation costs are eligible.

## **Sidewalks**

When a city fails to keep its sidewalks in a reasonable state of repair, free of dangerous and unsafe conditions, the result can be costly injury claims. Many cities have ordinances based on state statute that impose the cost of sidewalk repair upon abutting property owners. If a sidewalk needs repairing, the city asks the abutting property owner to make the repair. If the repair is not made, the city may make the repair and bill the property owner. While these ordinances provide a way to repair and maintain sidewalks, they do not relieve the city from liability if someone is injured due to a dangerous sidewalk.

## City and town sidewalk statute summary

Statute	RCW 35.68	RCW 35.69	RCW 35.70
Applicability	All cities or towns	Code cities, 1st & 2nd class cities, or charter cities of equal population	Code cities or 2nd class cities and towns
Improvement type	Construct, reconstruct & repair sidewalks, curbs, and gutters	Sidewalk construction & reconstruction less than a block long	Any form of sidewalk construction
Remarks	City may require improvements to be made or accomplish them through contract	City requires improvements to be made and, if not, then accomplishes them through contract	City requires improvements to be made and, if not, then accomplishes them through contract

All three statutes refer to limitations in RCW 35.69.020:

- An abutting property owner cannot be charged more than 50% of the valuation of his or her property, exclusive of improvements;
- An abutting property owner cannot be charged if action by the city caused deterioration or damage to the sidewalk, or if the deterioration or damage was caused by failure of the city to enforce its ordinances.

Sidewalks are pedestrian facilities that must meet the requirements of the Americans with Disabilities Act (ADA). When a city constructs new sidewalks or alters a sidewalk (“alter” includes repaving, but not pothole patching) the city must ensure that the sidewalks are built or upgraded to ADA standards.

## Snow and ice removal

Cities have the responsibility for control of snow and ice on city streets and sidewalks. Emergency services and routine travel must remain possible, even in bad weather. Snow and ice control programs must consider safety, budget, personnel, and environmental factors. These tasks can be done by city employees and equipment, by private contractors, or through partnerships or service agreements with other local governments.

A city may decide to focus on traction control measures (such as sanding) for smaller amounts of snow or ice accumulation while reserving plowing roads for greater amounts of snow accumulation.

The intent of policies and procedures should be to provide for reasonably safe use and passage of vehicles using the city’s public street system, and to ensure that emergency service vehicles can travel on city streets and provide needed access to city facilities. Of course, such policies assume that motorists will drive in a cautious manner, and in a vehicle that is properly equipped, given the prevailing roadway conditions.

Many cities require that owners of each building or vacant property with adjoining sidewalks clean the sidewalk of snow or ice within a certain period of time after snow stops falling.

## Transportation planning

Cities are required to prepare and adopt a six-year comprehensive transportation program. The plans are to be adopted after one or more public hearings and then filed with the Secretary of the Washington State Department of Transportation (WSDOT).

The Transportation Improvement Plan (TIP) should include:

- Proposed road and bridge construction work
- Other transportation facilities and programs
- New or improved bicycle or pedestrian facilities that promote non-motorized transit
- How the city will preserve railroad rights-of-way if a railroad ceases to operate in its jurisdiction.

A six-year TIP must set forth projects and programs of regional significance for inclusion in the transportation improvement program within that region.

State law requires that all cities and towns update their six-year TIPs annually. TIPs must also be consistent with the transportation element of the city's comprehensive plan, if the city is required to do comprehensive planning under the Growth Management Act. For more information on comprehensive planning, see Chapter 10.

## Parks and recreation

Quality of life in cities is better when families and friends can enjoy a picnic in the park, a swim in a pool, a softball game, or a walk on a trail. City parks and recreation opportunities may also include public auditoriums, art museums, and golf courses.

Cities have several choices as to how they offer parks and recreation services. They can:

- Provide the services themselves
- Partner with another jurisdiction
- Create a park district

Park districts provide a way to finance park programs. This financing method is often used when the people who will use a city's recreational facilities live both inside and outside city limits.

### Planning requirements

The Growth Management Act (GMA) requires the fastest-growing counties and the cities within them to conduct extensive planning to be consistent with state goals on open space and recreation. The state requirement includes retaining open space, enhancing recreational opportunities, conserving fish and wildlife habitat, increasing access to natural resource lands and water, and developing parks and recreation facilities. See Chapter 10 for more information on the GMA.

## Bidding and purchasing

Although bidding and purchasing requirements may sometimes feel like bureaucratic barriers to completing a project, they were created for good reason. They ensure that public contracts are awarded fairly and performed efficiently, at the least cost to the public. The laws also protect the public from the costs of fraud and cronyism.

Every city should have a purchasing system established by council policy and/or ordinance that meets these criteria:

- Is uniform throughout the city;
- Complies with public works bid laws;
- Is used by all departments;
- Addresses the issue of ethical appearances;
- Meets public advertising requirements; and
- Meets public bid opening requirements.

	Prevailing wages apply	Bid limits apply
<b>Services</b>		
Purchased services	No	No
Personal services	No	No
Professional services	No	No
Ordinary maintenance (by agency forces)	No	No
<b>Public works</b>		
Public works	Yes	Yes
Maintenance when performed by contract	Yes	Yes

*RCW 39.04.010 defines a public work project as “all work, construction, alteration, repair or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality...” The implication is that maintenance activities that are not “ordinary” are subject to bid limits, and then, if contracted, to prevailing wages.*

### When to go out to bid

It is important to know when a city must have a competitive bidding process on a project and a uniform procurement system. Competitive bidding is determined by several factors—including the cost of the project or purchase, type of purchase, the city’s classification, and in some cases, the city’s population. A city doesn’t have to use a competitive bid process for everything, but must when it is required by statute, local charter provision, or local ordinance.

### Public works and maintenance

RCW 39.04.010 defines the term “public work” for bidding purposes as “all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein.” All public works, including maintenance when performed by contract, must comply with bid laws if the cost of the project exceeds a certain amount.

What is ordinary maintenance? Within the context of prevailing wages, it is defined as maintenance work performed by the regular employees of the state or any county, municipality, or political subdivision created by its laws.

When maintenance is performed by city staff, it is not public works and is therefore not subject to either bid laws or prevailing wages. Contracted ordinary maintenance is considered a public works project and is subject to both bid laws and prevailing wages.

### **Public works bid limits**

When deciding whether a project is under or over bid limits, estimated project costs:

- Must include all construction-related work, but not engineering/architectural design fees;
- Must include all phases of the project;
- Should include applicable sales and use taxes (with some exemptions);
- Must not include donated labor, materials, supplies, etc.; and
- Must be based on competitive bid basis.

State statute on public works bid limits for cities and other public entities are subject to change over time. Make sure to stay up to date on the governing statutes for your class of city (RCW 35.22.620(5) and 35.22.630 for first class cities, and RCW 35.23.352(6) for second class cities, towns, and (via RCW 35A.40.200) code cities).

If the estimated project cost is below the relevant bid limit, the city can choose to construct the project through:

- Use of agency crews
- Interlocal agreement with another jurisdiction, or
- Contract with a private contractor

If a city wants to use these exemptions, council must adopt a resolution at the time of contracting or have written policies outlining the following exemptions:

- Purchases that are clearly and legitimately limited to a single source of supply
- Purchases involving special facilities or market conditions
- Purchases in the event of emergency
- Purchases of insurance or bonds
- Public works contracts in the event of an emergency

If written policies are used to waive competitive bidding requirements, the contract and a factual basis for the exception must be recorded and open to the public as soon as the contract is awarded.

### **Consulting services**

Competitive bids are generally not required for services, including professional engineers, land surveyors, architects, etc. These services should be selected on the basis of qualifications. A city needs to recruit consultants through an announcement for each project or through a consultant roster.

### **Other services**

Services such as ongoing computer support, landscaping, and janitorial contracts are not public works activities and do not require a city to follow competitive bid laws. This does not mean the city does not need to follow other

statutory provisions that may apply to a particular kind of service. For example, even though janitorial contracts are a service, prevailing wages apply to those contracts.

### **Equipment, materials, and supply purchases**

This category includes supplies, materials, and equipment that are for general purposes only. Examples include office supplies, equipment, and vehicles. Phone system hardware is an example of an equipment purchase, but a telephone system that requires installation of cable, conduits, and other devices may fall within the definition of a public work.

Purchases of supplies, materials, and equipment below a minimum dollar amount are subject only to city policies. Above this threshold, a city must either use a vendor list procedure or seek open and competitive bids. Small cities can use a vendor list process to purchase equipment, materials, and supplies that are not for public work or improvement. The city must also advertise at least twice a year that the vendor list exists. If a city uses vendor lists, it must make a list of awarded contracts available to the public.

### **Technology equipment purchases**

Cities may use “competitive negotiation” in lieu of a competitive bid process for telecommunications, computer equipment, or software. This alternate process requires that the city:

- Provide procedures for technical evaluation of the proposals, identification of qualified sources, and the selection process for awarding the contract; and
- Award the contract to the qualified bidder whose proposal is “most advantageous.”

### **Small works rosters**

When the contract amount for a public works project is \$350,000 or less, a city may follow the small works roster process for a public work or improvement as an alternative to the standard competitive bidding requirements.

A city may create a single general small works roster, create a small works roster for different specialties or categories of anticipated work, and make distinctions between contractors based upon different geographic areas served by the contractor. The city must first pass a resolution or ordinance authorizing use of the small works roster process and establish procedures.

Advantages of a small works roster for a city include:

- Only contractors who meet mandatory bidder criteria are placed on the roster
- More manageable number of bidders
- Greater certainty of interested bidders
- Simpler solicitation
- Possibility for streamlined award and contract administration
- Opportunity to automate

A city needs to advertise at least once a year in an area newspaper for contractors to be included in the small works roster. The advertisement must contain notice of the existence of the roster, solicitation of contractors, and a note that responsible contractors are to be added at any time that they submit a written request and necessary records.

A city has the option of joining a roster service provider who will maintain their roster. For example, MRSC Rosters is a statewide small public works and consultant roster online database for Washington cities to join. MRSC posts the annual legal notice on behalf of all participating agencies and maintains the roster.

## Funding for public works: Planning for the long term

Infrastructure projects are expensive. A city must think strategically about how to manage infrastructure costs over the long term. To do this, city officials shouldn't hesitate to ask for help and advice from those who have a deep knowledge of laws, best practices, available grants, and success stories from similar cities.

See Chapter 6 for information on grant and low-interest loan opportunities and long-range financial planning.

## Know the law

- [RCW 35.67 - Sewerage systems - refuse collection and disposal](#)
- [RCW 35.91 - Municipal Water & Sewer Facilities Act](#)
- [RCW 35.92 - Municipal utilities - water, electricity, natural gas](#)
- [RCW 36.94 - Sewerage, water, and drainage systems \(counties\)](#)
- [RCW 57 - Water-sewer districts](#)
- [RCW 35.68 - Sidewalks, gutter, curbs, and driveways - all cities and towns](#)
- [RCW 35.69 - Construction, reconstruction in first and second class cities](#)
- [RCW 35.70 - Sidewalks, construction in second class cities and towns](#)
- [RCW 35.77.010 - Transportation Improvement Plan](#)
- [RCW 36.70A.070\(6\) - Comprehensive Transportation Plan - Growth Management Act](#)
- [RCW 35.21.020 - Power to acquire](#)
- [RCW 39.34 - Interlocal Cooperation Act](#)
- [RCW 36.70A.020 \(9\) and RCW 36.70A.070 \(8\) - Growth Management Act](#)
- [RCW 39 - Public contracts & indebtedness](#)
- [RCW 39.12 - Prevailing wages](#)
- [RCW 39.80 - Selection of professional engineers, land surveyors, architects, and landscape architects](#)
- [RCW 35.21.156 - Solid waste, contracts with vendors, vendor selection procedures](#)
- [RCW 35.23.352 - Bid law for code cities under 20,000 in population, second class cities and towns](#)
- [RCW 35A.40.210 - Cross-reference for code cities bidding requirements](#)
- [RCW 39.04.010 - Public works definitions](#)
- [RCW 39.04.280 - Competitive bidding requirements - exemptions](#)
- [WAC 296-127-010\(7\) - Definition of "public work"](#)
- [City and town sidewalk statutes: RCW 35.68, RCW 35.69, RCW 35.70](#)