About MRSC

Municipal Research and Services Center (MRSC) is a nonprofit organization dedicated to proactively supporting the success of local governments through one-on-one consultation, research tools, online and in-person training, and timely, unbiased information on issues impacting all aspects of local governments.

For more than 80 years, local governments in Washington State have turned to MRSC for assistance. Our trusted staff attorneys, policy consultants, and finance experts have decades of experience and provide personalized guidance through Ask MRSC and our extensive online resources. Every year we help thousands of staff and elected officials research policies, comply with state and federal laws, and improve day-to-day operations through best practices.

Municipal Research News is published quarterly to inform, engage, and educate readers about ongoing and emerging issues. In print and online, Municipal Research News covers major topics as the Growth Management Act, the legalization of recreational marijuana, and the ever-evolving complexities of the Public Records Act, to name a few. When the legal landscape changes, we are here to clarify the issues and help local government leaders make the right decisions for their communities.

Municipal Research News

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MRSC Offers Training for All Levels of Local Government

Need certification credits for your public records officer license? Seeking help in fulfilling your agency’s annual financial report? Looking to stay up-to-date on court decisions related to the Open Public Meetings Act? Look no further! MRSC offers training on a wide range of topics that support a variety of local government departments.

WORKSHOPS
Our in-person workshops usually take place in spring and fall at locations throughout the state. These workshops provide in-depth training in specific areas, such as purchasing and contracting essentials, public records management, and financial reporting. Due to the pandemic, earlier this year our staff members quickly transitioned workshop content into a webinar format – such as our very popular annual financial reporting webinar series – and we anticipate more “online workshops” soon. We will resume in-person workshops when state public health officials determine it is safe to do so, but we do not anticipate this happening before next spring at the earliest.

TRAINING SCHOLARSHIPS AVAILABLE

We know the fallout from the COVID-19 pandemic has impacted many local government budgets. To make sure that agencies can still connect with our valuable training opportunities, we partner with the Washington Cities Insurance Authority (WCIA) and Washington Counties Risk Pool (WCRP) to provide training scholarships and reimbursements for member entities. Other training scholarship opportunities may also be available.

We post information about specific scholarship opportunities to each webinar page on our website; for general information about additional scholarship opportunities, please contact us.

Washington Trivia Question

Which county has averaged 40 bushels of wheat per acre since 1934?

Answer on page 10

Your ideas and comments are appreciated. If you have news you would like to share or would like to write a short feature article, please contact the editor, Leah LaCivita, at lalacivita@mrsc.org

GIVE IT A TRY!

Check out what we have to offer if you are looking for affordable training that is targeted to your needs and experience as a local government staff or elected official. Our trainings can also help you earn continuing education credits (e.g., attorneys, public records officers, professional accountants, planners, and elected city officials).

In 2019, 9,787 local government staff and elected officials across Washington State attended one of our online webinars or in-person workshops, and we expect to surpass this number in 2020, even with the stay-at-home order. We look forward to getting back out into the community, but until then you can rest assured that we will be working hard to bring local government staff and officials relevant online training through the rest of the pandemic. Bookmark our Training homepage (mrsc.org/training) for easy access to upcoming opportunities.
WHEN FIRST AMENDMENT RIGHTS AND PUBLIC MEETINGS CLASH

Most governing bodies of cities, towns, counties, and special purpose districts have an interest in assuring that meetings are conducted in an orderly way and are not disrupted by threatening, irrelevant, or overlong comment. These same governing bodies must also avoid violating the rights of citizens who wish to comment during a public meeting or hearing. What authority does that body have to establish and carry out procedures that can prevent the interruption or delay of a public meeting due to disruptive or irrelevant comments?

LEGAL AUTHORITY

The First Amendment of the U.S. Constitution provides protection to and opportunity for free speech in public forums. The public meeting of a board or council is considered a “limited public forum,” which means the government can regulate the time, place, and manner of speech. Boards and councils regulate speech through the adoption of rules of procedure and conduct.

When writing and establishing rules of conduct, the governing body must be careful not to violate the protections that meeting attendees enjoy under the First Amendment. The Ninth Circuit Court of Appeals addressed this issue in Acosta v. City of Costa Mesa, 718 F.3d 800 (9th Cir. 2013), indicating where the line may lie between council rules that are enforceable and those that violate constitutional rights. In that case, the court held that the First Amendment requires that a person’s speech in a city council meeting must actually disrupt a meeting before that person may be removed from the meeting. The case provides an example of language a council may adopt for such a proposed rule, which the court looked on approvingly, stating:

> It shall be unlawful for any person in the audience at a council meeting to do any of the following: (1) Engage in disorderly, disruptive, disturbing, delaying or boisterous conduct, such as, but not limited to, handclapping, stomping of feet, cadeting, and standing, yelling or similar demonstrations, minor disruptions, or disturbing the peace and orderly conduct of the proceedings of the council. Id., at 816.

Another case, Steinburg v. Chesterfield County Planning Comm’n, 527 F.3d 977 (4th Cir. 2008), concerned an action brought by a private citizen, Robert Steinburg, against the Planning Commission of Chesterfield County, Virginia. Steinburg attended a meeting of the Chesterfield County Planning Commission but was escorted out of the meeting when he refused to limit his comments to the matter at hand and engaged in personal attacks in violation of adopted procedures (See our 2008 blog post Balancing the Council’s Right to Manage Meetings With Expectations of Citizens for a more detailed discussion of the case).

Steinburg claimed that the Chesterfield County Planning Commission had violated his First Amendment right to free speech. But the Steinburg court pointed out that the commission’s meeting was a “limited public forum” that could be managed by the government entity. The Steinburg court explained that argumentative or disruptive behavior cannot be shielded by a claim of First Amendment rights, stating:

> Officials presiding over such meetings must have discretion... to cut off speech which they reasonably perceive to be, or imminently to threaten, a disruption of the orderly and fair progress of the discussion, whether by virtue of its irrelevance, its duration, or its very tone and manner.

RULES OF PROCEDURE

Many city councils and county councils/boards of commissioners in Washington have adopted formal rules of procedure to govern the conduct of their meetings. In fact, city councils are authorized by statute to develop such procedures. See RCW 35A.12.120 for non-charter code cities; RCW 35.23.270 for second-class cities; and RCW 35.27.280 for towns. Councils in first-class cities are authorized to adopt rules of procedure by their city charters.

While county councils/commissions do not have a similar statute, that authority is necessarily implied from the council’s board’s authority (and requirement) to hold meetings and conduct business.

MRSC offers sample rules of procedures from cities and counties on our Council/Board of Commissioners Rules of Procedure webpage, and a few samples from port districts (such as the Port of Olympia) in our Sample Document Library.

WHAT ABOUT VIRTUAL MEETINGS?

When members of the public are allowed to participate in remote public meetings the same rules of decorum that would apply to an in-person meeting should be applied to its remote counterpart. In ruling on whether a provision of the disorderly conduct statute (RCW 9A.84.030(1)(b)) is unconstitutionally overbroad and infringes on protected speech, the court in State v. Pattern, 196 Wn. App. 451, 460, 389 P.3d 612, 616 (2016) noted: “A person generally has a free speech right to make his or her views known, but the rubric of free speech does not include the intent to substantially interfere with a meeting.”

The meeting chair should explain to the public the rules for participation in the remote meeting and warn that anyone who disrupts the meeting will be disconnected. The chair may also have to disconnect those that are inadvertently disrupting the meeting, such as due to sound feedback or too much background noise.

CONCLUSION

When the conduct of attendees at public meetings is disruptive, a governing body may take steps to assure that the public’s work is carried out without fear of infringing on the First Amendment rights of citizens.

Municipal Research Study Center (MRSC) is a non-profit organization that provides government and community leaders with the information, guidance, and tools they need to strengthen local governance. MRSC produces timely, policy-driven insights for local leaders and decision-makers who are charged with solving complex, multi-faceted challenges.

BY MRSC INSIGHT

MRSC Insight reflects the best writing of MRSC staff on timeless topics that impact staff and elected officials in Washington cities, counties, and special purpose districts.
**Questions Related to Elections**

**Is there a regulation prohibiting campaign signs from being located within a certain number of feet of any polling place?**

Yes — there is a provision in the WAC that addresses this. WAC 434-250-100(6) provides:

> Within twenty-five feet of a ballot deposit site that is not located within a voting center, no person may electioneer, circulate campaign material, solicit petition signatures, or interfere with or impede the voting process. Whenever it is necessary to maintain order around a ballot deposit site, the county auditor may contact a law enforcement agency for assistance. A campaign sign situated within the 25-foot radius of the ballot deposit site would constitute “electioneering.” Also, if the abutting property next to a ballot deposit site is city-owned, the city could remove the any campaign signs placed there.

**Who pays for the election costs related to the creation of a Metro Park District?**

If the Metro Parks District is proposed in a city, the city bears the cost of the election. If it is proposed in the unincorporated county, the county bears the cost. If it is multijurisdictional — it includes areas situated within two different jurisdictions — both jurisdictions would share the cost. See RCW 29A.04.410.

**The city has a stock “portrait” photo of the Mayor that she would like to use in her campaign materials. Can we “sell” the photo to the mayor? Is this running afoul of PDC restrictions?**

If the city took these photos in the normal course of business, to use, for example, in a city brochure so that the public can identify its elected officials, then once the photos have been taken and are on file with the city, they are public records. The mayor should have access to the photos as public records and should be able to acquire them by paying for copies. Alternatively, if the photos are available online, such as on the city’s webpage, the mayor likely could download the photo(s) and make use of them, without payment, as could any member of the public.

**Do commission counties have authority to hold advisory elections and how do such measures get placed on the ballot, including whether a citizen petition could compel such an election?**

For legal authority in support of a county board of commissioners conducting an advisory ballot, see AGLO 1976 No. 60 (county authority to hold advisory elections on local issues at the county level under the reasoning of AGO 51-53 No. 327) acknowledging the authority of a county board of commissioners to hold an advisory election. See also: AGLO 1979 No. 37 (no authority for a county auditor to initiate an advisory poll of presidential candidates). AGLO 1976 No. 60 also points out that there is “no law under which a board of county commissioners can be required to conduct any sort of an advisory election prior to its adoption of a given county ordinance or other measure.”

So, it is solely within the discretion of a board of county commissioners whether and when to hold an advisory election. That being the case, while a group of citizens might submit a petition requesting an advisory election, it would still be a decision for the commission whether or not to hold such an election.

**If no one files in the next general election for a council position that is expiring, does the current person in that council position continue to serve after the term expires or would that person need to be appointed to the position?**

Yes. In case of a lapsed election that causes the incumbent councilmember to “hold over” (unless the incumbent resigns), the incumbent would, in effect, be starting a new term, although the second half of that term would be filled by election at the next general municipal election. See RCW 29A.24.201. A councilmanic term is four years and the language of RCW 35A.12.040 indicates that the holdover period does not extend the term beyond four years.

Under a contrary interpretation, if the incumbent, in holding over, would not be starting a new term, then the person who is elected at the next general municipal election would be starting a new four-year term. But that would skew the 4-3 or 3-2 staggered term ratio (depending on whether there is a seven- or five-member council) set up by statute (RCW 35A.12.040; RCW 35A.02.050; see also, RCW 35.02.139). Also, a contrary interpretation would simply mean that terms can be longer than four years, which is inconsistent with RCW 35A.12.040.

Also because the holdover councilmember would be serving a new term, they would be entitled to a salary increase that might apply to that new term.

**If a councilmember holds over because nobody ran for the position, must he/she take another oath of office?**

Yes. In case of a lapsed election that causes the incumbent councilmember to “hold over” (unless the incumbent resigns), the incumbent would, in effect, be starting a new term, although the second half of that term would be filled by election at the next general municipal election. See RCW 29A.24.201. A councilmanic term is four years and the language of RCW 35A.12.040 indicates that the holdover period does not extend the term beyond four years.

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STAYING AHEAD OF OVERDOSE SPIKES

BY LEAH LACIVITA, MRSC COMMUNICATIONS COORDINATOR

According to the American Medical Association, 35 states across the nation have reported spikes in opioid-related deaths since the start of the COVID-19 pandemic in the United States (U.S.). While the nation is (rightly) marshaling resources to contain COVID-19, some public health experts worry that any gains made in combating opioid-related overdoses have been reversed and may not recover for a long time. Fortunately, local government agencies have access to a free tool that can be used to map clusters of fatal and non-fatal drug overdoses, which may help predict where and when the next overdose will occur.

BACKGROUND
A quarter of a million people in the U.S. have died from an opioid overdose from 1999-2018. For the first time in years, the CDC released data this January showing a slight decline in fatal overdoses nationwide. However, the arrival of the coronavirus epidemic has brought a sudden halt to this positive trend. A May 13 report from the Office of National Drug Control Policy found close to an 11.4% increase in fatal overdoses and an 18.6% increase in non-fatal overdoses during January through April 2020 (compared to the same time frame in 2019) using county-level data from six different states.

WHAT ACCOUNTS FOR THE RECENT RISE?
People with substance use disorder already face obstacles to accessing treatment, but there are three significant ways that the COVID-19 pandemic has further complicated matters: Restricted access to resources, social isolation, and supply chain disruption.

Restricted Access to Treatment
Stay-at-home orders have created barriers to treatment, with medication-assisted treatment clinics reducing hours, closing, or offering fewer resources. Some clinics and treatment centers have opted for mobile services and delivery, but many are resource poor, making the sudden switch challenging. In April, the federal government amended rules to allow increased flexibility for providing buprenorphine and methadone to patients with opioid use disorder. Providers can now prescribe buprenorphine across state lines without an initial in-person evaluation (e.g., telehealth visits are approved) and can also provide larger doses of take-home medications.

Social Isolation Adds to Existing Instability
Addiction is already known as a disease of loneliness and disconnection. Compound that with the fear and uncertainty associated with COVID-19-related social and economic distress and the fear and uncertainty associated with COVID-19 and you have a dangerous cocktail. Narcotics Anonymous and other similar recovery groups have largely switched to online meetings, but the strong social networks so critical to addiction recovery are being tested in the current climate.

Disrupted Supply Chains Strain Resources
Supply chain disruptions are causing opioid-related shortages, impacting both the medical community and the black market for illegal drugs. Coronavirus shutdowns and hospital overcrowding are limiting access to essential medications and services that people who are addicted to opioids rely on, leading to reports of drug stockpiling. Further, a reduction in exports and new travel restrictions to the U.S. have led to a spike in illicit drug prices. Persons addicted to opioids are especially at risk, as illicitly manufactured (and potentially deadly) fentanyl is often found in combination with heroin and counterfeit opioid prescription pills that resemble Oxycodone or Xanax.

PREDICTING OUTBREAKS
This past April, Seattle saw an increase in fatal overdoses from fentanyl mixed with tainted pills and King County saw a similar spike in overdose rates in May, this time from black tar heroin mixed with fentanyl. Fentanyl is a synthetic opioid that is sold illegally in powder form, making it easy to mix tiny quantities into another drug. It’s 50-100 times more potent than morphine but far cheaper and easier to obtain, giving dealers plenty of incentive to add it to other narcotics. When fentanyl-laced narcotics show up on city streets what often follows is a clustering of fatal and non-fatal overdoses, a pattern likely to be repeated in neighboring jurisdictions days or weeks later. The pattern is similar to an epidemiology map with patient zero at the center, extending to disease clusters/outbreaks identified nearby at a later date.

It should be noted that while the CDC uses a variety of data sources to monitor fatal opioid overdose rates, there is no centralized system that federal and state agencies use to collect overdose data in real or near-real time. With such a system, an agency could quickly identify overdose clusters and outbreaks within its own jurisdiction and use this information to alert nearby communities to marshal the people (hospitals, social workers, first responders) and resources (outreach, education, naloxone) to prepare for a spike in their jurisdictions.

THE OVERDOSE DATA MAPPING APPLICATION PROGRAM
In 2017, the Washington D.C./Baltimore High Intensity Drug Trafficking Areas (HIDTA) rolled out the web-based Overdose Detection Mapping Application Program (ODMAP), a mapping software program that collects real time, county-level fatal and non-fatal opioid overdose data from ambulance teams, hospitals, and law enforcement. Participation in ODMAP is open to “state, local, federal and tribal agencies serving the interests of public safety and health as part of their official mandate, including licensed first responders and hospitals.” Today, 3,300 agencies in 49 states use ODMAP, including here in Washington, where 34 agencies, including counties, county departments (health, coroner’s office, sheriff); city police and fire departments; and rural fire and rescue groups share data with ODMAP.

HOW IT WORKS
ODMAP focuses exclusively on logging and tracking overdoses in real-time, which allows the system to find patterns in overdose data and predict new spikes and clusters. ODMAP is free to all users and offers two levels of user access depending on the type of data, including county, state, and federal. ODMAP also offers software that can be used to track overdose data, a password-protected web portal. A first responder will report fatal and non-fatal overdoses, the time and location, and will also record if naloxone was administered (and the dosage). Police will complete a different form on which they can record a victim’s personal information (date of birth; overdose history) and situational information (eyewitness testimony; type of drug causing the overdose; evidence found at the scene). This data can be cross-referenced with previous overdose reports to allow reporting officers from different agencies to coordinate any follow-up, such as further investigation.

The data provided by agency users can then be mapped to help identify possible correlations between clusters and spikes, predict the location of a new cluster, or to connect individual instances of non-fatal overdoses across city, county, or even state lines. Analytics on overdose outbreaks are available to Level 2 users (sheriffs and public health chiefs) via ODMAP, which requires a separate username and password. A sheriff can log in to get a bird’s-eye view of recorded overdose incidents – in the form of color-coded blips – across a map of the U.S. Accessing localized data is as simple as zooming in on a specific point on the map.

In addition to being able to spot overdose clusters in one area and predict possible spikes in neighboring areas, agencies have used ODMAP to guide procurement and use/distribution of naloxone, increase/improve data sharing with other agencies, increase monitoring or patrolling of areas where there are a large number of overdoses, identify where and when to investigate trends in narcotics distribution, and guide outreach efforts to persons at risk for overdose and/or their support networks.

FOR MORE INFORMATION
To begin, agencies must sign the ODMAP Participation Agreement and designate an agency administrator who will manage the agency’s ODMAP access and individual account holders. Since the application’s predictive and analytical tools are made more powerful through agency data, ODMAP provides a host of support to entice agencies to join. It’s public-facing website features a Training section that includes a FAQ sheet, training manual, ODFORM tutorial, and multiple links to the program’s YouTube channel, where it hosts general videos about the program as well as training videos directed at Level 1 or Level 2 users. Visit ODMAP.org to learn more.

Leah LaCivita, Communications Coordinator, writes about a variety of issues and profiles innovative local government programs and projects in Washington State. lacivita@mrsc.org

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POSSESSION AND CARRYING OF FIREARMS IN WASHINGTON STATE

What’s Allowed?

Cities in Washington State have experienced a large number of protests in 2020. While these protests have been mostly peaceful, some cities have seen counter-protestors carrying firearms within downtown corridors or outside businesses. For many, seeing individuals openly carrying firearms in city streets is an uncommon sight, and this has local governments wondering what the law is regarding firearms in public places.

BACKGROUND

Washington is an open-carry state, which means that an individual can openly carry a firearm in many public areas, although private property owners may prohibit firearm possession on their property. This right to openly carry firearms doesn’t mean that anything goes, however. The state, and to a lesser degree, cities and counties, do place some prohibitions on the display, carrying, and use of firearms.

REGULATING THE UNLAWFUL DISPLAY OF FIREARMS

First, RCW 9.41.270 prohibits an individual from carrying, exhibiting, displaying, or drawing a firearm in a manner that manifests an intent to intimidate another or that warrants alarm for the safety of others. The standard applied is a reasonable person standard, as described in State v. Spencer, 75 Wn. App. 118 (1994). Under this standard, a protestor with a gun properly secured in an exposed holster is unlikely to constitute a violation under RCW 9.41.270, but more unbecoming behavior that warrants alarm for a person’s safety can be a crime. For example, in State v. Spencer, an individual walking briskly on a residential street at 10:00 PM, carrying a loaded AK-47 assault rifle slung over his shoulder warranted alarm in violation of RCW 9.41.270.

There are exceptions to the unlawful display of firearms prohibition found in RCW 9.41.270. These include acts committed by a person while in their abode or place of business, and a person acting in self-defense against the use of presently threatened unlawful force by another or for the purpose of protecting another against the use of such unlawful force by a third person.

REGULATING AIMING AND DISCHARGING A FIREARM

Second, a person cannot aim a firearm towards a human being per RCW 9.41.270(2)(a), and state law prohibits a person from willfully discharging a firearm in a public place or any place where a person might be endangered. (Although beyond the scope of this article, self-defense can provide a defense to this prohibition and other similar prohibitions involving firearm discharge. See RCW 9A.16.020 and RCW 9A.16.110.)

Further, although the state preempts the field of firearm regulation under RCW 9.41.290, local governments do have limited authority to enact laws involving discharge of firearms within their jurisdiction where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized. RCW 9.41.290(2)(a). For example, the City of Bellingham’s Municipal Code 10.30.010 prohibits the discharge of firearms within the city, except at indoor rifle ranges.

REGULATING USE OF A FIREARM TO IMPERSONATE LAW ENFORCEMENT

Third, a person cannot claim to be a law enforcement officer or create an impression they are a law enforcement officer. See RCW 9A.60.045, which was previously RCW 9A.60.040(3). There is limited case law on the statute and none that I found that involved impersonating a law enforcement officer while carrying a firearm. An example of how this statute has been applied is in Alford v. Haner, where the United States Court of Appeals for the Ninth Circuit held that a police officer had probable cause to arrest a driver for impersonating a law enforcement officer. (Using wig-wag headlights, the driver had pulled over to aid a motorist with a disabled vehicle and then told the motorist that he was a police officer. He also had a police-style radio, a portable radio scanner, and handcuffs in his car.)

Fourth, individuals are prohibited from possessing guns, whether concealed or not, in specified places, including courthouses, jails, schools, bars, parts of airports, outdoor music festivals, and, new this past legislative session, childcare facilities. See RCW 9.41.280; RCW 9.41.300; and RCW 70.108.150.

REQUIRING LICENSES FOR CONCEALED HANDGUNS

Finally, an individual cannot carry a loaded, concealed handgun without a license (except in their own abode or place of business), per RCW 9.41.050(1)(a). On a related note, it is legal in Washington to conceal carry a handgun and wear a mask; Therefore, the statewide mandate to wear masks does not affect the ability to conceal carry.

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Introduction to Economic Development for Local Governments During COVID-19 and Beyond
Tuesday, November 10, 11:00am–12:00pm  |  Credits: CML

Elements in Preparing a Unit Price Contract
Wednesday, December 2, 10:00–11:30am  |  Credits: CAEC

Learn more and register at mrsc.org/training