Municipal Research News

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Financial management of public resources is serious business. It is an important responsibility of each public agency, and doing it well benefits the agency itself, its employees, and the community it serves. To that end, MRSC has partnered with the State Auditor’s Office (SAO) Center for Government Innovation to expand our online Financial Policies Tool Kit at mrsc.org/financialpolicies.

In the expanded Tool Kit, we published new guidance on Credit Card Use Policies and Travel and Expense Reimbursement Policies (including guidance on meals), with detailed information, legal requirements, and “key questions to consider” to help you formulate your jurisdiction’s policy for its unique values and needs. We have also included several sample forms from cities, counties, and special purpose districts, including travel authorizations, expense reimbursement forms, and lost receipt affidavits.

Our tool kit also includes previously published guidance on asset management, cost allocation, debt, fund balance/reserves (which we recently updated), and investments.

We have provided numerous example policies from a wide variety of entities. They have been reviewed for completeness, being current, and adhering to best practices. However, don’t just copy them — instead, use them to help prompt your thinking about the best approach in your organization. Mark them “draft” so that you don’t confuse anyone as to their status at this point (and so as not to give the impression to elected officials that you’ve already made the decisions).

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Schedule a time to review the drafts

This can be a study session, workshop, or whatever type of meeting is more informal for your elected officials and staff to meet. Be sure to get attendees copies well ahead of the meeting so they have the opportunity to review prior to the discussion. Facilitate the discussion about the options and choices that your elected officials will want to discuss.

Schedule a time to review the final version

Bring back a final version of your policies to a business meeting of your elected officials for their final consideration and adoption. Use whatever form of policy adoption is consistent with your organization. Be sure to think about how to maintain and provide access to the current versions of policies within your organization, such as an agency-wide intranet that members of the organization have access to. You can also post policies on your agency’s public-facing webpage(s).

Adopting financial policies helps to advise the organization and the community you serve that you take these matters seriously. The investment of time and effort will pay dividends for years to come.

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CHANGES TO BID THRESHOLDS
This bill raised several bid thresholds. For agencies authorized to use the provisions of the small works roster in RCW 39.04.155, the threshold has been raised to $350,000. Additionally, the option to waive retainage for any projects under the small works roster was granted with the right of recovery against the contractor for payments made on behalf of the contractor. The threshold for a limited public works process within the small works roster is raised to $50,000.

However, for Ports (RCW 53.08.120) and Irrigation districts the change in RCW 39.04.155 will not change the threshold since the authorizing statutes (RCW 87.03.435 and RCW 87.03.436) specifically call out a small works roster limit of $300,000.

Code cities and second-class cities and towns have increased thresholds of $10,155 for multiple-craft public works projects and $75,500 for single-craft projects (RCW 35A.40.200/RCW 35.23.522).

First-class cities have an increased threshold for day-labor limits to $150,000 for multiple-craft projects and $75,500 for single-craft projects (RCW 35.32.526).

Although no monetary bid threshold was changed for counties, RCW 36.32.235 was amended to remove the population requirement for counties with an established purchasing department, which now subjects all counties with an established purchasing department to this statute.

Fire districts have had three thresholds increased: 1.) for the purchase of materials, supplies, and/or equipment raised to $40,000; 2.) for the use of a vendor roster under RCW 39.04.190 (raised to $75,000); and 3.) for work or construction of buildings under RCW 52.14.110 (raised to $300,000).

The thresholds for PUDs purchases by contract is raised to $30,000. The monthly threshold without a contract is raised to $12,000 and anything over that must be by contract. The public works contracting threshold is raised to $70,000. Also, the limit for materials used by day labor is raised to $300,000 and now defines what individual items of equipment are not included in that limit (RCW 54.04.070). PUDs were also granted an increase in the threshold range for using a vendor roster for monthly purchases (provided in RCW 39.04.190). The new range is $30,000—$120,000.

CHANGES TO SMALL WORKS ROSTER THRESHOLD
This bill concerns the small works roster threshold as it applies to ports and irrigation districts.

The threshold for the small works roster for Ports is established in RCW 53.08.120(1)b and is currently set at $300,000 (which was not revised in 2019). However, the authorizing statute does not specifically state any threshold for using limited public works procedures within the small works roster. Consequently, it appears that Port Districts are eligible to use the increase (to $350,000) of the limited public works process within RCW 39.04.155.

The portion of ESSB 5418 that addressed changes for Irrigation districts was vetoed, as these changes were also part of ESB 5453, but it appears irrigation districts will not have authority to increase their small works roster threshold beyond $300,000.

OTHER HIGHLIGHTED PROVISIONS
Additional provisions have been grouped by type of agency impacted.

For code cities, second-class cities, and towns (RCW 35A.40.200/RCW 35.23.522), the bill allows an agency to award to the next lowest bidder that falls within 5% of the lowest bid and meets criteria in the situation where the lowest responsible bidder was issued a written finding by the city that a project was late, over budget, or did not meet specifications, and the city did not find (in writing) that the bidder had shown they would improve to meet future specifications.

Woman- or minority-owned contractors now must be certified. If an agency makes an award to a woman- or minority-owned business (WMBE) per statute criteria, an annual report must be made to the Department of Commerce indicating the number of awards and how notice was provided to certified WMBE contractors.

The portion of this bill pertaining to procurement improvements for Irrigation districts (RCW 87.03) was vetoed by the governor, but these improvements were duplicated in and passed as part of ESB 5453.

There are other clarifications, corrections, and notations that have been incorporated for all local governments. Examples of these would be that “certified” is being added to descriptions of WMBE contractors (Sec. 1 and 1) and limited public works bidding processes have award allowances to mini- and micro-businesses, previously described as awards to small businesses (Sec. 5). Also, there is a correction in the bill to an erroneous reference to RCW 39.26 that should be RCW 39.29, regarding the Washington State Office of Minority and Women’s Business Enterprise goals.

When requested by a bidder, municipalities are now required to provide copies of bids received within two days of a competitive bid opening (RCW 39.04.101). An award cannot occur until at least two full business days after such documents have been provided.

Judy Isaac, Public Works Consultant, has experience in public works and public procurement, including purchasing positions with the City of Redmond and the City of Shoreline, and most recently as Purchasing Manager for KCDA Purchasing Cooperative. Working in areas of procurement and project management has provided Judy significant experience in both the public and private sectors.

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HOMELESSNESS
The Limits of Enforcement

BY OSKAR REY, MRSC LEGAL CONSULTANT

One of the difficulties in understanding the legal issues involving homelessness is the fact that so many different areas of law are in play. This article summarizes some of the major issues.

MARTIN v. CITY OF BOISE AND PROHIBITIONS ON CAMPING, SLEEPING, OR LYING IN PUBLIC

This case found that the City of Boise’s enforcement of ordinances prohibiting camping, sleeping, or lying in public violated the Eighth Amendment on cruel and unusual punishment if an individual does not have a meaningful alternative (such as space in a shelter or a legal place to camp). The Ninth Circuit Court of Appeals denied a request for rehearing before the full Ninth Circuit and amended its opinion slightly. Five judges joined in lengthy dissents from the denial of rehearing, and the City of Boise has sought review from the United States Supreme Court.

UNAUTHORIZED ENCAMPMENTS—SEIZURES

The Martin case involves issuance of criminal citations to homeless individuals. Lavac v. City of Los Angeles addresses a related issue—due process requirements for the removal of unauthorized encampments on public property. Prior to clearing encampments, local governments must provide notice to camp resident (72-hour minimum notice is common). It is also important to have outreach personnel present during encampment removal, whose job it is to help individuals in an encampment identify alternative locations to go to. Personal property found during the encampment removal must be held for a certain amount of time so that it can be claimed by the owner. For example, the City of Seattle’s Unauthorized Encampment Removal Policy provides for a holding period of 70 days.

UNAUTHORIZED ENCAMPMENTS—SEARCHES

In 2017, the Washington Court of Appeals ruled that tents and shelters set up on public property and used for habitation are protected from unreasonable searches under the Washington State Constitution. In State v. Pippin, Mr. Pippin was arrested when the police found drugs in his tent. The court ruled that the impound itself was legal, but that the impound fee constituted a lien on the vehicle, which should have been exempt under the Homestead Act.

It is important to note that as a Superior Court case this decision is not precedent for Washington local governments. However, it is currently pending before the Washington Court of Appeals.

PANHANDLING REGULATIONS

The Washington Supreme Court struck down an ordinance prohibiting begged or panhandling on First Amendment grounds in the 2016 case of City of Lakewood v. Willis. In light of Willis, MRSC recommends that local governments review their regulations and enforcement practices. Asking for help or aid is protected speech and courts will closely scrutinize regulations that focus on certain types of speech (such as soliciting aid). Public safety laws (such as obstructing traffic) may present appropriate enforcement alternatives when fairly applied, since these laws do not regulate protected speech.

Oskar Rey, Legal Consultant, writes on a variety of local government issues including land use, zoning, code enforcement, public records, and public works.

My city adopts a budget at the fund level. Does that mean that I can change the allocation of resources within a fund without going to council for an amendment?

Adopting a ‘fund level’ budget provides the city with the ability to “adjust” its line-item appropriations within a fund without having to adopt a budget amendment. RCW 35.33.121 (RCW 35.33.120 for code cities) provides the authority for the “city’s or town’s chief administrative officer” to make such adjustments unless the city has adopted financial policies that would limit this authority.

It’s not a requirement to adjust the individual line items throughout the year. Many cities find it helpful to leave the original appropriations for operating expenses (e.g., street supplies, small tools) so that they can compare the actual line item appropriation versus expenditures from a historical perspective, which can assist with setting future budget appropriations.

Must a code city hold a public hearing prior to adopting the original ordinance stating its intent to budget on a biennial basis?

The change from an annual budget process to a biennial budget process does NOT require a public hearing. Chapter 35A.34 RCW is the statutory reference and RCW 35A.34.040 only requires that the city adopt an ordinance to establish a biennial process. The statute reads in part:

“...all code cities are authorized to establish by ordinance a two-year fiscal biennial budget. The ordinance shall be enacted at least six months prior to commencement of the fiscal biennium and this chapter applies to all code cities which utilize a fiscal biennium budget. Which simply means that the city must adopt an ordinance to establish a biennial budget process and that the ordinance must be adopted at least six months prior to first biennial budget period.

Can we file an extension for our annual budget? Are there any penalties? If we can file for an extension, how do we proceed?

You really can’t file an extension. However, if the council is unable to pass a new budget by year’s end, it could adopt the current year’s budget on an interim basis, adjusting the revenue expected for the new year. Then, when council can reach agreement, it can amend the interim budget to reflect the new agreement.

Oskar Rey, Legal Consultant, writes on a variety of local government issues including land use, zoning, code enforcement, public records, and public works.

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NEW ELECTION LAWS
Promote Citizen Participation and Increase Transparency

BY LINDA GALLAGHER, MRSC LEGAL CONSULTANT

It seems that every year the Washington State Legislature passes laws relating to our elections and the integrity of local, state, and national elections. For example, 2018 brought us important improvements including the Washington Voting Rights Act, the Future Voter Program, and extended voter registration time periods. There are more new election laws in 2019, and in this article, I summarize seven.

PORT DISTRICT CAMPAIGNS
HB 1375 extends campaign contribution limits in the Fair Campaign Practices Act so they apply to all port district offices regardless of the number of registered voters within the district. Previously, the limits applied to elections in the Port of Seattle and the Port of Tacoma (ports with more than 200,000 registered voters), but not other ports. Campaign contribution limits already apply to candidates for: judicial office, state office, legislative office, and certain local elected offices, including county, school board, judicial, and/or mayoral office, city council, certain public hospital district boards of commissioners, and special purpose district offices.

PACS DONATING TO OTHER PACS
ESHB 1379 requires additional public disclosure in campaign advertising by Political Action Committees (PACs). Sponsors of political advertisements must identify and disclose the top five contributors that donate the amount necessary to qualify as an independent expenditure ($300 or $1,000, depending on the office) during the 12 months before the date that the advertisement is initially to be presented to the public.

If any of those five contributors is a PAC, then the top three contributors that gave more than the threshold amount to any of those committees during the same period must also be named. If any of those contributors are political committees, the sponsor must identify their top three contributors, and so on, until the sponsor has identified the top three contributors that are not PACs.

BALLOT DECLARATIONS
HB 1545 improves processing of ballots during an election. The record of returned ballots that have declarations with missing or mismatched signatures must be updated each day that a county canvasses ballots, each time a voter is contacted by phone or mail, and each time a voter submits updated information. The record of noncompliant ballots and voter contacts must be sent to the Secretary of State within 48 hours, then the record will be made publicly available within 24 hours of receipt.

FREE POSTAGE
SSB 5063 requires that return envelopes for ballots must now include prepaid postage and the state must reimburse counties for the cost of prepaid postage on mail and absentee ballots in primary and general elections. This law recognizes that “voting by mail has many advantages” and that “while the cost of ballot return postage may only be a small amount, passing the burden along to Washington’s citizens, many of whom no longer need to participate in the democratic process.”

NATIVE AMERICAN VOTING RIGHTS
ESSB 5079, or the Native American Voting Rights Act of Washington, helps the state’s tribal members more effectively participate in elections. The minimum information required for voter registration under state law is amended to allow for “unmarked homes” and “a nontraditional residential address,” including “a narrative description of the voter’s address” to be used when a voter resides on tribal lands. Tribal identification cards may be used as a form of identification for election purposes. Ballot drop boxes may be placed on tribal lands and must be accessible to county auditors via public roads.

TIMELY ELECTIONS
Other than in-person by the close of polls on election day, receipt of new voter registrations and registration updates must be received eight days before an election.

VOTER REGISTRATION DEADLINES
SB 3227 clarifies the meaning of receipt by an election official of a voter registration by the “voter registration deadline.” Other than in-person by the close of polls on election day, receipt of new voter registrations and registration updates must be received eight days before an election.

RCW 29A.08.140 (amended in 2018, effective July 1, 2019) already allows new voter registrations and registration updates to be made in-person by 8:00 pm on an election day. Other methods to update voter registrations include by mail, email, telephone, and electronically.

Before this amendment there was more ambiguity regarding the length of time before the elections are first held under a new elections system. Now, all positions on the governing body of a jurisdiction adopting a new election plan either voluntarily or as a result of a court order filed under the WVRA are up for election at the next general election. This change provides voters with a more meaningful and prompter opportunities to participate in new elections. A local government adopting a new election system under the WVRA may subsequently choose to stagger the terms of governing body seats after the initial elections under the new system.

Linda Gallagher, Legal Consultant, joined MRSC in 2017. She previously served as a Senior Deputy Prosecuting Attorney for King County and as an Assistant Attorney General. Linda’s municipal law experience includes risk management, torts, civil rights, transit, employment, workers compensation, eminent domain, vehicle licensing, law enforcement, corrections, and public health.
## OVERTIME WORK
### Time Off or Additional Pay?

**BY PAUL SULLIVAN, MRSC LEGAL CONSULTANT**

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### COMPENSATORY TIME

An employee of a public agency may request compensatory time off work instead of being paid for the hours worked over 40 hours during a workweek, but before an employee can earn compensatory time, there must be an agreement made between the employee and the employing agency that allows the accrual (29 CFR 553.20). Compensatory time accumulates at a rate not less than one and a half hours of compensatory time for each hour of overtime worked (29 CFR 609.22), and there is a limit on the number of hours an employee may accumulate: 120 hours for most employees and 240 hours for employees in safety, emergency response, or a seasonal operation of the agency. Mere inconvenience is not enough to deny use. To turn down a request, 29 CFR 553.25 requires the employer must:

- Reasonably and in good faith anticipate that it would impose an unreasonable burden on the agency's ability to provide services of acceptable quality and quantity for the public during the time requested.

### THE BASICS OF OVERTIME

Per RCW 49.46.130(1), the normal workweek for most employees is 40 hours. For some employees, though, such as police officers and firefighters, the work period is calculated in a different manner based upon the number of hours worked during a consecutive 28-day period. See RCW 49.46.130(5).

The pay for overtime hours, those worked over the normal work period, is not less than one and a half times the employee's regular rate of pay—see RCW 49.46.130(1)—though some employment contracts provide for payment of double or even triple the normal rate of pay in certain circumstances. Overtime is calculated upon any excess hours worked over a whole work period, not for any extra hours worked on a particular day. For example, if an employee's normal work day is eight hours, working ten hours one day will not necessarily result in overtime pay. However, if the employee works 42 hours during the same workweek, he or she would then qualify for two hours of overtime.

### ACCREDDED COMPENSATORY TIME

Accrued compensatory time hours must be allowed to do so within a “reasonable period” after making the request, provided the request will not “unduly disrupt” the operations of the agency. Mere inconvenience is not enough to deny use. To turn down a request, 29 CFR 553.25 requires the employer must:

- Reasonably and in good faith anticipate that it would impose an unreasonable burden on the agency's ability to provide services of acceptable quality and quantity for the public during the time requested.

Even after compensatory time has been accumulated, an employer may nevertheless pay an employee cash for the accumulated time. 29 CFR 553.26 provides that if there is a payment, the employee may still request compensatory time for future overtime work.

Similarly, even if an employee has requested compensatory time, he or she may later require a payment in cash. Payment is calculated at the rate of pay in effect at the time of the request, not the rate that existed when the compensatory time was earned. When an employee terminates employment, the rate of payment is the average regular rate of pay during the employee’s last three years of employment or the regular rate received by the employee, whichever is higher (29 CFR 553.27).

### COMPENSATORY TIME

Compensatory time can be good for an employee who wishes more time away from work and, if he or she later chooses, unused compensatory time can be converted into a cash payment. Compensatory time can also be good for the employer as it allows giving an employee time off instead of paying cash, and that could be important in a tight budget year.

The various issues surrounding the award of use of compensatory time give employers and employees a lot to think about. Whether compensatory time should be allowed or taken is a policy decision, both for the employee and for the employer.
Learning For Local Government Professionals and Elected Officials

MRSC offers convenient, online and in-person training across a variety of broad topics including finance and budgeting, government performance, management, public works and contracting, public records act compliance, and land use case law.

WEBINARS

- **Building the Foundations of a Great Workplace Culture**
  - Tuesday, October 29, 11:00am–12:00pm

- **Ethics in Planning**
  - Monday, November 18, 12:00–1:30pm

- **Land Use Case Law Update**
  - Thursday, December 12, 12:00–1:00pm

WORKSHOPS

- **Purchasing and Contracting Essentials**
  - Spokane
  - Tuesday, October 29, 9:00am–3:30pm

- **Walla Walla**
  - Wednesday, October 30, 9:00am–3:30pm

- **White Salmon**
  - Thursday, November 14, 9:00am–3:30pm

Learn more and register at mrsc.org/training