The coronavirus (COVID-19) pandemic sweeping Washington and the whole world is unprecedented in the modern era. In the span of approximately two weeks in March, Washington communities went from a normal state of affairs to a statewide shutdown of schools, restaurants, and many public facilities and other places of work and business. This is a rapidly changing situation, and no doubt it has changed further since the time this article was written.

First of all, we want to thank all of you in local government for all of your hard work through this crisis. These are difficult and anxious times, and the dedication of our public servants like you is remarkable — from first responders and healthcare workers on the front lines, to public health officials and our elected leaders, to administrative staff members now working from home. Keep up the good work — you are making a positive impact within your community at a very difficult time.

Meanwhile, MRSC’s staff members — also working almost entirely remotely — have been focused on helping cities, counties, and special purpose districts do their jobs safely and effectively during this crisis. We published our first coronavirus-related blog post on March 3, shortly after the first emergency declarations were issued by the State of Washington and King County. After that, our staff has been working tirelessly to gather sample documents, answer inquiries, post hourly website updates, and host free webinars to answer your questions and make your jobs a little bit easier. While we have been updating our website almost daily with coronavirus-related information since publishing that first blog post on March 3, you can view all of MRSC’s resources by starting at mrsc.org/coronavirus.

The assistance of our local government partners has been invaluable, including the Sound Cities Association, which provided many sample documents in the early stages of the outbreak, Pacifica Law Group and Summit Law Group, who partnered with us on our first webinar, and all those individuals and jurisdictions who reached out with questions, information, and sample documents. (And a special thank you to our administrative and IT staff who make our entire operation possible and made sure our transition to a remote workplace was remarkably seamless!) We’re all in this together, and we will get through this together.

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 at the MRSC Insight blog, we cover such 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.
During the Coronavirus Outbreak

BY MIKE BAILEY, MRSC FINANCE CONSULTANT

One of the questions we’ve heard from local governments with regard to the coronavirus relates to the potential impacts on fiscal issues. In this blog, we will explore some of the issues you may want to consider from a fiscal / finance office perspective. We’ll review business continuity, revenue implications, and local economic impacts.

BUSINESS CONTINUITY

We’ve heard a lot about the need to be prepared to provide for the continuity of operations in anticipation of a variety of potential scenarios. The most common example has been an earthquake that would make it difficult to continue normal operations. Those who have been in local government for a while will remember similar discussions around such topics as the “bird flu” and other potential pandemics. The current healthcare crisis — at least in certain parts of the state — is now presenting that very situation. In these circumstances it is even more important that local governments deliver the services that our communities rely on. Additionally, our employees need to be assured that they will continue to be paid and have reliable health insurance benefits.

Hopefully your government has indeed responded to these recommendations by creating a “continuity of business operations” plan (COOP). Resources exist within the construct of the National Incident Management System (NIMS) to help you in thinking through the various issues to consider as you review your ability to provide business continuity for your government and community. Additionally, FEMA offers a Continuity Tool Kit with several resources to help you review and prepare for such activities as connecting to systems remotely, maintaining human resource systems and data, producing payroll, and addressing other related fiscal office needs. The ability to support procurement needs, pay vendors, and deposit payments in a timely manner are also considerations. Any ability to address other related fiscal / finance office needs. The ability to support procurement needs, pay the various issues to consider as you review your ability to provide business continuity for your community. Will a drop in restaurant and tourism traffic result in layoffs or lower wages for these employees that will translate into a lower level of retail activity? That seems likely — at least to some degree. In addition to reduced sales tax revenues, we’ll likely see lower lodging taxes, admission taxes, motor vehicle fuel tax (MVFT) state-shared distributions (due to fewer people driving), and other related revenues and fees.

REVENUE IMPLICATIONS

Another question we’ve heard relates to the potential impact on local government revenues. There are certain types of revenues that will be at greater risk than others. As a result, this issue will be impacted by the type of revenue structure within your government. Those who largely rely on property taxes are likely to be more stable than those who have a large exposure to consumer or business activity levels. Many local governments rely on sales taxes or (for cities) business taxes of some type for a significant portion of their revenues. The strong local economy over the past 10 years has allowed year-over-year increases in these revenue types. However, a consequence of the coronavirus may be a disruption in the underlying activity that results in these taxes. We’re seeing many events being cancelled, a scaling down of commercial activity, and even the closing of many smaller businesses that rely on foot traffic for clientele. If these continue for any length of time, the “trickle through” effect will be a decrease in the related sales, business & occupation, and other taxes.

Many local governments are expressing concern with regard to the types of work often performed by hourly employees in their community. Will a drop in restaurant and tourism traffic result in layoffs or lower wages for those employees that will translate into a lower level of retail activity? That seems likely — at least to some degree. In addition to reduced sales tax revenues, we’ll likely see lower lodging taxes, admission taxes, motor vehicle fuel tax (MVFT) state-shared distributions (due to fewer people driving), and other related revenues and fees.

A global pandemic emergency on this scale is unprecedented in our lifetimes — So how should you go about estimating the scale of the potential impact on your organization’s revenues? First, you should review your revenue profile and assess the degree to which your organization is susceptible to revenue impacts related to the virus. With so many unknowns, your analysis should be based on the best information you can gather, with ranges of impact. Information sources could include:

- How your agency’s revenue channels have performed during prior, relevant recession periods.
- Information from the local public health office that suggests the most likely trajectory of the virus in your area.

One of the examples we’ve used in our training relates to economic disruptions similar to those caused by a pandemic. While I was at the City of Redmond our council utilized a base level reserve of 8.5% of revenues. The strong local economy over the past 10 years has allowed year-over-year increases in these revenue types. However, a consequence of the coronavirus may be a disruption in the underlying activity that results in these taxes. We’re seeing many events being cancelled, a scaling down of commercial activity, and even the closing of many smaller businesses that rely on foot traffic for clientele. If these continue for any length of time, the “trickle through” effect will be a decrease in the related sales, business & occupation, and other taxes.

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FISCAL POLICY

We have consistently encouraged local governments to develop fiscal policies to help guide their thinking for a variety of scenarios. Fund balance reserves is a common fiscal policy topic. MRSC has detailed guidance on its website to assist your agency in thinking through the right levels of fund balance and the scenarios under which a portion of fund balance might be appropriate.

LOCAL ECONOMIC IMPACTS

Lastly, your government may have a role in supporting a vibrant local economy. It may have an economic development function that can shift into a bit of a different role now, since many of the smaller, local businesses in our communities are dealing with unprecedented challenges. As discussed above, many employees in our communities rely on an hourly wage. As restaurants, tourist venues, and similar establishments scale back or close, this impacts individuals who rely on these jobs for their income. I’ve heard that the typical response has been a referral to unemployment insurance. That may prove to be the most practical approach to helping anyone who finds themselves unemployed or under-employed. In fact, the Washington State Employment Security Department has programs specifically designed to respond to the coronavirus situation.

If economic development support is one of your organizational responsibilities, I’d recommend assessing local options that can support small businesses most likely to be affected by the disruptions. This is likely to be a difficult time for many of them.

CONCLUSION

At this point there are more questions than answers with respect to the impact of the coronavirus on local government finances. At a minimum, I’d recommend reviewing your business continuity capabilities, assessing potential impacts on current and future revenues, and reviewing options to assist those who may be in need as we work through the current health crisis.
Every month, Ask MRSC receives hundreds of inquiries from Washington cities, towns, counties, and certain special purpose districts. The following is a sample of these inquiries and the answers provided by our skilled legal and policy consultants.

How do we let the public know when we’re having a meeting (or when we’re canceling or moving one)?

The time and place of your regular meetings have already been established by your governing body. However, Governor Inslee’s Proclamation 20-28, issued March 24, 2020 and effective until midnight on April 23, 2020, requires that all meetings of the governing body not be held in person. Instead, they must be held remotely while promoting as much telephonic or other electronic remote access as necessary. The Proclamation specifically waives certain notice requirements, such as those in RCW 42.30.070, which allow the presiding officer to move the regular meeting place in an emergency. MRSC recommends that you provide notice of the new location by as many means as is practicable (website, notification to local media). The Proclamation also waives the requirements in RCW 42.30.080(2)(j) that require notice of a special meeting to be posted at least 24 hours before the time of the meeting. Again, we recommend you publicize the change in time as widely as is practicable.

The procedure for dealing with public hearings is as follows: Assuming you’d properly noticed the meeting under whichever statute required the hearing, MRSC believes you can continue the hearing without having to follow the full procedures required for the original notice.

Do cities and counties offer grants or low interest loans to local businesses as financial relief due to COVID-19 impacts?

The Washington State Constitution prohibits Gifts of Public Funds “except for the necessary support of the poor and infirm.” There is a related prohibition in the State Constitution on the lending of credit by public entities. Based on our understanding of this provision, MRSC has historically advised that financial contributions by local government entities to private businesses, either in the form of a grant or a loan, are generally prohibited. We have also previously advised that there must be a proper public purpose or public benefit resulting from such expenditures beyond providing financial support to a local business. However, on March 17 the Washington Attorney General issued a memo to state and local governments clarifying that public funds may be spent “for the primary purpose of protecting and promoting public health which may have an incidental benefit on private citizens and entities.” This may provide more flexibility for local governments to assist local businesses.

We recommend discussing any proposal related to financial assistance with your legal counsel. In addition, both the state and federal governments have either introduced or adopted significant measures intended to provide economic relief to small businesses.

Can cities and counties offer grants or low interest loans to local businesses as financial relief due to COVID-19 impacts?

The federal Families First Coronavirus Response Act (FFCRA) is in effect April 1, 2020 to December 31, 2020 and provides for two sources of additional paid leave for local government employees (as well as many private sector employees). Private employers are entitled to a tax credit for these benefits paid to employees, but local government employers are not. Here are highlights of the law:

**Emergency Family and Medical Leave Expansion Act.** Employees who have been on payroll for 30 days or more are entitled to 12 weeks of Expanded Family and Medical Leave if the employee cannot work due to the need to care for a child because of school closure or unavailability of the childcare provider.

The first two weeks (10 days) of expanded family and medical leave are unpaid but the employee must be allowed to use emergency paid sick leave or other accrued leave for those two weeks.

- For leave after the initial 10 days, the employer must pay the employee at least 2/3 of their regular pay. Pay is capped at $200/day and $10,000 in the aggregate.
- Employers may exclude health care providers and emergency responders from coverage.

**Emergency Paid Sick Leave Act.** Full-time employees are entitled to up to 80 hours of Emergency Paid Sick Leave; part-time employees are entitled to the number of hours they typically work over a two-week period. All employees are eligible; it does not matter how long they have been employed. An employee is entitled to Emergency Paid Sick Leave only for COVID-19-related reasons, including illness, quarantine/isolation, or school closure/childcare provider unavailability due to COVID-19 precautions.

- Employers cannot require employees use other leave prior to using Emergency Paid Sick Leave.
- If the leave is taken due to the employee’s own health or quarantine/isolation, the employee must be paid their regular rate of pay. Pay is capped at $511/day and $5,110 in the aggregate.
- Employers may exclude health care providers and emergency responders from coverage.

How do the new federal Families First Coronavirus Response Act (FFCRA) apply to local governments?

Yes. The Governor’s emergency Proclamation 20-28, issued March 24, requires agencies to meet completely remotely without providing for a physical location. Because of this restricted access to the meeting, the Proclamation also requires agencies to limit the action taken at those meetings to “necessary and routine matters or are matters necessary to respond to the COVID-19 outbreak and the current public health emergency.” Items necessary to respond to the emergency could include ratification of administrative proclamations and orders and approval of emergency contracts.

The proclamation does not provide a definition for “necessary and routine” matters. We suggest you limit agenda items to areas such as approving payrolls and other vouchers, approval of minutes of previous meetings, and other matters that cannot wait until you can provide a physical location where the public can attend.

**Families First Coronavirus Response Act (FFCRA).** The act requires employers (including state and local governments, as well as certain other employers) to provide paid sick leave and family and medical leave for specified reasons related to COVID-19. The leave is available to all employees who have worked for the employer for at least 30 days. Employers must provide at least 80 hours of paid sick leave per year. Employees who have been employed for at least 10 days are eligible for the leave. The leave is paid at a rate of at least 2/3 of the employee’s regular rate of pay, up to a maximum of $511 per day.

**Emergency Paid Family and Medical Leave Expansion Act.** The FFCRA also requires employers to provide emergency paid family and medical leave to employees who need time off to care for a family member or due to school closings or childcare unavailability. The leave is available to all employees who have worked for the employer for at least 30 days. It is paid at a rate of at least 2/3 of the employee’s regular rate of pay, up to a maximum of $511 per day.
PERMANENT SUPPORTIVE HOUSING: One Option for Addressing Homelessness

Affordable housing and homelessness are two of the more challenging issues facing local governments today. Finding affordable housing options for the formerly homeless and providing them with needed services to help them lead productive lives is a laudable yet difficult goal. Permanent supportive housing, however, is an option that may help to provide one solution.

WHAT IS PERMANENT SUPPORTIVE HOUSING?

What is permanent supportive housing (PSH) and who is it meant to serve; you may ask? The National Health Care for the Homeless Council offers the following definition:

Permanent Supportive Housing (PSH) is a model that combines low-barrier affordable housing, health care, and supportive services to help individuals and families lead more stable lives. PSH typically targets people who are homeless or otherwise unstably housed, experience multiple barriers to housing, and are unable to maintain housing stability without supportive services.

WHERE IS PSH ALLOWED?

A bill from the 2019 legislative session was recently signed into law (RCW 35.21.689) that states: "A city may not prohibit permanent supportive housing in areas where multi-family housing is permitted." In other words, your local zoning/development regulations should contain provisions that deal with PSH in a manner that complies with this new state law. Several cities already have "supportive housing" as an identified land use in their zoning codes, including Mount Vernon and Auburn. Other cities, such as Everett, include it within their definition of multi-family housing.

WHO TYPICALLY DEVELOPS THIS TYPE OF HOUSING?

Developers of permanent supportive housing projects are often private nonprofit organizations, but these groups usually partner with one or more public entities to accomplish the task. Financing for this type of housing is especially challenging because funding usually needs to come from many different sources. For example, Everett’s multi-source financial assistance is described later in this blog post. Even if a community cannot provide any direct financial help, other incentives and non-monetary programs (such as impact fee waivers and expedited permit review) could be provided for PSH. If you haven’t already done so, please be sure to amend your development regulations to accommodate this type of land use.

CASE STUDY: HOPEWORKS STATION II, EVERETT

HopeWorks Station II, a four-story, multi-use, 65-unit development located in Everett, is the case study for this blog post. The project serves low-income and formerly homeless individuals and families. The housing component consists of 28 studios, 27 one-bedrooms, and 10 two-bedrooms. It was developed by Housing Hope Properties and HopeWorks Social Enterprise and opened its doors to residents in the fall of 2019.

HopeWorks Station II provides both on-site and off-site supportive services, such as programs that serve youth and veterans, and a "family treatment court." It also offers an on-site Workforce Development Center, which is complemented by an on-site coffee shop/restaurant, furniture retail shop, and offices for a landscaping business. The concept is that residents of HopeWorks Station II will be able to acquire-on-the-job skills by working at one of the on-site businesses.

HopeWorks Station II was designed to be an energy-efficient building and participated in the Living Building Challenge Affordable Housing Pilot Program. The project developer’s ambitious goal was to go beyond a "net zero" energy consumption level and actually generate 5% more energy than the building consumes.

The City of Everett was an active partner in developing this project, both financially and from a regulatory perspective. Everett provided direct financial assistance, with $200,000 in city general fund monies (for the Workforce Development Center), federal HOME funding ($500,000), Affordable Housing Trust funds ($220,000), federal Community Development Block Grant funds for design ($129,000), and a reduced impact fee payment. Other financial partners include the Everett Housing Authority. In response to serious interest from local nonprofit housing developers, of which HopeWorks Housing II was one proposal, Everett also amended its development regulations to make it more hospitable to PSH. The city recently revised those regulations so that permanent supportive housing is just viewed as another type of multi-family housing allowed in multi-family and mixed-use zones.

CONCLUSION

Homelessness is not just a housing problem. Most communities recognize that homeless people need both housing and related social services. Permanent supportive housing is not a new concept, but the rate of construction of new facilities has not been enough to meet the need. This fact is likely one reason why state law now requires permanent supportive housing to be allowed in all multi-family zones.

While not every community will be able to provide the same level of support as Everett, crafting an approach to permanent supportive housing that meets local needs is something that should be considered by Washington’s local governments.
LOCAL BREED-SPECIFIC DOG BANS

Now Need a Good Behavior Exception

BY LINDA GALLAGHER, MRSC LEGAL CONSULTANT

Washington State law defines and makes a distinction between “dangerous dogs,” which are to be regulated under state law and the provisions of Ch. 16.08 RCW, and “potentially dangerous dogs,” which are regulated by locally adopted ordinances. Breed-specific prohibitions are a type of locally adopted “potentially dangerous dog” regulations. Effective January 1, 2020, Washington state law, HB 1026 (codified at RCW 16.08.110), requires municipalities with ordinances regulating or prohibiting particular breeds of dogs to also provide a good behavior exception for such dogs. This exception allows residents to possess dogs of otherwise-prohibited breeds if the dog has passed the American Kennel Club (AKC) canine good citizen test or a reasonably equivalent canine behavioral test.

Breed-specific legislation is a type of dangerous or potentially dangerous dog law typically passed by local governments in the form of an ordinance or policy that pertains to a specific dog breed or several breeds but does not apply to any others. Pit bull breeds are usually the primary focus of such laws, but the ban may also include Rottweilers, Dobermans, or Bulldogs. Proponents of breed-specific prohibitions and regulations seek to limit public exposure to dogs of particular breeds believed to be more dangerous than others. Opponents of such laws seek to allow possession of dogs of all breeds and instead focus on the behavior of specific dogs and their owners.

WHAT DOES RCW 16.08.110 DO?

RCW 16.08.110(1) provides that a city or county may not prohibit the possession of a dog based upon its breed, impose requirements specific to possession of a dog based upon its breed, or declare a dog dangerous or potentially dangerous based on its breed unless all of the following four conditions are met:

1. The city or county has established and maintains a reasonable process for exempting any dog from the regulations or ban if the dog passes the American kennel club canine good citizen test or an equivalent behavioral test;
2. Dogs that pass the AKC canine good citizen test or a reasonably equivalent test are exempt from breed-based regulations for at least two years;
3. Dogs that pass test are also given the opportunity to retest to maintain their exemption the regulations; and
4. Dogs that fail the test are given the opportunity to retest within a reasonable period of time.

AKC CANINE GOOD CITIZEN TEST

Dogs pass the AKC canine good citizen test by completing a series of 10 challenges, including accepting a stranger, sitting politely for petting, walking on a leash, walking calmly through a crowd, sitting and staying on command, coming when called, and not reacting adversely to other dogs and/or distractions. To regulate certain breeds of dogs, such as pit bulls, local governments must now establish and maintain a process to exempt dogs that pass the AKC canine good citizen test or an equivalent behavioral test as determined by the city or county. The city or county is not required to provide this test, and dog owners are responsible for the cost of the testing.

As noted in the legislation, an exemption must be in effect for at least two years, with regular retesting to maintain it. In addition, if a dog fails the behavioral test, then the local government must allow for the animal to retest within a reasonable time.

SERVICE ANIMALS AND GUIDE DOGS

The Washington State Human Rights Commission has consistently recommended that language be included in breed-specific dangerous dog ordinances that provides exceptions, exemptions, or waivers for trained guide dogs and service animals used by people with disabilities (see RCW 49.60.215.) Prohibiting specific breeds could be considered too limiting for people with disabilities.

NEXT STEPS

Jurisdictions with breed-specific dog regulations need to review their current ordinances and comply with RCW 16.08.110 by including an exemption process if they wish to maintain such regulations and prohibitions. Some jurisdictions have already chosen to remove breed-specific regulations and prohibitions from their local code altogether. Some local jurisdictions may be considering adopting breed-specific regulations, but in doing so, will need to ensure that any new regulations are in compliance with state law.
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