Municipal Research News

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Mrsc Launches New Website Search

We’re excited to announce that Mrsc has rolled out a new and significantly improved website search system!

As of right now, the Mrsc website has more than 400 topic pages, 30 publications, 800 blog posts, 3,900 sample documents, and 300 archived inquiries, plus a variety of other resources. That’s about 5,500 total pieces of content (and counting).

All of our content is geared toward helping local government staff and officials across Washington State – educating you about legal requirements and policy considerations, informing you of new legislation and court decisions, providing examples of documents adopted by other jurisdictions, and more.

But with so much information on so many different topics, it can sometimes be hard to find what you’re looking for. In past customer satisfaction surveys, we heard from a number of you who generally love our website but said that the search engine needed improvement.

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The volatility of transportation revenues has been a concern for many years. The Office of Financial Management (OFM) – through the Transportation Revenue Forecast Council (TRFC) – released the November 2019 Transportation Revenue Forecast and then released a revised forecast for Volume II: Detailed Forecast Tables on November 27. The release and revision to the transportation revenue forecasts, within the span of just a week, is a good indication of OFM’s concerns regarding the impacts of I-976.

**I-976 IMPACTS ON TRANSPORTATION REVENUES**

Transportation Benefit Districts with License Fees

At first glance, I-976 raised concerns for the state’s Department of Transportation, transit agencies, and those entities with Transportation Benefit Districts (TBD). It should be noted that all of the TBD’s established within the state have been formed by cities and towns, with the majority (60%) imposing a license fee to fund the district and the remaining 40% passing a TBD sales tax ballot measure (RCW 82.14.0455). The sales tax revenues will not be impacted, but for those 64 cities with TBDs funded by license fees, they will potentially lose their authority to impose the fee as a result of the passage of I-976. For these cities, the Washington Supreme Court will decide on the validity of the initiative in the forthcoming months.

Multimodal Funds

Since 2016, cities and counties have been receiving state-shared revenues from the state’s ‘multimodal’ account (RCW 47.66.070) through appropriations in the state biennial budget. The revenues transferred into the multimodal fund are from vehicle license fees and other state transportation revenues. As a result of I-976, it is anticipated that the legislature will reevaluate its state-shared revenue allocation to cities and counties. This expectation is further supported by a November 25 article in Route Fifty, a national news source for federal, state, and local government entities. This article, *In a booming transportation cut, quotes Rep. Jake Fey*, chair of the legislature’s House Transportation Committee, on how he intends to mitigate the impacts of I-976 on the state’s multimodal account. States Fey, “My focus is going to be about doing the best job of spreading the pain.”

**What’s Next**

The legal challenges over I-976 have begun with a broad coalition of local government entities and state organizations filing a suit and requesting an injunction until the case has been heard by the courts. King County Superior Court granted the injunction on November 27, 2019 and, subsequently, the State Attorney General’s office (AG) filed an emergency motion with the Supreme Court to stay the lower court’s order by December 5 (the effective date of I-976). The Supreme Court denied the AG’s request for a stay and the issue will be heard by the court in the months ahead.

Now that the injunction has been upheld, those TBD cities and towns will need to decide how to manage the ongoing receipt of license fee revenues that could potentially have to be returned to vehicle owners. Depending upon the timeline of the court ruling the accumulation of these revenues could be substantial, and it will be important to evaluate the consequences of spending any of these fees.

With regards to other impacts of I-976, many transportation projects that had been approved but not started have now been postponed. On November 26 the State Department of Transportation released this list of postponed projects that are in stasis until the legislature has an opportunity to reconvene and evaluate. These were projects that, in many areas of the state, had been ongoing and/or waiting (sometimes for a lengthy period) to receive funding. For example, the City of Spokane and the Greater Spokane area has been waiting for the completion of a north/south freeway that will tie into Interstate 90. This project has been in the works for several decades but the last portion of it is now listed as one of those postponed projects, as noted in a December 2 Spokane-Gazette Review article, “State puts portion of North Spokane freeway on hold in response to I-976.”

All cities, towns, and counties have been impacted by the passing of I-976. Both the Supreme Court and the state legislature will have work to do and local governments will have some decisions to make on the best way to adjust 2020 transportation (street and road fund) budgets.
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.

**Ask MRSC**

**Growing Pains: Questions Related to Growing Cities**

Our city will likely exceed 20,000 population in 2020. What are the financial, legal, planning, etc. requirements that will change once our city exceeds this number?

This list has most, but perhaps not all, of the differences a city will encounter when its population passes 20,000.

- The city must establish a local LEOFF disability board per RCW 41.26.110.
- For code cities with a population over 20,000, RCW 35A.41.100 provides the additional authorization to establish a retirement system for employees.
- Under RCW 35A.40.210, purchases for code cities with 20,000 population or more shall be governed by RCW 35.22.620, while purchases for code cities with under 20,000 population shall be governed by RCW 35.23.352.
- RCW 35.37020, which has to do with transfers of surplus revenues to the general fund and requires that the general fund make up any deficit in a utility fund, no longer applies.
- Per RCW 43.63A.215, the city must have accessory apartment provisions in its zoning code.
- As of June 12, 2008, a city with a population between 20,000-25,000 that currently operates a publicly owned marina may enter into a reduced fee lease that authorizes the city to use state-owned aquatic lands for the purpose of operating a publicly owned marina.
- Per RCW 35A.70.070, all code cities having a population of more than 20,000 must serve as a primary district for registration of vital statistics in accordance with the provisions of chapter 70.58 RCW.
- Once population is more than 25,000, a city will have greater responsibilities for any state highway in its limits under RCW 47.24.020.
- RCW 36.70A.600(6) offers planning grant assistance for cities with a population over 20,000 that are planning to increase residential building capacity under RCW 36.70A.040.

Another related consideration may be whether your city employs 50 or more full time employees. When this milestone is met, there is eligibility for additional federal and state law mandated benefits. Many cities with less than 50 employees provide health care, family medical leave, or other leave benefits on a voluntary basis, and your city may also do so. Most federal law and some state law requirements are triggered by a 50-employee threshold. The Affordable Care Act (ACA) remains in effect and requires employers of 50 or more employees to provide health care coverage to full-time employees and their dependents.

The Family Medical Leave Act (FMLA) and the Washington Family Leave Act (WFLA) - chapter 49.78 RCW – apply only to employees who work for employers, including local governmental entities, that have 50 or more full-time employees within 75 miles of the worksite.

You should also check the State Auditor’s Office (SAO) for any changes in their reporting requirements for code cities with populations greater than 20,000.

MRSC’s Code City Handbook contains useful information about the laws applicable to code cities, charter and noncharter, and classification of such cities. This handbook was published in 2009 so be sure to check for current updates in any statutes you may be reviewing.

Finally, we recommend you also consult with your city attorney.

The statute you are referring to is RCW 47.24.020, which covers the “jurisdiction, control, and duty” of the state and cities/towns with respect to city/town streets that are part of state highways. In 2018, the legislature adopted EHB 2948, which updated the population thresholds in RCW 47.24.020 from 25,000 to 27,500.

Beginning June 7, 2018, the population threshold at which cities are required to assume maintenance responsibilities for their city streets that are part of state highways increased to 27,500. Cities have three years from the determination of population to plan for additional staffing, budgetary needs, and equipment requirements before assuming the new responsibilities. EHB 2948 provided additional threshold increases to 30,000 in 2023, 32,000 in 2028, and 35,000 in 2033.

The subsections of RCW 47.24.020 that include the population threshold are (6) and (13) and relate to street lighting and cleaning, snow removal, traffic control signals, signs, etc.

(6) Except as otherwise provided in subsection (f) of this section, the city or town at its own expense shall provide street illumination and shall clean all such streets, including storm sewer inlets and catch basins, and remove all snow, except that the state shall when necessary plow the snow on the roadway. In cities and towns having a population of 27,500 or less according to the latest determination of population by the office of financial management, the city, when necessary for public safety, shall assume, at its expense, responsibility for the stability of the slopes of cuts and fills and the embankments within the right-of-way to protect the roadway itself. When the population of a city or town first exceeds 27,500 according to the determination of population by the office of financial management, the city or town shall have three years from the date of the determination to plan for additional staffing, budgetary, and equipment requirements before being required to assume the responsibilities under this subsection. The state shall install, maintain, and operate all illuminating facilities on any limited access facility, together with its interchanges, located within the corporate limits of any city or town, and shall assume and pay the costs of all such installation, maintenance, and operation incurred after November 1, 1954.

(13) Except as otherwise provided in subsection (f) of this section, the department shall install, maintain, operate, and control at state expense all traffic control signals, signs, and traffic control devices for the purpose of regulating both pedestrian and motor vehicular traffic on, entering upon, or leaving state highways in cities and towns having a population of 27,500 or less according to the latest determination of population by the office of financial management. Such cities and towns may submit to the department a plan for traffic control signals, signs, and traffic control devices desired by them, indicating the location, nature of installation, or type thereof, or a proposed amendment to such an existing plan or installation, and the department shall consult with the cities or towns concerning the plan before installing such signals, signs, or devices. Cities and towns having a population in excess of 27,500 according to the latest determination of population by the office of financial management shall install, maintain, operate, and control such signals, signs, and devices at their own expense, subject to approval of the department for the installation and type only. When the population of a city or town first exceeds 27,500 according to the determination of population by the office of financial management, the city or town shall have three years from the date of the determination to plan for additional staffing, budgetary, and equipment requirements before being required to assume the responsibilities under this subsection. For the purpose of this subsection, striping, lane marking, and channelization are considered traffic control devices.
NEW DEVELOPMENTS IN PRA LAND

The Washington Supreme Court (Court) handed down two important Public Records Act (PRA) decisions in October 2019, one addressing whether birth dates are exempt from public records requests and the other addressing how to apply the active and ongoing employment investigations exemption during an open PRA request.

CASE #1: WASH. PUB. EMP. ASS’N V. WASH. STATE CTR. FOR CHILDHOOD DEAFNESS & HEARING LOSS

Reversing a 2017 Court of Appeals decision, which found a constitutional right to privacy in a public employee’s full name associated with their date of birth, the Supreme Court in Wash. Pub. Emps. Ass’n v. Wash. State Ctr. for Childhood Deafness & Hearing Loss held that neither the PRA nor the state constitution provide a protected privacy interest against disclosure of this information.

The Court reviewed the exemption in RCW 42.56.250(4), which protects certain information in personnel and employment related records. In denying the applicability of the exemption to a public employee’s birth date, the Court noted that the statute specifically protects the birth dates of an employee’s dependents, but not the employee’s birth date, the Court noted that the statute specifically protects the birth dates of an employee’s dependents, but not the employee’s birth date, the Court noted that the statute specifically protects the birth dates of an employee’s dependents, but not the employee’s birth date.

We must read RCW 42.56.340(4) for what it is: a list of specifically exempted personal information, not an illustrative description of a broader, implied exemption for all personal information.

RCW 42.56.230(3)
The Court also reviewed RCW 42.56.230(3), which protects personal information in employee files to the extent disclosure would violate their right to privacy. In rejecting applicability of this exemption to an employee birth dates, the Court noted the following:

• Birth dates are already readily available in the public domain;
• “The privacy protection afforded by the PRA is narrow,” extending only to matters concerning their private life, leaving “no room for including birth dates within the common law sphere of protected privacy”; and
• Birth dates are often important in matters of public concern.

The Court did acknowledge that there are “legitimate concerns about the misappropriation of birth dates that echo the concerns related to Social Security numbers,” but ultimately identified this as an area for the Washington State Legislature, not the courts, to address by revising the statutory language.

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Article I, Section 7 of the Constitution

The court also rejected the notion that birth dates are protected under the constitution’s right to privacy provision, stating:

Disclosure of birth date information is not “highly offensive” under our precedent, and it serves legitimate public interests, furthering the policy of the PRA to promote transparency and public oversight.

CASE #2: GIPSON V. SNOHOMISH COUNTY

Gipson v. Snohomish County held that an agency “determines any applicable exemptions at the time the request is received,” and doesn’t have a duty to revisit records withheld or redacted in previous installments to determine whether an exemption no longer applies.

The exemption in the case applied to investigative records that are part of active and ongoing employment investigations, an exemption that was previously codified at RCW 42.56.250(5) and is now codified at 42.56.250(4). The county relied on the exemption to withhold records even though most of the installments were produced at a time during which the investigation was no longer active and ongoing.

I think a timeline is really helpful to understand the court’s decision:

• December 1, 2014: Records request received for investigation records
• February 2, 2015: Investigation ended
• February 19, 2015: Second installment produced (installation withheld records pursuant to the active and ongoing employment investigation exemption)
• March 5, 2015: Third installment produced
• April 22, 2015: Fourth installment produced
• May 4, 2015: Fifth installment produced and request closed

Here, the investigation was no longer active and ongoing at the time of the second and subsequent installment. Nonetheless, the Court upheld the county’s reliance on the active and ongoing investigation exemption to withhold records since applicability of the exemptions is determined at the time the request is received, not at the time the installments are produced. The Court noted that installments are not new, independent requests; Rather, they fulfill a single request. Thus, as explained by the Court:

Should the exemption expire, and the record come into existence after the initial request and determination, the onus is on the requestor to make a “refresher request.”

Key Takeaway From This Case

Exemptions apply at the time the request is received and an agency does not have to review previous installments to determine if an exemption no longer applies to withheld or redacted records.

Flannary Collins, Managing Attorney, first joined MRSC as a legal consultant in August 2013 after working for ten years as the assistant city attorney for the city of Shoreline. Flannary writes on a wide range of issues including the Open Public Meetings Act, ethics, and personnel issues, and is especially knowledgeable on the Public Records Act and public records management, disclosure, and case law.
Handling Public Requests

Municipal employees sometimes must deal with a people who make numerous requests for public records, or complain, or just want to talk. What can you do? What can’t you do? What should you do?

RESPONDING TO PUBLIC RECORDS REQUESTS

A citizen requests copies of all the emails and text messages sent by several of your elected officials over the last three years. Hundreds of records are involved: Must they be provided? Yes, absolutely. An agency may not refuse to provide records simply because the request is large or has previously been made. The person making the request is not required to give a reason for the request. The records must be provided, subject to possible redaction.

Can you ever say no?

Is there anything that can be done when the request seems unwieldy or impossible? A few statutory provisions may help. While records must be provided – per RCW 42.56.080(1) and WAC 44-14-04002(2) – the request must be for identifiable records, or those that exist and can be reasonably located. A request for a record not currently in existence (“I want all applications for next month’s zoning change”) is not a valid request nor is a request for information (“How much did the city pay for travel in March?”).

If the records are not identifiable the request can be denied, but you must first attempt to get clarification from the requestor (see RCW 42.56.100 and WAC 44-14-04002). Sometimes a person may not know what he or she wants, and by discussing the request with that person you may pare down the size of it. Record requests can be provided to the requestor in installments. However, if an installment is not picked up or reviewed by the requestor the agency is no longer required to fulfill the balance of the request, per WAC 44-14-0400(10).

The rules do not eliminate the responsibility to provide records, but they may better establish time expectations for a response given the agency’s other responsibilities.

Recouping costs

Per RCW 42.56.070(7), a charge can now be made for providing electronic records. Additionally, RCW 42.56.120(4) allows a local government to require an upfront deposit for copies, which may discourage or reduce some of the larger requests.

RCW 42.56.100 allows a local government to adopt rules that can help guard it against “excessive interference with other essential functions of the agency.” The rules do not eliminate the responsibility to provide records, but they may better establish time expectations for a response given the agency’s other responsibilities.

RESPONDING TO COMPLAINTS

Government can’t and doesn’t please everyone all the time. If a person feels somehow wrongdoing, he or she may complain, sometimes directing the complaint to a municipal employee who is the most accessible but one who has little or no knowledge of the issue or how it can be resolved. What then? Obviously, the complainant can and probably should be directed to someone better able to provide a response. Sometimes, though, a complaint can be resolved or diffused merely by an employee courteously listening and showing an understanding of the complainant’s situation.

Dealing with aggressive behavior

What should be done, though, if the person disrupts, threatens, or harasses employees? First, politely ask the person to stop or maybe even ask him or her to leave. If necessary, get a supervisor, manager, director, or mayor to help. If the problem persists, police intervention can be an option.

A criminal charge, such as trespass, might be possible (RCW 9A.52.080) if the person remains on site and continues to disrupt the business of the municipality. Under RCW 9A.46.020 a person can be charged with harassment (i.e., causes or threatens bodily injury, physical damage to property, threatens physical confinement or restraint, or maliciously acts to substantially harm another’s mental health or safety), and under RCW 9A.76.080 a person could be charged with intimidating a public servant if, by threat, he or she attempts to influence a vote, opinion, decision, or other official act.

Potentially arresting a person or having a criminal complaint filed against him or her is a very serious step for a local government to take – and certainly not a preferred way to proceed – but it may need to be considered if the person making the complaint makes it impossible for business to be safely or effectively carried out.

As a preventative measure, if a person’s conduct is improper, serious, and ongoing, the agency’s attorney may need to request a restraining order from the court to prevent the person from entering a building where government activity is being conducted. If the harassment is continuous and directed to a specific individual, the person being harassed could ask a court for an anti-harassment protection order under RCW 10.14.080.

Some people just want to talk… and talk

Occasionally someone may come into the office ostensibly on business but, in fact, mostly wants to talk. Is there really any harm? Probably not, but work that needs to be done by municipal employees cannot be done during an extended conversation. Explain that time devoted to visiting cannot continue because of work assignments. A supervisor may need to intervene to help keep conversations short and primarily limited to municipal business.

In dealing with public requests, be they for records, complaints, or just a chat, having a consistent, friendly approach and carefully reminding visitors that work needs to be done may help.
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

The Open Public Meetings Act Primer – How to Avoid Common Pitfalls
Wednesday, February 12, 11:00am–12:00pm

Making Your Job Easier with MRSC’s Services (Free!)
Thursday, February 13, 11:00am–12:00pm

Building a Foundation for Fiscal Oversight
Tuesday, February 25, 11:00am–12:00pm

WORKSHOPS

Public Records Act Basics and More
7–8 dates and locations in March & April

Annual Financial Reporting (Cash) Workshop
4 dates and locations throughout March

Learn more and register at mrsc.org/training