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# Memorandum

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**To:** Dave Mercier, City Manager; Mike Jackson, Deputy City Manager

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**From:** Cary Driskell, Deputy City Attorney

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**CC:** Mike Connelly, City Attorney

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**Date:** March 4, 2009

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**Re:** Disincorporation-related issues

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## I. HISTORY OF DISINCORPORATION IN WASHINGTON STATE

The last recorded use of the statutory authority of a city to disincorporate was exercised in 1972, when the city of Westlake, in Grant County disincorporated.<sup>1</sup> There has never been an involuntary disincorporation in the State of Washington.

Pursuant to the Revised Code of Washington (RCW), disincorporation “[a]ctions taken under chapter 35A.15 RCW may be subject to potential review by a boundary review board.”<sup>2</sup>

## II. STATUTORY AUTHORITY

The authority for a noncharter code city to disincorporate is found in RCW 35A.15.010. Pursuant to that statute, “[a]ny noncharter code city may be disincorporated.”<sup>3</sup> The methods for initiating the process of disincorporation, the statutory requirements for the disincorporation process, and the effects of disincorporation are discussed in subsequent sections.

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<sup>1</sup> Washington Secretary of State. However, the Municipal Research & Services Center of Washington (MRSC), “Focus Brief: Disincorporation,” December 1999, lists the most recent Washington municipal disincorporation as being the city of Elbertson (in Whitman County) in 1965.

<sup>2</sup> RCW 35A.15.001; *see also* Op. Atty. Gen’l, No. 56 (1976).

<sup>3</sup> RCW 35A.15.010.

### **III. PRESCRIBED METHODS FOR INITIATION OF DISINCORPORATION**

The statute that grants authority for a noncharter code city to be disincorporated also provides the ways in which voluntary disincorporation may be initiated. Another state statute, RCW 35A.15.110, describes the initiation of involuntary disincorporation procedures.

#### **A. Voluntary Disincorporation.**

Voluntary disincorporation may be commenced either by a petition of city citizens or by resolution of a city's legislative body.

##### **1. Initiation by Citizens' Petition**

In order to begin the process of disincorporation by petition, a petition for disincorporation must be filed with the county auditor. To be effective in commencing the disincorporation process, the petition must be signed by "a majority of the registered voters resident in such city."<sup>4</sup> RCW 35A.01.040(8) pertains to the time period in which a petition must be filed for a determination of sufficiency. It reads: "Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken." RCW 35A.01.040(8). The practical effect of this provision is that a six month time limit on the validity of a signature begins to toll as of the signing of that signature, and that signatures that include a date older than six months are "stale" and invalid.

Although there is very little applicable case law on the broad issue of disincorporation, one issue on which Washington courts have ruled is the issue of signature validity. Specifically, the issue was whether a citizen who had previously signed a petition could withdraw his or her

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<sup>4</sup> RCW 35A.15.010.

name from that petition.<sup>5</sup> On this issue the Supreme Court of Washington held in the affirmative.<sup>6</sup>

In the City of Spokane Valley, \* residents were registered to vote as of the November 2004 general election.<sup>7</sup> Thus, in order to satisfy the petition signature requirement, \* valid signatures of registered voters would be required to initiate disincorporation.

## **2. Initiation by the City Council**

As an alternative to the petition method, the process of disincorporation can be commenced by a resolution of the city council.<sup>8</sup>

### **B. Involuntary Disincorporation**

The authority for the involuntary disincorporation of a noncharter code city is found in RCW 35A.15.110, which reads (in pertinent part): “A noncharter code cite may be involuntarily dissolved in the manner provided in RCW 35.07.230, 35.07.240, 35.07.250, and 35.07.260 upon the existence of the conditions stated in RCW 35.07.230.”<sup>9</sup> The conditions required to exist before involuntary dissolution of a noncharter code city can occur include :

“[i]f any town fails for two successive years to hold its regular municipal election, or if the officers elected at the regular election of any town fail for two successive years to qualify and the government of the town ceases to function by reason thereof...”<sup>10</sup>

In the event any of these conditions are met, “the state auditor may petition the superior court of the county for an order, dissolving the town.”<sup>11</sup> The remaining RCW provisions that relate to

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<sup>5</sup> *State ex rel. Mohr v. City of Seattle*, 59 Wash. 68, 71, 109 P. 309 (1910), citing *Parish v. Collins*, 43 Wash. 392, 86 P. 557 (1906).

<sup>6</sup> *Id.* Subsequent legislative enactments have refined the requirements to withdraw one’s name from a petition.

<sup>7</sup> Spokane County Elections Department, via email, December 13, 2004.

<sup>8</sup> *Id.*

<sup>9</sup> RCW 35A.15.110.

<sup>10</sup> RCW 35.07.230.

<sup>11</sup> *Id.*

involuntary dissolution include requirements as to the content of the state auditor's petition for dissolution, notice requirements, and guidelines for conducting a hearing on the matter.<sup>12</sup>

#### **IV. PROCESSES OF DISINCORPORATION**

The remainder of the disincorporation process is the same for both petition-initiated disincorporation and disincorporation initiated by resolution of the city council. After passage of a resolution by the city council, or after receipt of the requisite number valid signatures on a petition for disincorporation (that meets the standards for petitions as prescribed by the RCW),

the legislative body [of the city] shall cause the proposition of disincorporation to be submitted to the voters at the next general election if one is to be held within one hundred and eighty days, or at a special election called for that purpose not less than ninety days, nor more than one hundred and eighty days, after the certification of the petition, or the passage of the resolution, as the case may be.<sup>13</sup>

The applicable statutory provisions also prescribe the proper ballot format to be used in such an election upon the issue of disincorporation.

It is also important to note that if the disincorporation proponents obtain the necessary number of good signatures, it would then have to be submitted to the Spokane County Boundary Review Board (BRB) within 180 days of the proposed action pursuant to RCW 36.93.090(1). After filing with the BRB, its jurisdiction may be invoked under RCW 36.93.100, which lists various ways it can be invoked, one of which is subsection (2), "any governmental unit affected, including the governmental unit for which the boundary change or extension of permanent water or sewer service is proposed, or the county within which the area of the proposed action is located, files a request for review of the specific action." The City of Spokane Valley, as the affected governmental unit, could invoke the BRB's jurisdiction.

"If a period of forty-five days shall elapse without the board's jurisdiction having been invoked as set forth in this section, the proposed action shall be deemed

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<sup>12</sup> RCW 35.07.230, 35.07.240, 35.07.250, and 35.07.260.

<sup>13</sup> RCW 35A.15.020 (in pertinent part).

approved. If a review of a proposal is requested, the board shall make a finding as prescribed in RCW 36.93.150 within one hundred twenty days after the filing of such a request for review. If this period of one hundred twenty days shall elapse without the board making a finding as prescribed in RCW36.93.150, the proposal shall be deemed approved unless the board and the person who submitted the proposal agree to an extension of the one hundred twenty day period."

RCW 36.93.100.

While the BRB review could be invoked right away after the filing of the notice of intention, and while the BRB could make its decision sooner than 120 days, a special election, if not held at the primary or general election date, must be requested of the County auditor at least 52 days before the election. If the election is to be held on a primary or general election date, it must be requested at least 84 days before the election. RCW 29A.04.330(3).

The BRB review, once jurisdiction is invoked, would focus on meeting the objectives of the BRB, set forth in RCW 36.93.180:

The decisions of the boundary review board shall attempt to achieve the following objectives:

- (1) Preservation of natural neighborhoods and communities;
- (2) Use of physical boundaries, including but not limited to bodies of water, highways, and land contours;
- (3) Creation and preservation of logical service areas;
- (4) Prevention of abnormally irregular boundaries;
- (5) Discouragement of multiple incorporations of small cities and encouragement of incorporation of cities in excess of ten thousand population in heavily populated urban areas;
- (6) Dissolution of inactive special purpose districts;
- (7) Adjustment of impractical boundaries;
- (8) Incorporation as cities or towns or annexation to cities or towns of unincorporated areas which are urban in character; and
- (9) Protection of agricultural and rural lands which are designated for long term productive agricultural and resource use by a comprehensive plan adopted by the county legislative authority.

RCW 36.93.180.

Additionally, RCW 36.93.157 requires that "decisions of the boundary review board located in a county that is required or chooses to plan under RCW 36.70A.040 must be consistent with RCW 36.70A.020, 36.70A.110, and 36.70A.210." RCW 36.70A.110(4) states that "[i]n general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development." *Emphasis added.*

If the BRB approves the proposal to disincorporate, it would then be placed on a future ballot for vote by the electorate. Pursuant to statute, if a majority of the votes cast on the dissolution proposition are in favor of dissolution of the city, the municipal corporation "shall be dissolved upon certification of the election results to the office of the secretary of state,"<sup>14</sup> which is generally within 12-14 days after the date the election is held.

## **V. EFFECTS OF DISINCORPORATION**

"The effect of disincorporation of a non-charter code city shall be as provided in RCW 35.07.090, 35.07.100, 35.07.110."<sup>15</sup>

### **A. General Effects of Disincorporation**

By statute, upon disincorporation, a city's powers and privileges are surrendered to the state. All offices within the city are immediately dissolved, and the city is absolved of any further duty to the state or to inhabitants of the city.<sup>16</sup> However, disincorporation does not impair

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<sup>14</sup> RCW 35A.15.040.

<sup>15</sup> RCW 35A.15.050.

<sup>16</sup> RCW 35.07.090.

the performance of any contract the city entered into prior to disincorporation.<sup>17</sup> All unexpired franchises remain in full effect.<sup>18</sup>

Upon disincorporation, the streets and highways of the city pass into state control. The county board of commissioners can form the territory encompassing the roads into a new road district, or the territory can be annexed to adjoining districts.<sup>19</sup>

## **B. Receiver –Election, Qualifications, and Duties**

If the city has any outstanding liabilities or indebtedness the election of a receiver is required.<sup>20</sup> According to statute, the election of a receiver shall coincide with the election on the proposition of disincorporation.<sup>21</sup> If the city is believed to have no outstanding liabilities, thus precluding the election of a receiver, and it is later determined that the city does, in fact, have indebtedness or an outstanding liability, any interested person may petition the superior court for the appointment of a receiver. Unless the indebtedness or liability is discharged, the court shall appoint a receiver.<sup>22</sup>

### **1. Qualification of Receiver**

The elected receiver must qualify within ten days of the election by filing a bond in the amount of the audited indebtedness and the established liabilities of the city.<sup>23</sup> If the person elected receiver fails to qualify, the superior court of the county is to hold a hearing, and unless

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<sup>17</sup> RCW 35.07.100.

<sup>18</sup> *Id.*

<sup>19</sup> RCW 35.07.110.

<sup>20</sup> The express statutory duties of a receiver are outlined in RCW 35.07.150, 35.07.160, 35.07.170, 35.07.180, and 35.07.220.

<sup>21</sup> RCW 35A.15.020.

<sup>22</sup> RCW 35.07.140.

<sup>23</sup> RCW 35.07.120.

good cause is shown, the court shall appoint some suitable person to act as receiver.<sup>24</sup> A person appointed receiver by the court is likewise required to qualify by the filing of a bond.<sup>25</sup>

## **2. Duties and Authority of Receiver**

The duties and authority of the receiver are outlined in RCW 35.07.150 (referenced by RCW 35A.15.070), and include the rights, powers, and limitations provided for in RCW 35.07.160, 35.07.170, and 35.07.180 (referenced by RCW 35A.15.070). The duties and authority of a receiver include:

(a) Upon qualification, a receiver shall take possession of all the property, money, vouchers, records, and books of the former municipality (RCW 35.07.150).

(b) The receiver shall wind up the affairs of the former municipality (RCW 35.07.150).

(c) The receiver shall have authority to pay:

- all outstanding warrants and bonds in the order of their maturity (RCW 35.07.150(1));
- all lawful claims against the former municipality that have been audited and allowed by the council (RCW 35.07.150(2));
- all lawful claims presented within the lawful time limits for the presentment of such claims, but no such claim shall be paid if not presented within six months of the disincorporation election (RCW 35.07.150(3));
- all claims that by final adjudication may be established as lawful claims against the corporation (RCW 35.07.150(4)).

(d) The receiver may sue and be sued, and is subject to suit in all cases wherein the former municipality might have been sued (RCW 35.07.160).

(e) The receiver has authority to sell at public auction (after the requirements of notice as in property sold on execution by the sheriff have been met) all property of the former municipality except as is necessary for the receiver's use in winding up the affairs of the former

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<sup>24</sup> RCW 35.07.130.

<sup>25</sup> *Id.*



municipality, and also excepting any property dedicated to public use. Personal property shall be sold for cash, but real property may be sold either for all cash, or for one-half cash and the remainder due in deferred payments, the final payment of which may not be paid later than one year from the date of sale. In such a case, title shall not pass until all deferred payments are paid in full (RCW 35.07.170).

(f) The receiver shall have authority to levy taxes on all taxable property in the same manner and to the same extent as the proper authorities of the former city or town could have done had it not been disincorporated. The receiver shall also have authority to receive the taxes upon collection, and to apply them together with the proceeds from the sale of property of the former municipality to extinguish the obligations of the former city or town. After all of the lawful claims against the former municipality have been paid (excepting bonds not yet due), no levy greater than fifty cents per thousand dollars of assessed value shall be made; nor shall the levy be greater than sufficient to meet the accruing interest until the bonds mature.

## **VI. CONCLUSION**

As demonstrated by the rarity of municipal disincorporation in Washington, the three methods to initiate disincorporation (the petition method, the city council method, and the involuntary method) present difficult obstacles. The number of signatures required by the petition method before a disincorporation proposition can even be placed on the ballot is high. The city council, by a majority vote, could resolve to put the issue to an election of city citizens.