

Municipal Research News

LOCAL GOVERNMENT
SUCCESS



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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.

Washington Trivia Question

Founded in 1854, what is the name of the oldest incorporated town in the state?

Answer on page 10

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

Municipal Research News

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MRSC HIGHLIGHTS

MRSC and PTAC Announce Exciting New Partnership



The 2022 Washington Legislative Session included a budget proviso (SB 5693) that will fund a new effort between MRSC and the Washington Procurement Technical Assistance Center (PTAC), a state-based agency that educates and advises businesses on government contracting. This new partnership will expand resources related to public work contracting with a focus on reducing disparities and increasing the share of women and minority-owned businesses that successfully compete for and earn local government public works contracts.

MRSC'S PLANS FOR PROGRAMMING

With its expertise in providing services to local governments, MRSC is the lead agency for planning program deliverables, including focused training and technical assistance.

Training content will be developed and presented to customers by MRSC staff and contracted, state-based subject matter experts on public works contracting principles and best practices, utilization of supplemental bidding criteria, and utilization of alternative public works contracting (i.e., job-order contracting, design build, and general contractor/construction management).

With support from PTAC, we will also expand training services to deliver:

- An updated Small Works Roster Guide that covers Washington laws related to the use of a small public works roster for awarding public works contracts;
- The development of new webpages for alternative public works contracting by addressing topics like job-order contracting, design build, and general contractor/construction management;
- An expansion of public works samples and templates in our Sample Document Library;
- The development of a local government contracting equity toolkit with a

focus on increasing the participation of women- and minority-owned businesses; and

- The creation of a new Public Works Resource Guide to provide examples of best practices for public works projects.

HOW WILL THIS HELP CONTRACTORS?

From 2013-2019, only 4% of local government public works contracts were awarded to women or minority owned prime contractors, representing 2% of the total contract dollar amounts awarded. This new partnership will bring technical assistance, training, networking events, and new online contracting tools to help women and minority-owned businesses find and properly bid on local government contracting opportunities, as well as build successful small businesses.

HOW WILL THIS HELP LOCAL GOVERNMENTS?

Legislators in this session also passed a \$17 billion transportation package that provides funding for new ferries, roadway maintenance, and public transportation improvements. In addition to the training and technical assistance efforts, MRSC and PTAC are coordinating a plan to schedule regional outreach events around the state, both to help local governments make the best use of these new funding resources and to connect them with women- and minority-owned contractors for future project opportunities.

The timeframe for program deliverables will be July 1, 2022-June 30, 2023. MRSC looks forward to making a positive contribution to increasing the opportunities for women and minority-owned businesses in public works contracting.



BY ERIC LOWELL, MRSC FINANCE CONSULTANT

DONATIONS AND LOCAL GOVERNMENTS: The Basics of Giving and Receiving

MRSC gets a fair number of questions each year concerning donations to and from local governments. This article looks at two broad issues: how a local government can receive donations and how a local government can make a donation without violating the gift of public funds prohibition.

RECEIVING DONATIONS

Local governments in Washington State are allowed to receive donations. RCW 35.21.100 states:

Every city and town by ordinance may accept any money or property donated, devised, or bequeathed to it and carry out the terms of the donation, devise, or bequest, if within the powers granted by law. If no terms or conditions are attached to the donation, devise, or bequest, the city or town may expend or use it for any municipal purpose.

While there is not a similar statutory provision for counties, counties nonetheless have inherent authority to accept donations. In general, special purpose districts may also accept gifts — see, for

example, RCW 70.44.060(1) which authorizes public hospital districts to accept donations. However, the manner in which special purpose districts can receive these donations may differ — for example, the board of commissioners for a port must approve donations of real and personal property, per RCW 53.08.110.

Receiving gifts also raises a host of issues, most commonly policies and procedures, how to report gifts, and how to manage gifts with requirements. Let's look at each.

Reporting Requirements

One common question is whether or not donations to a local government are tax deductible. The IRS Code at 26 U.S.C. §170(c)(1) states that a donation is tax deductible when it is to:

...a State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

Note that the donation is to be for “public purposes,” so it should not be intended to benefit a particular individual or group.

Additionally, the IRS requires certain documentation of the donation, as explained in IRS Publication 1771.

If a donor wishes to claim a tax deduction for a donation to a local government that exceeds \$250, the donor must obtain a written acknowledgment that contains the following:

1. the name of the individual or organizational donor,
2. the amount of cash contribution,
3. a description (but not the value) of non-cash contribution,
4. a statement that no goods or services were provided by the donor in return for the contribution, if that was the case, and
5. a description and good faith estimate of the value of goods or services, if any, that a donor provided in return for the contribution.

It is not necessary to include either a Social Security number or organizational tax identification number on the written acknowledgement.

Policies and Procedures

A best practice is for local governments to develop a donation acceptance policy that also indicates any limitations on donations. Lakewood's policy is as follows:

The City may accept and use donations only for purposes related to those powers granted to the City by law. Any donation to the City that is accompanied with any contingency, term, or condition on the

use by the City of such donation that is inconsistent with this chapter or contrary to law shall be declined by the City. The City may decline to accept any donation that is inconsistent with the policies, plans, goals, or any other ordinance of the City.

If a local government accepts a donation with requirements on how the funds must be spent, the donation must then be spent for that purpose.

What To Do When Gifts Come With Restrictions

If the donation has no restrictions attached to the gift, it may be used for any municipal purpose. However, some cash donations, such as a bequest, may come with require-

ments on how the funds may be spent. If a local government accepts a donation with requirements on how the funds must be spent, the donation must then be spent for that purpose. If it is unable to spend the funds for that purpose, it must reject the donation. (Note that for financial reporting purposes, any unspent donations at year end with restrictions attached to them would be reported in restricted ending fund balance.)

MAKING DONATIONS

In general, local governments are not allowed to make gifts of public funds. Article 8, Section 7 of the Washington State Constitution prohibits any local government entity from bestowing a gift or lending money, property, or the entity's credit to a private party. Section 7 does allow public funds to be used in providing “necessary support for the poor and infirm,” and an example of this would be utility assistance programs that provide payments or reduced rates to qualifying customers.

Outside of supporting the poor and infirm, a donation from a local government would need to meet certain criteria. The courts have used a two-step process to determine whether or not a local government has bestowed a gift of public funds. First, they will look to see if the funds were used to carry out a fundamental purpose of government. If the answer is yes, then there has not been a gift of public funds. Second, the courts will determine whether

the government had “donative intent” and whether it received an adequate return for any transfer of funds.

Donating Surplus Property

Many local governments can run into a gift of public funds issue when donating surplus property. Local governments should have surplus procedures and policies in place and ensure adequate consideration is made to avoid gifting the surplus. In some instances, surplus items will have de minimis or no monetary value. The local government could likely justify donating such items if it includes certain steps as part of the surplus process. For example, the governing body should declare such items surplus and include a description which demonstrates the items have little to no value (e.g., outdated, obsolete, broken, etc.)

In 2014 White Salmon was getting rid of old, obsolete tasers. The resolution for the surplus of these tasers notes that the city will donate the taser batteries and holsters to Skamania County. The resolution included the city's justification for this: The county still used the same model of taser so the holsters and batteries could be used as spare parts. Since White Salmon and its residents receive services from Skamania County, the city was able to justify donating these parts and there was no gift of public funds problem.

CONCLUSION

Local governments should have policies and procedures in place for receiving and giving donations. The implications of accepting or giving a donation should be considered. Proper procedures for donations should be followed in order to avoid a gift of public funds issue.



Eric Lowell, Finance Consultant, has been in local government finance for over 13 years, working in city government and a special purpose district. Eric writes about local government finance. elowell@mrsc.org

ASK MRSC

Questions Related to Donations

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.

What must a city do to hold a fund raiser? The mayor would like to hold a special event with all funds for said event going into a specific fund.

Per RCW 35.21.100; RCW 35A.11.040, any class of city has the express authority to accept donations which, in our opinion, implies the authority to solicit donations or engage in fundraising.

Some cities have chosen to partner with an existing 501(c)(3) to perform fundraising, while others have created a 501(c)(3) organization for fundraising purposes. 501(c)(3) status is important as it allows donors who contribute to your fundraiser get a tax deduction on the donation. Normally, a 501(c)(3) organization should register with the Washington Secretary of State's office as a charity; however, if the organization raises less than \$50,000 in a year, registration is not required.

Any local government that engages in fundraising should be sure to check with both federal and state regulations to determine what and how any contributions should be recorded/reported.

Our public hospital district has a foundation for fundraising. The foundation has proposed providing room naming in return for donations. Is this allowable?

Washington local governments may accept donations and agree to acknowledge the donor by naming a facility after them. However, having a policy in place at the outset is important. This policy should define the sponsorship process that would be used and ensures that the agency is consistent in handling such requests in the future.

My city is in the process of redoing landscaping. We have a number of large trees and plants that need to be removed. Can we give away the plants and trees (intact or for lumber)?

MRSC has received inquiries about the proper process for disposing of trees on city property. MRSC recommends declaring the downed trees to be surplus before the wood is removed. In the course of declaring the materials surplus, the city could determine that the value of the property is exceeded by the costs to remove the property. In that case, there could be a donation arrangement where the recipients — such as local nonprofit — would undertake the expense of removing/moving the plants. This could avoid a potential prohibition of gifts of public funds issue under the state constitution, Article 8, Section 7.

If the trees do have value, then the city should follow its process for disposal of surplus property and contract for their removal with someone willing to pay fair market value for the items.

Our county is developing a frisbee golf course and would like to get sponsors for some items. Is this allowable?

Counties' authorities are set forth under Title 36, but there is no general provision regarding accepting gifts for counties in this title. Nevertheless, it has been MRSC's position that a county has inherent authority to accept gifts, whether conditional or otherwise. Counties do have express statutory authority in specific situations. RCW 36.33.030 authorizes county commissioners to accept gifts for the cumulative reserve fund; RCW 36.75.040(3) authorizes them to accept gifts or donations of land for road purposes; RCW 36.37.020 for fairs; RCW 36.58.010 for disposing of solid waste or recyclables; RCW 36.70A.160 for open space, and RCW 36.34.340 for park, recreational, viewpoint, greenbelt, conservation, historic, scenic, or view purposes. RCW 36.70.300 allows a county planning agency to accept gifts, and RCW 36.75.160 allows a county to accept gifts of bridges and trestles.

Additionally, various special districts and municipal corporations that a county may establish have general statutory authority to accept gifts or donations. See, e.g., RCW 36.73.110 (transportation benefit district); RCW 36.60.010 (county rail district); RCW 36.62.010(4) (hospital); RCW 36.83.080 (service district); RCW 36.102.050(5) (public stadium authority); RCW 36.69.160 (park and recreation district); RCW 36.68.400 (park and recreation service area); RCW 36.120.110(1) (regional transportation investment district).

There are several examples of gift and donation policies on our Parks and Recreation Finance page. We also recommend working with your prosecuting attorney's office in developing a policy for any sponsorship/advertising opportunity.

Have a Question? Ask MRSC. Call us at (206) 625-1300 or (800) 933-6772 or submit your question online at mrsc.org

Ask MRSC

Recruiting for Local Government Positions

It is no secret that employers are currently struggling to find qualified individuals to fill vacant positions, and local governments are no exception. This article explores outside-of-the-box approaches to filling vacant local government positions, including hiring individuals who live out of state, providing hiring bonuses or additional incentives, and allowing for alternative work schedules (and locations).

CONSIDERATIONS FOR HIRING EMPLOYEES WHO LIVE OUT OF STATE: PAYROLL TAXES

While I am not an expert on payroll taxes, one consideration for local governments employers when hiring an out-of-state worker is whether any out-of-state taxes need to be withheld from that employee's paycheck. The majority of other states have an income tax, but Washington does not. Does a Washington employer need to withhold the other state's income tax from an employee's paycheck?

The answer is that although the Washington municipality is not legally obligated to withhold the other state's income tax, they may nonetheless want to do so, both for the convenience of the employee and to avoid any future compliance issues. The Washington State Office of Financial Management (OFM) prepared guidance for state agencies on hiring out-of-state remote workers, which can be extrapolated for Washington local governments. Here is how OFM described the income tax issue:

State agencies should plan to withhold income tax for out-of-state workers, since most other states have income tax. Employers withholding income tax from employee wages are required to have an income tax withholding account and may be subject to a civil penalty of up to \$100 for each day such employer should have, but did not have, such an account. Although it is permissible for an employee to withhold and



pay their own income tax in their state of residence, if the employee fails to pay the appropriate tax the onus will be on the employer to address the taxes due if a compliance issue arises. To avoid this complication and the risk of financial penalties, Washington state agencies should proactively withhold payroll taxes.

The Oregon Department of Revenue also touches on this issue in an online FAQ as follows:

Question: What about employers located outside of Oregon? Are they required to withhold [income tax] for Oregon residents working out of state?

Answer: It isn't required but we do ask employers to register and withhold taxes as a convenience to the employee.

Note, however, that income tax is only one of the payroll taxes to consider. There could be other taxes unique to that state that must be assessed against the out-of-state employee or even the Washington local government employer. For example, according to OFM's Out-of-State Remote Work Guidance and Resources, Oregon has a statewide transit tax imposed at a rate of 0.1% on wages of all residents, even if that individual performs their work out of state.

As a comparison, Washington has a few payroll taxes unique to our state — such as premiums for paid family and medical leave as well as premiums for long term care. So, those taxes must be collected from Washington residents even if they work remotely for an Oregon company. Therefore, when hiring an individual who lives out of state, make sure to research whether that state may have state-specific payroll taxes. If so, your local government should collect those taxes.

SIGNING BONUSES

Signing bonuses, where an individual is paid a bonus upon their initial hire (and/or at a certain period after the hire), are also an acceptable method for attracting new employees. As a general matter these types of bonuses don't implicate the gift of public funds prohibition contained in Article 8, Section 7 of the

Washington State Constitution because the employer is receiving something in return: a new employee. However, the local government should adopt a policy authorizing signing bonuses and other hiring incentives.

Spokane County's Sign-on Bonus Policy uses the bonus as a recruiting tool to attract highly competent candidates into positions that are difficult to fill. The policy provides 50% of the bonus with the new employee's first paycheck and the remaining 50% upon their first year of service: executive and department heads can receive up to \$10,000; managerial positions \$7,000; and sheriff's office and detention services employees \$7,500. In another example, Everett's Lateral Police Officer Hiring Incentive Program provides a \$25,000 monetary incentive for in-state lateral hires who successfully complete their fourth anniversary as an Everett Police Officer.

ADDITIONAL RECRUITMENT TOOLS AND HIRING INCENTIVES

There are other recruitment tools besides signing bonuses available to Washington local governments described on MRSC's Hiring Procedures webpage, which states:

Recruitment may encourage applications from more qualified and experienced candidates who might not otherwise be aware of the position. The cost of recruitment is specifically recognized as an expense that may be paid through an emergency expenditure (for cities, see RCW 35.33.081, 35.34.140, 35A.33.080, and 35A.34.140). Recruitment may be handled in-house or through a job placement, "headhunter" firm. State law allows the direct payment of lodging and transportation costs of candidates who are sought to be interviewed.

In addition to candidate lodging and transportation costs, other incentives could include front-loaded vacation and/or sick leave, payment of moving expenses, a paid visit to the municipality to search for housing or for other matters, and interim housing expenses. Redmond

Personnel Manual, Section 3.50 includes all of these in its hiring toolkit for non-union supervisors and managers.

Another recruitment tool is payment of a referral bonus, which is a bonus paid to an existing local government employee for referring the new hire. Like the other incentives, the local government agency should adopt a policy detailing the specific criteria for what triggers payment of a referral bonus, the amount of the bonus, at what point in time the bonus will be paid, and other similar considerations.

In searching for Washington referral bonus examples, we found several in the law enforcement context, such as King County's referral program for corrections officer and juvenile detention officers and Kitsap County's collective bargaining agreement authorizing a referral bonus for lateral hire candidates for deputy sheriff and corrections officer. However, referral bonuses can be used outside of the law enforcement context. Maple Valley's Resolution No. R-20-1431 authorizes a referral bonus for recruitment of the vacant city engineer position.

A local government's policy on referral bonuses should also identify the public purpose for providing the bonus in order to satisfy any gift of public funds concerns. As well, the agency will want to review whether this type of referral bonus is in sync with its equity policies and any diversification goals.

REMOTE WORK ARRANGEMENTS

Since the onset of the COVID-19 pandemic, remote work or telecommuting has been the norm and it continues to be the expectation for many employees today — especially those with "desk" jobs. Offering new employees a telecommute opportunity can make the difference between a successful and unsuccessful hire, and local governments should examine which of their positions could accommodate a fully or partially remote worker.

Remote work arrangements are also an exceptional tool to recruit applicants who cannot work during traditional work hours or in the traditional office environment, such as those with disabilities or limited childcare support. The agency should also

adopt a clear internal remote work policy in order to articulate it to applicants.

PRACTICAL TIPS

Other approaches Washington local governments are taking to fill vacant positions include:

1. Shortening the time between posting the job and the initial review. While it used to be common to wait several weeks until a first review, a better approach in a tight job market is to have an initial review much sooner. This makes it less likely that a good candidates will take a different job in the meantime.
2. Linking to the agency's values statement in the job description. Other helpful measures are to include a message about your agency's culture and describe your diversity, equity, and inclusion plan. Also, be clear about the benefits your agency offers, as these may be more generous than those offered by other employers.
3. Posting job openings on a variety of job sites. If you post on LinkedIn, consider that your post may gain better visibility if your agency uses LinkedIn for more than just job announcements. Some cities have shared with MRSC that they have seen a pretty dramatic increase in response to LinkedIn job posts once the city started posting other content regularly to the site.

FINAL THOUGHTS

While it's a tough recruiting world out there, these hiring incentives and practical tips can help your local government find success in filling positions.



Flannary Collins, Managing Attorney, writes on a wide range of issues including the Open Public Meetings Act, ethics, and personnel issues, Public Records Act and public records management, disclosure, and case law. fcollins@mrsc.org

2022 Legislative Updates to Personnel Laws

SALARY AND LEAVE

BY SARAH DOAR, MRSC LEGAL CONSULTANT



As has been the case for several years, the Washington State Legislature continues to expand employer obligations by calling for more generous employee benefits and protections. This article covers new legislation related to mandatory disclosure of salary and benefits in job postings and an expansion of the Paid Family and Medical Leave Act.

SALARY AND BENEFITS DISCLOSURE

The legislature previously updated the Equal Pay and Opportunities Act (EPOA) in 2019 by requiring transparency on pay ranges for particular positions after an employer has extended a job offer and prohibiting employers from asking for an applicant's wage history prior to extending an offer with proposed pay. Note that the EPOA only applies to employers with 15 or more employees (See Chapter 49.58 RCW).

With ESSB 5761, the legislature has amended RCW 49.58.110 to require wage

transparency upfront. Employers with 15 or more employees will be required to:

...disclose in each posting for each job opening the wage scale or salary range, and a general description of all of the benefits and other compensation to be offered to the hired applicant. For the purposes of this section, "posting" means any solicitation intended to recruit job applicants for a specific available position, including recruitment done directly by an employer or indirectly through a third party, and includes any postings done electronically, or with a printed

hard copy, that includes qualifications for desired applicants.

This requirement to include wage information in the job posting will go into effect January 1, 2023. While the new requirement is not yet in effect and smaller employers are not required to comply, MRSC encourages all employers to consider going ahead and voluntarily disclose this information in their job postings.

PAID FAMILY AND MEDICAL LEAVE EXPANSION

Washington implemented the Paid Family and Medical Leave Act (PFML) in 2020 (adopted in 2017), replacing the former Washington Family Leave Act. As with any major new program, it is necessary to fill in some gaps and prepare for the long-term health of the program.

The legislature made several changes and additions to the PFML in SSB 5649. The first, and likely most significant for

employees, is that the bill expands the definition of "family leave" to include the seven calendar days following the death of a child either pre-birth or during the 12 months after birth or placement. Additionally, an employee is allowed to take medical leave rather than family leave during the first six weeks after the birth of a child. An employee is also not required to obtain certification for a serious health condition (i.e., a doctor's note after three days of absence) to be eligible for leave benefits during the first six weeks after the birth of a child.

Currently, the PFML does not apply to collective bargaining agreements that were in existence on October 19, 2017 (see RCW 50A.05.090), but this exemption will expire on December 31, 2023.

The bill also requires the Employment Security Department (ESD) to publish a list of employers with approved voluntary plans that have opted out of participating in the PFML. This list is available on [Paidleave.wa.gov](https://paidleave.wa.gov).

When establishing criteria for telework eligibility, consider whether the criteria treat lower wage employees equitably.

SSB 5649 creates the Office of Actuarial Services within ESD. This office is required to annually report on the financial health of the program and the lowest future premium rates to ensure solvency. ESD is required to report quarterly on premium collections, benefit payments, the insurance account balance, and other program expenditures. The Office of the State Actuary is required to assist ESD. The bill also creates a legislative committee to oversee the health of the program and charges the Joint Legislative Audit and Review Committee (JLARC) to conduct a performance audit.

Finally, the bill creates a temporary obligation for ESD to ask employees if they are taking PFML for reasons related to the COVID-19 pandemic, with the obligation

expiring July 1, 2023. The information is to be used solely for the administration of the program, including monitoring the potential impacts on the financial health of the program. Disclosure of this information is controlled by chapter 50A.25 RCW and RCW 50A.05.020(3) and 50A.20.030.



Sarah Doar, Legal Consultant, writes on many aspects of government business, including compliance with public records and opening meeting laws, land use issues, and environmental law. sdoar@mrsc.org

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Washington Trivia Answer

The town of **Steilacoom** had the first public library, first jail, and the first sawmill in Washington State.



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