

Municipal Research News

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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

Which city park began as a military reservation in the 1840s and features 500 acres of old-growth forest along the shores of Puget Sound?

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

LOCAL GOVERNMENT
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MRSC HIGHLIGHTS

Local Climate Response Project Tackles Big Challenges

Washington's cities and counties have been amongst the nation's leaders in defining the role that local governments play in the worldwide effort to reduce the negative impacts of climate change, including reducing carbon emissions; building safe, resilient infrastructure; and prioritizing and investing in the frontline communities hardest hit by severe climate-related events.

In July 2021, MRSC launched its Local Climate Response Project, with a focus on helping local governments reduce greenhouse gas emissions, center equity in climate planning efforts, and adapt to and become more resilient to the effects of climate change.

ACCOMPLISHMENTS TO DATE

In late July, MRSC distributed a survey to local government staff and officials to better understand local concerns regarding climate change impacts; to learn about ongoing local climate-related efforts; to assess the need for and interest in climate-related resources; and to identify opportunities for local climate-related work going forward.

Survey results indicated that a majority of respondents had significant concerns about the impacts of climate change and felt local governments need resources and expertise to meaningfully address climate effects, but also believed there is ample opportunity for taking action at the local level. We wrote about the survey in a blog and a full report can be downloaded on our website.

MRSC also developed a free, three-part webinar series: The first webinar, **Developing a Local Climate Action Strategy**, took place in November and the second, **Equity and Inclusion in Climate Action Planning**, took place in December 2021, but the recordings can

be obtained at our On-Demand Webinars webpage under the header, Climate and Sustainability. The last webinar in the series **Building Resiliency and Adapting to Impacts** takes place on January 12, 2022. The recording will also be listed on the On-Demand Webinars page.

FUTURE PLANS

In 2022, MRSC will expand its web-based resources, including adding new topic pages focused on equity in climate planning, local strategies to reduce greenhouse gas emissions, and preparing for/adapting to the effects of climate change at the local level. Central to this effort is the development of an interactive map showing the latest climate-related policies and plans adopted by Washington local governments.

Additionally, MRSC will build its collection of resources in climate action planning, including links to toolkits, technical resources, and funding opportunities, and will use our blogs to showcase promising strategies initiated by local governments, nonprofits, and other leaders throughout Washington.



TAX INCREMENT FINANCING

Now Available to Some Washington Local Governments

BY ERIC LOWELL, MRSC FINANCE CONSULTANT

During the 2021 legislative session, the Washington State Legislature passed HB 1189, which authorizes tax increment financing (TIF) for local governments.

BACKGROUND

Most states currently have TIF as an option for municipalities to help finance infrastructure projects that will spur economic development in economically stagnant areas. TIF allows local governments to finance public infrastructure in targeted areas, with the goal that these improvements will encourage additional private development and investment. Any improvements to a targeted area may eventually result in increased property values, bringing benefits to property owners, investors, residents, and the local government.

There have been several attempts to authorize TIF in Washington State, but those attempts have either been rejected by voters or struck down by the courts. The state had allowed similar mechanisms to TIF in the past, but these versions were less successful as they relied on investment from the state general fund. Another hurdle to allowing TIF in Washington has been the constitutional requirement that state property taxes be allocated to the common school fund. HB 1189 was drafted to both address this issue and not impact the state portion of property taxes.

REQUIREMENTS FOR TIF

Under HB 1189, TIF is now available to counties, cities, towns, and port districts, and TIF funds can be used for infrastructure projects typically undertaken by local governments, such as street and road maintenance or electric, broadband, or rail service (Section 1 (7) of HB 1189 offers a detailed list of eligible projects.)

In order to utilize TIF, the county, city, or port district must pass an ordinance (or resolution, in the case of port districts) that designates an increment area (i.e., a specific geographic area that is expected to benefit from the development), identifies the infrastructure improvements to be financed, and states whether or not bonds will be issued. Local governments must adhere to the following guidelines when creating these increment areas:

- It must prepare a project analysis.
- There can be no more than two active increment areas at a time and those increment areas cannot overlap.
- An increment area cannot have an assessed value of more than \$200 million or more than 20% of the total assessed valuation of the jurisdiction creating the area, whichever is less.
- Once an increment area is established, the boundaries cannot be modified.
- It cannot use TIF revenue for additional improvements that were not listed in the ordinance creating the increment area.
- The ordinance must include a start date for when the improvement will begin.
- It can only receive TIF revenues for the period required to pay the costs of the improvements.
- The increment area must be retired no more than 25 years after the adoption of the ordinance that created the increment area.

IMPACT ON PROPERTY TAXES

Washington State limits taxing districts to a 1% increase annually on property taxes (outside of voter approved levies). Under TIF, the properties within an increment area are assessed the local property taxes for all local taxing districts based on the increase in assessed value after the increment area is created. The rates used are the current year's levy rates for each local taxing district. These taxes must be used to finance the improvements specified when the increment area was formed.

Generally, property taxes are assessed in the following manner:

The previous year's total levy + 1% + new construction

With TIF, property taxes are assessed as follows:

Previous year's levy + 1% + new construction + (TIF assessed increase X levy rate / 1000)

The TIF portion of the property taxes is remitted to the local government that created the TIF. All other local taxing districts continue to receive the 1% increase to their previous year's levy, plus new construction.

PROJECT ANALYSIS

Before creating an increment area, the local government must complete a project analysis. The project analysis must include, but is not limited to:

- Objectives for and duration of the increment area;
- Identification of all parcels to be included in the increment area;
- A description of the expected private development within the increment area, including a comparison of scenarios with and without the proposed public improvements;
- A description of the improvements, including costs and methods of financing;
- A discussion of how private development would not reasonably be expected to occur in the foreseeable future without these improvements,
- An assessment of property value in the increment area and the amount expected to be generated from the increased increment assessment;
- Job creation and private development expected from the project; and
- An assessment of any impacts and necessary mitigation to address impacts on affordable and low-income housing; the local business community; local school districts; and local fire service (an impact of 20% of assessed valuation in the fire district or an increase in level of service to the increment area requires a negotiated mitigation plan).

Once a local government has compiled the required project analysis, it must also hold two public briefings exclusively on the project; publish a notice in a local newspaper; submit the project to the Washington State Treasurer and give a certified copy of the ordinance or resolution (in the case of port districts) creating the increment area to the county treasurer, county assessor, and governing body of each local taxing district within the increment area.

A local government needs to consider these requirements and restrictions when looking at TIF as an option for encouraging economic development in their jurisdiction. Discuss your objectives and goals with your legal counsel when considering TIF.

Register now for our
Feb 3 TIF webinar at
mrsc.org/training



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ASK MRSC

Questions Related to Environmental Issues

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.

Can you recommend incentive-based electric vehicle (EV) infrastructure-related code examples that are particularly noteworthy, have been appealed and upheld, or have been in place long enough to have good data on their effectiveness?

Many Washington agencies have code provisions that create standards and regulations for electric vehicle charging stations. The following codes are examples of the two often-seen tactics to increase or incentivize charging stations by either (1) creating more leniency for compliance to parking requirements or (2) providing a minimum number of EV charging stations for developments.

- **Mountlake Terrace** Municipal Code Ch. 19.126.040 – Enforces a minimum number of electric vehicle charging stations for each land use type
- **Walla Walla** Municipal Code Ch. 20.156 – Allows an electric vehicle charging station space to be included in the calculation for minimum required parking spaces that are required in a development

In addition, here are documents within which local governments have incorporated the idea of incentivizing EV charging stations in their transportation or sustainability plans, including:

- **Bainbridge Island** Community Based Strategies to Reduce GHG Emissions (2019): The city will pilot an electric vehicle charging infrastructure program that partners with Puget Sound Energy in order to provide residential and commercial customers with rebates for EV supply equipment and installations.
- **Bellevue** Environmental Stewardship Plan 2021-2025 – See Strategy M.3.2, which calls for the review of existing incentives available from Puget Sound Energy, the state, or other sources and seeks to either help building owners and tenants access these incentives or provide additional incentives to accelerate the installation of EV charging infrastructure in multi-family and commercial buildings.
- **Kirkland** Sustainability Master Plan (2020) – See Action ES-4.2, which enacts local code and programs to create incentives or require EV charging station retrofits in existing buildings or on development sites.

Can you provide three examples of greenhouse gas (GHG) policies by other Growth Management Act (GMA) counties?

Below are some examples of climate plans, which include greenhouse gas emissions reduction strategies, from GMA counties. Population numbers from 2019 are included.

- **King County** Climate Change Action, population 2,252,782.
- **Thurston** Climate Adaptation Plan, population 290,536.
- **Whatcom County** Draft Climate Action Plan, population 229,247.
- **Port Townsend/Jefferson County** Climate Action Plan, population 31,221.

Could you provide examples of local governments that encourage residential solar installations?

Below are examples of local governments employing various tools (e.g. permitting, education and incentives) to encourage residential solar power.

- **Bellevue's** solar panel permitting webpage page includes a checklist for residential photovoltaic systems and several other resources.
- **Bellingham** created the first solar panel building permit exemption program in the state, eliminating permitting and engineering requirements for almost all residential installations.
- **Edmonds** is a Northwest Solar Community, which means it works to promote solar energy and reduce some of the costs associated with solar installations. The program includes a flat fee and height exemptions for rooftop solar installations, among other elements.
- **Issaquah** no longer requires building permits for certain residential solar installations.
- **Langley** no longer requires building permits for small roof-mounted systems less than 15kW.
- **Mercer Island** is part of the Solarize Northwest program that provides discounts from participating installers. The Solarize Mercer Island campaign has been in place since 2014.

Finally, as part of a federal Department of Energy grant, grant partners Kirkland, Seattle, Bellevue have developed a streamlined process for permitting small-scale roof-mounted solar installations for single-family residential customers.

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

BRINGING THE FAMILY TO WORK

BY JILL DVORKIN, MRSC LEGAL CONSULTANT

Can the parks director hire his brother as a lifeguard at the municipal pool? Is it OK for the county treasurer to hire her spouse as an administrative assistant? The answer to each of these questions requires a review of the practice of nepotism, as well as Washington State's conflicts of interest law.



WHAT IS NEPOTISM?

Nepotism is defined as “favoritism (as in appointment to a job) based on kinship.” In government, nepotism is typically the practice of those with appointing authority giving jobs to relatives. Although not technically nepotism (which involves a person directly hiring a relative), some local government have personnel policies that also largely prohibit the employment of a current employee's relatives, regardless of who makes the hiring decision.

IS NEPOTISM BAD?

Nepotism is bad if, due to favoritism or family ties, persons are hired into positions they are not qualified for (and those who are qualified are not considered for employment). Civil service was established partly to eliminate nepotism in hiring.

IS NEPOTISM ILLEGAL?

Nepotism is not illegal, except in certain circumstances involving a municipal officer hiring their own spouse or dependent. RCW 42.23.030 prohibits a municipal officer from having a financial interest, directly or indirectly, in any contract made by, though, or under their supervision — with certain exceptions. Because an employment relationship is contractual in nature, this statute will, in most cases, prohibit a local official from hiring their spouse, since one spouse usually has a

Nepotism is bad if, due to favoritism or family ties, persons are hired into positions they are not qualified for.

legal interest in the other's earnings due to community property laws in Washington State. (It does not, however, prohibit a local government official's spouse being hired by another official within that agency.) This provision would also prohibit the hiring of a dependent child — but not their financially-independent children.

Here are three exceptions to the rule prohibiting the hiring of a spouse or dependent:

(1) For certain smaller cities with a population under 10,000 and counties with a population under 125,000, a municipal officer may participate in hiring a spouse into a municipal position that pays no more than \$1,500/month or \$18,000 in a calendar year. In the case of a rural public hospital district, an exception is available for contracts valued at \$24,000 or less in a calendar year. See RCW 42.23.030(6)(a) and (b).

(2) If the hiring officer and spouse entered into a separate property agreement such that any compensation the spouse received from municipal employment would belong only to that person, then RCW 42.23.030 would not be implicated because the hiring spouse would have no financial interest in their partner's employment contract with the hiring jurisdiction. See *State v. Miller*, 32 Wn.2d 149, 156-58 (1948) and AGLO 1979 No. 19.

(3) When one municipal officer's spouse is appointed or elected as another municipal officer, the prohibitions at RCW 42.23.030 are not implicated because that is not an employment contract. As explained AGO 1996 No. 15:

[F]or purposes of RCW 42.23.030, there is a legally significant difference between a contract of employment and the holding a public office. Although an employee's right to compensation may arise by virtue of a contract, a public officer's right to compensation does not depend upon contract. Instead, it belongs to the officer as an incident of office.

So, for example, two spouses could serve simultaneously on a town council, or one spouse could be appointed city clerk while the other is serving on the city council.

Another instance is if the spouse's employment contract pre-dated an elected official's term of office. In this case the newly elected official does not currently have a conflict of interest with regard to the spouse's existing contract. However, a potential conflict of interest could arise if a contract affecting the elected official's spouse must be renewed, such as an employment contract or a collective bargaining agreement.

Importantly, if a person is serving on a council or board that is making a hiring decision or renewing an employment contract that may benefit their spouse, it is not enough for the elected official to simply recuse oneself. The conflict exists regardless of whether the elected official votes on the contract.

PREVENTING NEPOTISM

Can a local government prohibit nepotism? Yes, and some do. All Washington, local governments have the authority to establish rules and regulations governing their internal operation, and this includes the ability to impose restrictions on the hiring of relatives.

Note, however, that pursuant to RCW 49.60.180 and under regulations adopted by the Washington State Human Rights Commission, it is an “unfair practice” and prohibited discrimination for an employer — local government or otherwise — to refuse to hire a person simply because his or her spouse is already employed by that employer, unless: a bona fide occupational qualification applies (see WAC 162-16-240); or the employer is enforcing “a documented conflict of interest policy limiting employment opportunities on the basis of marital status.” Per WAC 162-16-250, these include:

- Where one spouse would have the authority or practical power to supervise, appoint, remove, or discipline the other;
- Where one spouse would be responsible for auditing the work of the other;
- Where other circumstances exist that would place the couple in a situation of actual or reasonably foreseeable conflict between the employer's interest and their own; or
- Where, in order to avoid the reality or appearance of improper influence or favor, or to protect its confidentiality, the employer must limit the employment of close relatives of policy level officers of customers, competitors, regulatory agencies, or others with whom the employer deals.

These circumstances above may also provide practical, business-related reasons for denying employment when family relationships other than marital are implicated.

All Washington, local governments have the authority to establish rules and regulations governing their internal operation, and this includes the ability to impose restrictions on the hiring of relatives.



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Appeals Court Finds Non-Exempt Workers Must be Paid for All Required Out-of-Town Travel Time

The Washington State Department of Labor and Industries (L&I) has had a long-standing administrative policy requiring non-exempt employees be paid for all out-of-town business-related travel time. Under the policy, out-of-town travel time related to work must be paid if it met all three factors of hours worked, including: (1) an employee is authorized or required by the employer; (2) to be on duty; and (3) to be on the employer's premises or at a prescribed workplace. See WAC 296-126-002(8).

L&I's administrative policy was recently affirmed by Division Two of the Washington State Court of Appeals in *Port of Tacoma v. Sacks*. This case offers local governments clear guidance on what must be considered compensable hours when a non-exempt employee is traveling for a work-related purpose.

PORT OF TACOMA V. SACKS

The facts of the *Port of Tacoma v. Sacks* case are straightforward:

- New marine cargo cranes were purchased from China.
- The port sent several employees to China to observe the manufacture of the crane components that they would later repair. An employee was also sent to Houston, Texas, for relevant training.
- The port paid the employees eight hours/day for travel, regardless of the actual time spent traveling. As a result, the employees were not paid for all the time they spent traveling, as travel took more than eight hours/day.
- The port employees filed wage claims with L&I seeking compensation for the unpaid travel time, claiming time spent at the airports and time spent in flight.
- L&I agreed with the employees and ordered the port to pay nearly \$8,800 with interest.

The *Port of Tacoma v. Sacks* court accorded deference to L&I's interpretation of "hours worked" as it relates to out-of-town travel and held that the state's Minimum Wage Act (MWA) required the port to pay all travel time of non-exempt employees who traveled for out-of-town business. This is different from federal law, which generally only requires an employee be compensated for out-of-town travel time that takes place during their normal working hours. Federal law doesn't require compensation be paid for time spent traveling to the airport or hotel since this is considered non-compensable commute time (see U.S. Department of Labor Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act).

In concluding that all out-of-town travel time must be paid, the court distinguished non-compensable daily commute travel with compensable out-of-town travel. The court also accorded deference to L&I's interpretation of its own regulations, noting that their interpretation is "in line with Washington's 'long and

proud history of being a pioneer in the protection of employee rights." Finally, the court found all three factors of "hours worked" were met in this case.

Factor One: The employee is authorized or required by the employer

The parties (Port of Tacoma, employees) did not contest that the disputed hours were authorized or required.

Factor Two: The employee must be on duty

The court held the employees were on duty, which the court defined as being "engaged in an assigned task — the travel — at the behest of their employer, in order to effectuate their assigned duty to inspect the crane manufacturing process."

Factor Three: The employee must be on the employer's premises or at a prescribed workplace

Noting that "prescribed" means "dictated or directed," the *Port of Tacoma v. Sacks* court held that "the Port approved the means of travel and purchased the plane tickets, thereby dictating, i.e., prescribing the workplace."

CONCLUSION

The takeaway for Washington local governments is this: In determining what to pay employees who travel out-of-town for business, Washington local government employers can no longer apply the less protective standard in the federal Fair Labor Standards Act (FLSA) and instead must apply the more robust standard in the state Minimum Wage Act. This more robust MWA standard requires non-exempt employees be paid for all time spent traveling, both within working hours and outside of normal working hours, regardless of whether the employee is working during that travel time.



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. fcollins@mrsc.org

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Washington Trivia Answer

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Procurement Series Part 1: Materials, Supplies, and Equipment
 Wed., February 9, 10:00–11:00am

Tax Increment Financing (TIF)
 Thu., February 3, 10:00–11:00am
 Credits: CPE, CML

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 Tue., February 15, 11:00am–12:00pm

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