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 Washington county is home to the only potato known to have come directly to North America from South America?

Answer on page 10

New Website Improvements Give a Boost to Searchability and Safety

We made some changes to the MRSC website that should benefit our users. Some of the changes are more noticeable while others are more subtle, but we think they will all help you find information faster and easier.

Perhaps the most noticeable change is on our “topic pages” in the Explore Topics section of our website. These pages contain a wealth of information, but to make it easier for you to see the content on the page we have created new “On this Page” menus near the top of most pages. These menus provide a table of contents for the page, and you can even click on a specific section to jump to that part of the page. This isn’t techni-

If you don’t want to see this table of contents, it’s easy to click “On this Page” to hide it. If you want to go back to the table of contents at any time, just click the green “back to top” button at the bottom of your screen.

Another improvement is our Sample Document Library. There are two options to look for documents: searching and browsing. The search feature was, and still is, a quick and powerful way to look for documents. But the browse feature, which lists all of the documents in a particular section of our Library – job descriptions, policies/procedures, etc. – was not as user-friendly. Previously, these documents were displayed in alphabetical order by jurisdiction name (Aberdeen, Benton County, Camas, etc.), and there was no other way to sort them.

We have now updated the Library so it automatically displays documents in alphabetical order by title. For instance, if you are browsing job descriptions you will see Accounting positions first, then Building Officials, then City Attorneys, etc.

In addition, we have provided the option to sort samples by jurisdiction name (if you are looking for a particular jurisdiction) or by the year the document was adopted. For instance, if you want to see all the recently adopted ordinances that we have added to our Library, just browse “Ordinances” and click on “Date.”

And finally, we have made our website “more secure” by converting to HTTPS. While our website does not handle commercial or private information, such a credit card numbers, HTTPS is becoming the standard for all websites and will provide an extra level of security and encryption as you search for information on our website.

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The American Rescue Plan includes direct relief to states, counties, cities, and towns as well as public utilities, libraries, and transit agencies. This article offers preliminary information regarding those programs that will be of interest to local governments in Washington State.

**COUNTY, CITY, AND TOWN LOCAL FISCAL RECOVERY FUNDS**

Title IX, Subtitle M (Sec. 9001) of ARPA establishes the State and Local Fiscal Recovery Funds program, adding several sections to Title VI of the Social Security Act. The new Section 603 establishes the Local Fiscal Recovery Fund, discussed here. (Section 602 establishes the State Fiscal Recovery Fund and pertains solely to states, territories, and tribes.) ARPA provides $350 billion in additional funding for state and local governments, with $130 billion to be divided equally between cities and counties. The U.S. Department of the Treasury (Treasury) will distribute the funds through the state. The state later than May 10, 2021, and the second “tranches,” with the first distribution no later than June 9, 2021. Washington State will receive a new round of relief. ARPA is a $1.9 trillion package that includes direct relief to states, counties, cities, and towns as well as public utilities, libraries, and transit agencies. This article offers preliminary information regarding programs that will be of interest to local governments in Washington State.
Is overpayment to an employee a gift of public funds?

Yes, overpayment to an employee is a gift of public funds and should be recovered. State law sets forth a process for an employer to recover the overpayment of wages. See RCW 49.48.200. If recovery of the overpayment is made by deduction from future wages, the deductions cannot exceed 5% of the employee’s disposable earning in any pay period, other than the final pay period, unless the employee agrees to a greater deduction.

How does a town go about selling land it owns?

The procedure for the sale of surplus real property is driven mostly by local policy. Our topic page, Sale of Surplus City or Town Property, has useful information and sample policies, but, generally, here is what we recommend:

1. Town council passes a resolution declaring the property to be surplus and specifying how the property will be sold.
2. Town ascertains the fair market value for the property so as not to sell the property for less than its worth (thereby avoiding a gift of public funds issue).
3. Proceed with the sale in any commercially reasonable way.

The one caveat to this procedure is that, if the property was originally bought for utility purposes, there is an extra requirement for a public hearing. See RCW 35.94.040.

Can vacation time be given as an incentive/bonus if incorporated into an annual review for city employees? Or is that considered a gift of public funds?

The city could adopt a policy to add bonus time off as an incentive in connection with the annual review process. You will want to have objective criteria for when the additional time off is awarded so it is not left to the subjective judgment of a supervisor.

Such a new policy should be prospective only rather than retroactive in order to avoid a potential issue with the Washington Constitution’s prohibition on gifts of public funds and changes to public employee compensation previously established. If extra time off is granted for past-performance, then there is a problem with gifting of public resources. Once the policy is in place, then for city employees who continue their employment, the incentive for bonus time would be part of the compensation package.

Can local governments provide anything of monetary value as an incentive to the public to participate in various community engagement efforts?

A public agency may provide incentives such as gift cards or other small gifts without violating the state’s prohibition on gifting of public funds, provided there is an articulated public purpose for doing so. From our Gift of Public Funds topic page:

In assessing whether a gift has been bestowed to a private entity, the courts have used a two-step process. First, they determine whether the funds are being expended to carry out a fundamental purpose of the government. If so, then no gift of public funds has been made. Otherwise, the court looks to see whether the government entity had a “donative intent,” and whether it received an adequate return for the transfer.

If an incentive program serves a valid purpose of government, then incentivizing participation in that program is not a gift. For example, providing wellness awards to patients that participate in annual check-ups at a hospital district are not gifts under the law. A hospital could also use gift card drawings to get patients to respond to satisfaction surveys. The hospital would be receiving something of value in exchange for the gift card – namely a response to the survey. Similarly, providing some incentive to participate in a community planning process is serving an important governmental purpose.

If a city or other public entity does choose to offer incentives, it should adopt – in advance – a reasonable policy regarding the incentives, and the policy should articulate a valid municipal purpose for the expenditures. If gift cards or other items of monetary value are given as more of an “afterthought” or thank you gift, this would look less like an incentive program and more like a gift.

We recommend discussing the specifics of any program with your legal counsel. They will be in the best position to assist in developing an official policy that complies with the constitutional limitations regarding gifting of public funds.

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
This article discusses the importance of the roles and responsibilities of elected and appointed officials working together in local governments, and it specifically targets the legislative and executive branches.

**WHO’S THE BOSS?**

**Separation of Powers in Local Government**

BY LINDA GALLAGHER, MRSC LEGAL CONSULTANT

This article examines the interactions between two branches of local government — the legislative and the executive — but does not cover the third branch of local government, municipal and district courts.

Councils and commissions make policies. Mayors, city managers, county executives, and other public executives implement these policies. In cities and towns, mayors or city managers essentially serve as chief executive officers (CEOs). For counties, some have elected county executives while others have boards of county commissioners (BOCCs) that not only set policies but also have responsibility for policy implementation. Some counties have independently elected department heads. County commissioners may also delegate executive authority to staff. Special purpose district boards serve combined legislative and executive roles as established in the statutes providing specific powers and authorities to these public districts. Typically, a special purpose board appoints an executive director or general manager to run the district.

**POLICY MAKING AND POLICY IMPLEMENTATION**

Effective local government depends on a balance of the powers of policy making and policy implementation. Just as our federal government is designed with three co-equal branches of government — the legislative (Congress), executive (Presidential), and judicial (federal courts) branches — the authority of local governments depends upon separation of powers. This article examines the interactions between two branches of local government — the legislative and the executive — but does not cover the third branch of local government, municipal and district courts.

Councillors and commissioners make policies. Mayors, city managers, county executives, and other public executives implement these policies. In cities and towns, mayors or city managers essentially serve as chief executive officers (CEOs). For counties, some have elected county executives while others have boards of county commissioners (BOCCs) that not only set policies but also have responsibility for policy implementation. Some counties have independently elected department heads. County commissioners may also delegate executive authority to staff. Special purpose district boards serve combined legislative and executive roles as established in the statutes providing specific powers and authorities to these public districts. Typically, a special purpose board appoints an executive director or general manager to run the district.

**MAYORS, CITY MANAGERS, AND OTHER EXECUTIVES**

Executive branch responsibilities include making appointments that are subject to council or commission confirmation; hiring, supervising, and terminating deputies and other staff; managing budgets; handling public records; and administering contracts. Mayors in cities with a mayor-council form of government are in charge of the administration of city government and all city interests. RCW 35A.12.100, provides, in relevant part:

The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees, with authority to designate assistants and department heads. The mayor may appoint and remove a chief administrative officer or assistant administrative officer, if so provided by ordinance or charter. He or she shall see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city, and shall have general supervision of the administration of city government and all city interests.

Under RCW 35A.13.080(2), in code cities with the council-manager form of government, the city managers are responsible for all day-to-day operations of the city including:

1) to appoint and remove at any time all department heads, officers, and employees of the city code, except members of the council, and subject to the provisions of any applicable law, rule, or regulation relating to civil service.

In code cities with city managers, RCW 35A.13.120 essentially prohibits city council interference with city administration except for the purpose of inquiry through the city manager. Even when one councilmember has been selected as chair or mayor, this person remains a councilmember and part of the legislative branch of the city government, not the executive branch. Under RCW 35A.13.090, the role of a mayor in a city with a council-manager form of government is, in addition to serving as the chair of council meetings, essentially ceremonial.

Mayors, county executives, city managers, and staff do not make policy decisions; though they do have strong influence on the policy-making process and its resultant decisions. For example, they propose budgets, provide data and support related to proposed policies, and make policy recommendations to councils as well as receiving feedback and suggestions from these legislative bodies. This process works best when the executive and legislative branches work together with effective communication, trust, and collaboration.

**COUNCILMEMBERS, COMMISSIONERS, AND OTHER LEGISLATORS**

Councilmembers and commissioners are authorized and required to make policy. Councils and commissions make policy by passing legislation during public meetings pursuant to the Open Public Meetings Act (OPMA), chapter 42.30 RCW.

Legislative powers of cities and counties include budgeting and the appropriation of funds, authorization of payments, contracting for public works, drafting of procurement policies for other purchases and services, building and maintenance of agency facilities, and making and enforcing civil and criminal ordinances and resolutions that are not in conflict with state law. The Growth Management Act (GMA) planning process provides a long-term basis for planning, zoning, and budgeting for public projects through plan elements such as the Transportation Improvement Plan and Capital Improvement Plan, both of which have a six-year cycle.

For special purpose districts, the authorizing statutes for each type of district set forth the specific powers and duties of the districts through their legislative bodies, usually commissioners and directors.

**CONCLUSION**

So, who’s the boss in local government? Well, it depends, and the roles may have some overlap. For day-to-day operations and policy implementation in towns and cities, the mayor or city manager is the boss and leads the agency, all under the guidance of legislation put forth by the town or city council. Counties may have elected or appointed executives overseeing day-to-day operations. Special purpose districts also have executive directors or general managers who are in charge.

For legislation, including policy making and budgets, the legislative/governing body as a whole could be considered the boss. Ultimately, local elected officials are responsible to the people of their jurisdictions. Successful local government officials understand their respective roles and work together for the benefit of their communities.

Linda Gallagher, Legal Consultant, joined MRSC in 2017. She previously served as a Senior Deputy Prosecuting Attorney for King County and as an Assistant Attorney General. Linda’s municipal law experience includes risk management, torts, civil rights, transit, employment, workers compensation, eminent domain, vehicle licensing, law enforcement, corrections, and public health. lgallagher@mrsc.org
Local governments have numerous contracting options available for entering into non-public works contracts with private companies and other public agencies. This article explores which options can be used under which circumstances.

PERSONAL SERVICE CONTRACTS

Personal service contracts can be used by all local government agencies for a variety of work, such as contract prosecution services, working with a consultant to draft development code regulations, or using a local auto repair shop to maintain an agency’s vehicle fleet. By and large, local governments have no statutory requirements for personal service contracts (although port districts and public facilities districts do have some requirements), which are detailed on our Personal Services Contracts webpage. While not required, agencies should adopt guidelines for contracting for personal services, including delegating signature authority, and identifying when RFPs or RFQs will be solicited. Our Personal Services Contracts webpage explores this in more detail.

INTERLOCAL AGREEMENTS

The often, local government agencies will want to contract with one another either to jointly provide a governmental service or to have one agency provide the service on behalf of the other. Agencies should adopt guidelines for contracting for personal services.

Interlocals must be approved by the legislative body of each agency and filed with the county auditor or posted on participating agencies’ websites or other electronically retrievable public source.

MUTUAL AID AGREEMENTS

Mutual aid agreements are frequently used by local governments in the emergency management context where they are specifically identified in RCW 38.52.091 as a tool for public agencies to provide “reciprocal emergency management aid and assistance in case of disaster too great to be dealt with unassisted.”

MEMORANDUMS OF UNDERSTANDING OR AGREEMENT

Parties often use memorandums of understanding (MOU) or memorandums of agreement (MOA) to identify their intent or to broadly outline an agreement that will eventually lead to a more formal agreement. MOUs/MOAs used in this manner are not legally binding as they do not require parties to commit funds or other resources. They can be appropriate in circumstances where the parties are not quite ready to commit resources and useful in that they push parties to identify desired expectations and responsibilities before being locked into a binding contract.

CONCLUSION

Local governments have several options when contracting and should choose the most appropriate agreement, depending on the circumstances. Not quite ready to commit? Use an MOU or MOA. Ready to work cooperatively with another agency? Use an interlocal agreement. Do you want to share resources in an emergency situation? Use a mutual aid agreement. Does your local government just want to hire a private consultant for assistance? Go with the standard professional service contract.
MRSC TRAINING

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.

UPCOMING WEBINARS

- **Strategies and Tactics for Successfully Resolving Construction Claims**
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- **Making the Switch to Paperless Permitting**
  Tuesday, June 1, 12:00–1:30pm  |  Credits: CM

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