CITY OF SEATTLE V. LONG

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LOCAL GOVERNMENT SUCCESS

Municipal Research News
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 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

Answer on page 10

Which Puget Sound city established by ordinance a marine protected area more than 50 years ago for the purposes of creating an underwater park? (Bonus for the park name.)

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

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MRSC HIGHLIGHTS
2022 Edition of Budget Suggestions Now Available

MRSC’s Budget Suggestions publication, now in its 78th year, gives local governments key information needed for developing an annual budget. Our 2022 Budget Suggestions can be downloaded from our website.

Municipal finance and budgeting staff can find links within Budget Suggestions to resources on our website for more in-depth discussions on topics such as revenue types and tax and population data. Additionally, we have updated our State Shared Revenue Estimator to show cities and counties their 2021 populations and estimated per-capita portion of state shared revenues for 2022.

Here are highlights of this year’s edition.

An Overview of the Budget Process

Budget Suggestions includes key statutory deadlines for cities and counties, as well as information on budget hearings and key dates for getting voted revenue measures on the ballot.

This year, counties will want to note a change made to the deadline for certification of their property taxes. SHB 1309, which is a product of the 2021 legislative session, extended the deadline for the county legislative body to certify the county’s own property tax levies to the assessor from November 30 to December 15.

A Discussion of New Legislation

We also reviewed bills from the 2021 legislative session and highlighted those that may impact revenues or provide new revenue opportunities.

In response to the economic pressures of the COVID-19 pandemic, ESHB 1569 allows expanded uses of certain revenues – some permanently, some temporarily. With ESHB 1386, cities are now allowed to utilize targeted urban area tax exemptions that were previously only permitted for counties. And finally, after years of trying, ESHB 1189 makes tax increment financing available in Washington State.

Economic and Population Data

Budget Suggestions also offers an overview of the state and national economies, as well as the current status of the Consumer price index and implicit price deflator (IPD). For those governments with a population of 10,000 or more, an IPD at less than 1% means we will need a resolution of substantial need to levy the maximum increase of 1%. As we learned last year, unexpected changes can occur suddenly. Although we forecasted the IPD to be above 1% in 2020, it sank to 0.60152% due to the sudden COVID-19-related economic contraction.

Per-Capita Distribution Estimates

Each year we get forecasts of the different state shared revenue from various state agencies and provide per-capita distribution estimates for cities and counties. You can choose to use the information we provide to calculate your jurisdiction’s estimated distribution, or you can use our online tool, the State Shared Revenue Estimator, where we have done the work for you.

It is important to note that these figures are projections only. Unexpected events can have a big impact on revenues. The COVID-19 pandemic and the transition to work-from-home meant fewer gallons of fuel were sold and fuel tax revenue decreased. At the same time, alcohol and marijuana sales increased.

To keep updated on the state’s tax collections and projections, we also recommend following the state Economic and Revenue Forecasting Council (ERFC) and Transportation Revenue Forecasting Council (TRFC).

Other Budgeting Resources

In addition to 2022 Budget Suggestions, here are other budget-related materials on the MRSC website:

- City Revenue Guide and County Revenue Guide – Recently updated, the guides contain detailed guidance on property taxes, sales taxes, and a wide variety of other revenue sources and options.
- Financial Policies Tool Kit – This kit has expanded to address financial policy areas such as fund balance, reserves, cost allocation, debt management, investments, and other policy areas that have a fiscal impact.
- Tax and Population Data – The budget process is data-driven, and to that end we have expanded our population, property tax, and sales tax data to include historical data for each county and city going back 10 years, as well as local sales tax rates and components showing where your local sales taxes are going.

You can view all these materials (and more) at our Budgeting in Washington State webpage.
You may be familiar with the *City of Seattle v. Long* case, which until recently focused on whether automatic homestead protections apply to vehicles for habitation. On August 12, 2021, the Washington Supreme Court issued its decision in the case and provided clarification on how homestead rights apply to vehicles used by their owners as a residence. In addition, the Washington Supreme Court greatly expanded the circumstances under which an individual may bring an “excessive fines” challenge to a civil infraction under the Eighth Amendment of the U.S. Constitution. This article will address both aspects of the ruling.

**BACKGROUND**

Steven Long lived in his pick-up truck. His truck became inoperable while parked on a City of Seattle (City) gravel parking lot. Eventually he was issued a $44 ticket by the City for parking in the same spot for more than 72 hours. Mr. Long could not get his pick-up truck running, and it was towed several days later. The initial impound costs for the vehicle were $496.61. A magistrate subsequently waived the ticket amount and reduced the impound amount to $547.12. Mr. Long agreed to a payment plan with the City and got his truck back from the towing company.

Mr. Long then contested the impound, claiming that it violated his homestead rights in his truck and that the fines were excessive under the Eighth Amendment. Both the King County Superior Court and the Court of Appeals ruled in Mr. Long’s favor with respect to homestead rights but rejected his claims that the fines were excessive punishment under the Eighth Amendment.

**VEHICLE HOMESTEAD RIGHTS AND EXCESSIVE FINES**

*Does the Washington Supreme Court find consideration of an offender’s individual circumstances is a factor to be considered in determining whether a fine is proportional or excessive?*

The Washington Supreme Court found that consideration of an offender’s individual circumstances is a factor to be considered in determining whether a fine is proportional or excessive.

Does that mean that different results could occur with respect to the same violation and the same fine depending on the financial circumstances of the offender? Yes. A fine that might be proportional for one offender may be excessive for another offender of limited means. In the context of the homelessness crisis, the Washington Supreme Court noted:

> The excessive fines clause descended from English law that sought to protect individuals from fines that would deprive them of their ability to live. This concern is directly related to an offender’s circumstances – in this case, homelessness and the circumstances forcing individuals into it.

**What are homestead rights and why are they important in this context?**

Homestead laws place qualifying homes (up to a certain dollar amount) out of reach of judgment debt-holders and other creditors. Mr. Long and the City agreed that a vehicle used as a residence may be subject to homestead protection, but the parties disagreed on whether homestead protections attached automatically to the vehicle. The City’s position was that a vehicle owner must file a “declaration of homestead” with the county before homestead protections apply. Both the Court of Appeals and the Washington Supreme Court ruled that Mr. Long’s truck was automatically protected under the homestead statute (RCW Chapter 6.13).

**How do the Washington Supreme Court and the Court of Appeals rulings differ?**

The Washington Court of Appeals originally ruled that automatic homestead protection precluded the towing company from holding the vehicle for sale at auction because doing so would be a “forced sale” for the purpose of homestead laws (Washington Constitution, Article 19, Section 1 and RCW 6.13.070). The Washington Supreme Court found that Mr. Long’s assertion of homestead rights was premature. It conducted a technical analysis of the process by which a debt (in this case the ticket amount and towing charges) is reduced to judgment. It resorted to the metaphors of sword and shield, noting that homestead cannot be used as a sword to prevent issuance of a ticket or impoundment of a vehicle. But homestead rights can be used as a shield to protect the homestead from creditors.

The important thing to remember is that Mr. Long received his truck back when he agreed to the payment plan for the impound fee. At that point, the City paid the towing company the $547.12, becoming a creditor of Mr. Long in that amount, but took no action to collect that debt. Under the majority’s analysis, homestead protection would be a “shield” if the City attempted to collect the debt from Mr. Long, but it is not a “sword” under which Mr. Long can contest the City’s authority to ticket or impound his vehicle in the first place.

**Does the Washington Supreme Court decision on the timing of when homestead rights may be asserted impact municipalities from a practical standpoint?**

In most cases, probably not. Both the Court of Appeals and the Washington Supreme Court upheld the ability of municipalities to issue infractions and impound vehicles when authorized to do so – the issue is what should happen to a homestead vehicle once it has been impounded.

Municipalities should take steps to ensure that homestead vehicles are not sold at auction. My blog, *Living in Vehicles: How Homestead Rights Affect Municipal Impounds*, and an Association of Washington Cities article on Seattle v. Long contains recommended practices in light of the homestead rulings by the Court of Appeals and Washington Supreme Court.

**EXCESSIVE FINES UNDER THE EIGHTH AMENDMENT**

Below is a deeper dive into excessive fines using a question-and-answer format.

Has the Washington Supreme Court issued findings on how homestead rights apply to vehicles for habitation? Yes. A fine that might be proportional for one offender may be excessive for another offender of limited means. In the context of the homelessness crisis, the Washington Supreme Court noted:

> The excessive fines clause descended from English law that sought to protect individuals from fines that would deprive them of their ability to live. This concern is directly related to an offender’s circumstances – in this case, homelessness and the circumstances forcing individuals into it.

Does this case have any relation to the homelessness crisis? Yes. Mr. Long did not contest the ticket amount and reduced the impound amount to $547.12. Mr. Long agreed to a payment plan with the City and got his truck back from the towing company.

**Does that mean on how homestead rights apply to vehicles for habitation?**

On the other hand, the excessive fines clause has received little attention from courts until comparatively recently. And the federal case law on excessive fines has typically involved civil forfeitures in connection with drug crimes or failure to declare currency. The Washington Supreme Court first considered an Eighth Amendment excessive fines claim in 2020 in a case involving fines assessed against a nationwide grocer trade association for violations of the Fair Campaign Practices Act. There do not appear to be any other reported cases analyzing excessive fine claims in the context of vehicle infractions and impoundment, so this appears to be a new area for an old legal doctrine.

**How does one determine whether a fine is excessive?**

First, you must determine if there is a fine. For a sanction to constitute a fine, it must be at least partly punitive (i.e., punishment). While enforcing parking regulations and impounding illegally parked vehicles is partly remedial, the Washington Supreme Court found a punishment component as well.

Once it is determined that there is a fine, the next question is whether it is excessive. And in that regard, a fundamental question is whether an individual’s means and ability to pay should be part of the analysis. The Washington Supreme Court found that consideration of an offender’s individual circumstances is a factor to be considered in determining whether a fine is proportional or excessive.

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Campaign signs are a form of political expression, protected by the First Amendment of the U.S. Constitution and by article 1, section 5 of the Washington State Constitution. The use and regulation of campaign signs can be confusing for many. The basic issue is what limitations may be placed on the use of campaign signs. Where can these be placed? Can the duration of display be limited? How big can it be?

To help local governments wade through all the consideration, MRSC maintains a webpage on Sign Regulation that provides an overview of the various state and national court cases that have impacted the topic, as well as sample comprehensive sign codes and temporary sign regulation approaches.

The questions below represent just a few examples of the many that MRSC staff receive regarding sign regulation during an election season.

**ASK MRSC:** **Sign Regulation**

**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**

**Is there a regulation prohibiting campaign signs from being located within a certain number of feet of any polling place?**

Yes – there is a provision in the WAC that addresses this. WAC 434-250-100(6) provides:

Within twenty-five feet of a ballot deposit site that is not located within a voting center, no person may electioneer, circulate campaign material, solicit petition signatures, or interfere with or impede the voting process. Wherever it is necessary to maintain order around a ballot deposit site, the county auditor may contact a law enforcement agency for assistance. A campaign sign situated within the 25-foot radius of the ballot deposit site would constitute “electioneering.” Also, if the abutting property next to a ballot deposit site is city-owned, the city could remove the any campaign signs placed there.

**Can our city prohibit placement of signs on traffic circles or roundabouts so long as the regulation is enforced without reference to the content of the signs?**

The city can prohibit placement of signs in traffic circles and roundabouts so long as the regulation is enforced without reference to the content of the signs. Therefore, it is important that both the regulation of signs and the enforcement of the regulation is content-neutral.

**Some citizens would like the mayor of our city to remove campaign signs that are located on the mayor’s private commercial property following the November election. Can the city request removal of these signs?**

Prior to 2015, the 1993 decision by Washington State Supreme Court in Collier v. Tacoma held that cities have the authority to impose a 10-day or longer political sign removal requirement. However, the 2015 U.S. Supreme Court decision in Reed v. Town of Gilbert has put Reed’s doubt. Reed held that a local government cannot impose a “content-based restriction” on the placement of signs unless it is “narrowly tailored to serve a compelling state interest,” which is an extremely high standard that is unlikely to be met under almost any conditions.

“Content-based restrictions” are regulations of speech that not only treat different viewpoints differently (e.g. Democrat v. Republican), but different subject matters of speech differently (e.g. political signs v. directional signs). If your city had provisions in your sign code regulating signs on commercial property in a content-neutral manner (per Reed), then such rules could be applied.

The Washington State Public Disclosure Commission (PDC) maintains a webpage regarding political advertising, including campaign signs. Yard signs that are not larger than 8 feet by 4 feet are not subject to certain requirements, such as including identification of sponsors. The PDC is available to answer questions local governments may have. Their contact info is 877-601-2828 and pdc@pdc.wa.gov.

**Yes**

**We have received complaints about a political sign that sits on private property. Some members of the community find its language offensive and would like to see it taken down. Do we have any recourse?**

Your city should have sign regulations directing where signs such as the ones described may be placed. With regard to pro-levy signs on public property, this likely violates the prohibition against use of public facilities (which includes public lands) to promote or oppose a candidate or ballot measure (See RCW 42.17A.550).

With regards to signs on parking strip portion of the right-of-way (ROW) – or the area between the sidewalk and the curb in your average residential neighborhood – this portion of the ROW is an easement with fee ownership belonging to the adjacent property owner, so placing a sign in this portion of the ROW would be subject to the underlying owner’s consent (usually the adjacent property owner). In terms of regulating such signs, a municipality cannot pass a law prohibiting all campaign signs (or noncommercial temporary signs) from the ROW.

**Yes**

**Our city is about to vote on a proposition for a levy to support emergency services. The fire department association has obtained signs promoting the proposition. Where can these signs be placed?**

Members of the community may promote the proposition. Where can these signs be placed? Can the duration of display be limited? How big can it be?

**Yes**

**As you may know, there are First Amendment free speech protections for contents of signs. A municipality may regulate signs with reasonable restrictions, such as on size or distance from a highway, but may not regulate the messages a person places on the signs. A sign code that treats various categories of signs differently based on the information a sign conveys violates the First Amendment. Instead, jurisdictions must take a content-neutral approach to sign regulation. So, a sign code could not prohibit certain words in a sign’s content even if the words are considered profanity.**

**Yes**

**Can we have any recourse?**

**Is there a high standard that is unlikely to be met under almost any conditions.**

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**Reed v. Town of Gilbert**

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REMOTING LIMITS ON HOUSING UNIT INVENTORY

The intent of ESSB 5235 is to remove barriers that limit housing options. To accomplish this, cities, towns, code cities, and counties are prohibited from regulating or limiting the number of unrelated people who may occupy a house or other dwelling unit. Exceptions include occupant limits on group living arrangements regulated under state law or on short-term rentals and any lawful limits on occupant load per square foot or generally applicable health and safety provisions as established by applicable building code or city ordinance. Many jurisdictions include limits on unrelated people in their family definitions within their zoning codes, so checking these definitions is a good place to start when assessing your code for compliance.

LOCAL PLANNING AND DEVELOPMENT OF EMERGENCY SHELTERS/HOUSING

E2SHB 1220 updates the minimum requirements for the housing goal that guides comprehensive plans and development regulations. The bill requires jurisdictions that plan under the Growth Management Act (GMA) to include planning for and accommodating housing that is affordable to all economic segments of the population. To implement this goal, the following actions are now required as part of the housing element of comprehensive plans:

- Include a statement of goals, policies, objectives, and mandatory provisions for moderate density housing options (e.g., duplexes, triplexes, and townhomes) within urban growth areas (UGAs).
- Identify sufficient land capacity for housing, including housing for moderate-, low-, very low- and extremely low-income households; emergency housing, emergency shelters, and permanent supportive housing; and, within UGAs, consideration of duplexes, triplexes, and townhomes.
- Make adequate provisions for existing and projected needs of all economic segments of the community, including: incorporating consideration for moderate-, low-, very low- and extremely low-income households; documenting programs and actions needed to achieve housing availability; considering housing locations in relation to employment location; and considering the role of ADUs in meeting housing needs.
- Identify local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing (e.g., disinvestment, zoning that may have a discriminatory effect, and infrastructure availability).
- Identify and implement policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing caused by prior and current local policies, plans, and actions.
- Identify areas at higher risk of displacement from market forces that occur with changes to development regulations and capital investments.
- Establish anti-displacement policies, with consideration given to strategies such as the preservation of historical and cultural communities, equitable development initiatives, inclusionary zoning, and tenant protections.

Additionally, the Department of Commerce (Commerce) is required to provide an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth as required in the housing element, including units for moderate- to extremely low-income households, as well as emergency housing and shelters and permanent supportive housing.

The bill also expands provisions for shelters and housing for unsheltered people. Beginning September 30, 2021, local governments cannot prohibit emergency shelters and housing for people experiencing homelessness in certain zones, with exceptions. Optional reasonable occupancy, spacing, and intensity-of-use requirements for these uses are permitted. If you are considering including occupancy standards, you will want to make sure they also comply with ESSB 5235, which prohibits limiting the number of unrelated people who may occupy a house or other dwelling unit, with exceptions.

TAX INCENTIVES FOR AFFORDABLE HOUSING

E2SHB 5287 makes several changes to the multi-family property tax exemption (MFTE) program to incentivize the development of multi-unit housing, including:

- Creating a new 20-year property tax exemption for the creation of permanently affordable homes, and an additional 20-year property tax exemption for properties in certain cities that commit to renting at least 20% of their units to low-income households for at least 99 years if certain transit requirements are met.
- Extending by an additional 12 years the existing eight and 12-year MFTEs that are currently set to expire if they meet certain affordability requirements.
- Expanding eligibility to certain cities that meet statutory requirements and extending the time by which those cities may offer the 12-year exemption (until December 31, 2020).
- Expanding eligibility to smaller counties by decreasing the required unincorporated population for qualifying counties to 170,000.

The bill also makes several administrative modifications to the MTFE program, including changes to reporting requirements.

RELOCATION ASSISTANCE FOR CLOSED AND CONVERTED MOBILE HOME PARKS

E2SHB 1085 increases the maximum amount eligible tenants may receive in relocation assistance under Commerce’s Manufactured/Mobile Home Relocation Assistance Program. It requires tenants who receive initial cash assistance under the program to transfer title of the home to the park owner, relocate the home, or demolish and dispose of the home within 90 days in order to receive the remainder of relocation assistance. It also authorizes park owners to seek reimbursement for costs incurred for demolition and disposal of the homes when tenants do not relocate or demolish and dispose of their homes within 90 days.

ADDITIONAL REVENUE SOURCE FOR EVICTION PREVENTION AND HOUSING STABILITY SERVICES

HB 1277 establishes a $100.00 surcharge on certain recorded documents to fund various housing services. It also creates the Eviction Prevention Rental Assistance Program, requires Commerce to develop performance metrics for each county receiving funding from the surcharge, and requires these counties to dedicate a portion of funding to performance-based allocations.

Continued on page 9
cases are examples of a trend toward an expanded role of the Eighth Amendment in cases involving enforcement of municipal regulations against the unhoused. Compare the preceding quote with this passage from Martin:

[A]s long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.

Do the reasons for a municipality’s actions come into play? What if a municipality is acting for public health or emergency reasons? Yes. The Washington Supreme Court noted the relative absence of harm caused by the fact that Mr. Long parked his vehicle in the City lot. It noted that “the offense of overstay- ing one’s welcome in a specific location is not particularly egregious” and noted the following factors: (1) not parked in a high-demand area for parking; (2) not parked in a residential area; (3) he was not obstructing or blocking a roadway.

On the other hand, impoundment of Mr. Long’s truck had a significant impact on Mr. Long. He had to sleep outside, and he lost access to his tools, clothing, and bedding. An “excessive fines” analysis will be partially fact-based, so a municipality should consider the circumstances and document any exigent circumstances that cause it to act in a particular case.

CONCLUSION

The Washington Supreme Court’s decision in Seattle v. Long represents a significant expansion in the role of the excessive fines clause with respect to municipal infractions. In addition to parking infractions and impoundments, civil infractions issued under other municipal regulations – including ones such as anti-camping and sit-lying ordinances – may be subject to an excessive fines challenge. This case also potentially opens the door for “ability to pay” challenges to other municipal civil infractions to encampment residents.

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On the other hand, impoundment of Mr. Long’s truck had a significant impact on Mr. Long. He had to sleep outside, and he lost access to his tools, clothing, and bedding. An “excessive fines” analysis will be partially fact-based, so a municipality should consider the circumstances and document any exigent circumstances that cause it to act in a particular case.

CONCLUSION

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Tuesday, November 30, 10:00–11:30am | Credits: CM Ethics