

# Municipal

Summer 2005

# Research News

Research and Services Center of Washington

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## Public Records Act *Significant changes made*

Two legislative bills amending the public records act passed the legislature this session. One bill contains significant substantive changes; the other bill reorganizes and renumbers the public records disclosure statutes.

### **SSHB 1758**

This is the bill that created a lot of stress for local governments as it proceeded through the legislative process. The original legislation proposed to modify the attorney-client privilege, and that caused significant concern among city attorneys and prosecutors. Another section of the proposed bill would have significantly increased the financial penalties for documents not properly disclosed, including per day penalties that could have quickly mounted to large sums. Effective lobbying by our city and county organizations, and many volunteers, resulted in the elimination of those onerous provisions and the modification of several other provisions. The final version of this legislation preserved the attorney-client privilege in its present form and did not increase the penalties portion of the law.

### *Highlights of SSHB 1758*

Cities and counties are allowed, but not required, to respond to records requests on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. In addition, the new law

specifically provides that if an installment is not picked up or reviewed, the public agency is not obligated to fulfill the balance of the request. This clarifies an issue that has arisen quite often and may help to eliminate unnecessary work if the requestor fails to follow through and pick up or review partial installments as they become available.

Local governments are now prohibited from denying requests solely on the basis that the request is overbroad. Requestors may be asked to clarify exactly what they are looking for, and the benefits of narrowing the request may be explained to them – such as reducing the amount of time required to fill the request and reducing the copying costs. But if a person requests, for example, “all of the documents related to land use decisions and the comprehensive planning process over the past ten years,” the jurisdiction cannot refuse to respond solely because the request is overbroad or voluminous.

Cities and counties are now specifically permitted to require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request. They are also allowed to charge for each part of a request provided on an installment basis. Some jurisdictions had previously adopted local procedures requiring deposits; that procedure is now clearly permitted as long as the deposit does not exceed ten percent of the estimated cost.

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2601 4th Avenue, Suite 800  
Seattle, WA 98121-1280  
206.625.1300 • Fax 206.625.1220  
www.mrsc.org • mrsc@mrsc.org

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## CONTACTING MRSC

Staff members may be reached through the Internet using first initial and last name @mrsc.org: for example, ryukubousky@mrsc.org.

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Editor: Connie Elliot

Designer: Holly Stewart

The law now requires that each city and county appoint and maintain an individual to serve as the point of contact for members of the public requesting disclosure of public records and to oversee compliance with all disclosure requirements. Though some jurisdictions had done this before, it is now required.

The legislation directs the state Attorney General to adopt an advisory model rule for public agencies that addresses issues relating to assisting requestors, fulfilling large requests, fulfilling requests for electronic records, and other issues as determined by the Attorney General. The obvious intent is to provide more uniformity on the disclosure process throughout the state. However, this model rule will be advisory only; it is not

required that local jurisdictions adopt the model rule or any of its specific provisions.

The legislation clarified that the venue provisions for lawsuits filed against counties on public records disclosure issues is the same as for other lawsuits (RCW 36.01.050).

The statute of limitations in regard to public records disclosure matters had been unreasonably long. The legislation changes the statute of limitations for court actions from five years to within one year of an agency's claim of exemption or the last production of a record on a partial or installment basis.

All of the above changes go into effect on July 24, 2005.

### **SHB 1133**

This bill, though making no substantive changes in the public disclosure act, completely reorganizes the statutes relating to public disclosure. The disclosure exemptions will be organized into several discrete topics. The intent is to make it easier for agencies and the public to understand and use the public disclosure act. This bill does not go into effect until July 1, 2006. The new edition of the RCW published by the Code Reviser this fall should contain the public disclosure statutes as amended by the substantive bill (SSHB 1758) and also the reorganized public disclosure act in a new chapter.■

By Jim Doherty  
Legal Consultant  
Municipal Research and Services Center

## **New Web Page**

### ***Regulation of large retail establishments***

Large retail establishments, often termed "big box retail" or "superstores," have become a familiar fixture on the American landscape. Wal-Mart, Costco, and Toys "R" Us, representing different categories of these large-scale establishments, have become household names. Initially, these large-scale stores gravitated toward suburban sites that offered large tracts of low-cost, readily-available land, with access to a larger urban market area. Over the last decade, these large-scale stores have made impressive in-roads into rural and small town communities. A new breed of "big box" stores is rediscovering the market potential of central locations in much larger cities. In short, no community is immune from the potential effects of these large-scale retail businesses.

In many cases, these large-scale retail establishments have been welcomed with open arms or with some lesser degree of acceptance. In some communi-

ties, they have been viewed as an antidote to a declining economy, promising new sales tax revenue and jobs. Expansive, yet full parking lots and ringing cash registers are evidence that customers have embraced these stores for their wide selection of goods at low prices, often not previously available in a community. They have met stiff opposition in other communities fearing negative economic impacts on existing downtown business, traffic or other impacts of sprawl development, or a lack of connection with established community character. Cities that have escaped entry of these establishments within their boundaries may still experience significant impacts from stores in neighboring communities. In fact, such large-scale retail will bring a complex mixture of benefits and impacts.

These impacts typically were not anticipated in zoning and development regulations developed prior to the

meteoric rise of such large-scale retail. As a result, many communities are re-working policies and development regulations to provide better guidance in making decisions.

MRSC has developed a new Web page providing a variety of examples, regulatory approaches, articles, and studies to help with decisions about whether such large-scale retail establishments are appropriate in the community, and if so, where and under what circumstances they are appropriate. Materials include suggestions or examples of design guidelines, development standards, size limits (applied jurisdiction-wide or within certain types of commercial centers), and other requirements.

Take a look at this new Web page at <http://www.mrsc.org/Subjects/Planning/BigBoxRetail.aspx>.■

# Ask MRSC

Summaries of recent inquiries answered by MRSC consultants

## **Building Permits – If a city or county issues a building permit that it determines later to be erroneously issued, may it simply revoke the permit?**

No. According to the state supreme court in *Chelan County v. Nykreim*, 146 Wn.2d 904 (2002), the Land Use Petition Act (LUPA), chapter 36.70C RCW, changed what had previously been the rule that an improperly approved building permit is void and may be rescinded by the agency that erroneously issued it. Under *Nykreim*, a city or county that erroneously issues a building permit (or boundary line adjustment, such as was at issue in the *Nykreim* case, or other ministerial land use decision) must appeal that issuance under LUPA within 21 days - even though the city or county itself issued the permit - or it is foreclosed from challenging it; the city or county has no authority to simply revoke the permit.

## **Employment Posters – Are cities and counties required to post a USERRA (Uniformed Services Employment and Reemployment Rights Act) informational poster for employees?**

Federal law requires employers to notify employees of their rights under USERRA. Employers *may* meet this requirement by displaying this notice where they customarily place notices for employees, or they may provide the notice to employees in other ways, such as by handing or mailing out the notice, or distributing the notice via electronic mail. (For information on employee rights under USERRA, see <http://www.dol.gov/vets/programs/userra/poster.pdf>)

## **Executive Session – May a city council or board of county commissioners meet in executive session to discuss with legal counsel litigation or potential litigation when the discussion with legal counsel is by speaker phone?**

In our opinion, this would be permissible. The relevant statute, RCW 42.30.110(1)(i), provides that a governing body may meet in executive session to “discuss with legal counsel representing the agency” litigation or potential litigation. A discussion of such would occur where the legal counsel is not physically present but can communicate by speaker phone and can hear what the members of the governing body say. Physical presence is not a prerequisite to a discussion.

## **Fire Code – Is there a requirement that residential addresses be clearly visible on a house or mailbox?**

The only specific requirement that we are aware of is at Section 505.1 of the *International Fire Code*, which states:

Address numbers. New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 4 inches (102 mm) high with a minimum stroke width of 0.5 inch (12.7 mm).

This requirement would apply to both residential and nonresidential buildings.

## **Historic Buildings – What disincentives or penalties can be applied to discourage owners from the illegal demolition of a designated historic building?**

Many communities address demolition of a designated historic building by requiring a waiting period of six months or more before a demolition permit will be issued. The delay period provides an opportunity to try to find alternatives to demolition, but does not address the situation when an illegal demolition occurs. A few cities require that property be put up for sale before a demolition permit is issued.

Some communities have adopted a provision that requires a two-year or more delay period in issuing a building permit for a new structure after the illegal demolition of a designated historic building. Other disincentives for demolition include the imposition of a substantial fine, such as a fine that requires the payment of a fee equal to the cost of reconstruction; a requirement to reconstruct the building (not ideal from a preservation standpoint); and incarceration for a misdemeanor offense.

## **Retention Schedule – How long must a city or county retain medical bills it pays, such as for law enforcement or fire retirees?**

There is no state retention schedule category relating to medical bills. That being the case, one must resort to the general retention rule stating that records must be kept for six years. HIPAA (the federal Health Insurance Portability and Accountability Act) must also be considered, since medical bills do or may contain “individually identifiable health information” which must be protected from disclosure. One way to satisfy the

**How to “Ask MRSC.”** Assistance from MRSC may be obtained by **Phone** (206) 625-1300 or 1-800-933-6772 for long-distance calls; **Letter** 2601 4th Avenue, Suite 800, Seattle, WA, 98121-1280; **Fax** (206) 625-1220; or **E-mail** [mrsc@mrsc.org](mailto:mrsc@mrsc.org). Telephone inquiry service is available from 8:00 a.m. to 5:00 p.m. If a consultant is not immediately available, you can record a detailed request on voice mail 24-hours a day, and a staff member will call back as soon as possible.

requirement is to keep such records, including paid medical bills, separate from other records and secured in a locked environment.

### **SEPA – When is SEPA review required for building additions?**

The following explanation is excerpted from Sec. 2.3.3.5 (updated online version) of Department of Ecology's SEPA Handbook:

The Dept. of Ecology considers the exemption for additions or modifications to buildings within WAC 197-11-800(2)(e) to apply to any addition where the existing floor area plus the proposed addition has a total area less than the square footage exempted under WAC 197-11-800(1) for minor new construction. In other words, SEPA is required for any addition when the total square footage of the building (old plus new) exceeds the threshold adopted by the local jurisdiction. If a building is not exempt at the time of construction, neither would any additions to the building be exempt. WAC 197-11-800(3) does exempt minor repair, remodeling (not including additions), and maintenance activities which would not change the use of the building and that does not occur on lands covered by water.

The complete SEPA Handbook is available at <http://www.ecy.wa.gov/programs/sea/sepa/handbk/hbframe.htm>

### **SEPA – Must an applicant for a building permit to remodel an existing warehouse (exceeding 20,000 square feet) into a church go through the SEPA review process?**

An applicant for a building permit for the church remodel is required to go through the SEPA review process. SEPA applies to permits related to new construction or for a change of use for an existing building unless the permit is for a use that is exempted under SEPA. A church of that size is not categorically exempt under WAC 197-11-800. Even if there is no expansion of floor area, a remodel that involves a change of use would not be exempt under WAC 197-11-800(3).

Also, the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) does not exempt a church from complying with SEPA, as SEPA is a law of general applicability that does not impose a "substantial burden" on any person's religious exercise.▶

## **Call Before You Dig!**

Always, always, call before you dig! Don't assume that you know where all underground utilities are located, and don't assume that city records provide a complete and accurate record of all underground utilities. The statewide one-number locator services apply to everyone who digs, including all local government employees. No exceptions. See Chapter 19.122 RCW.

Those statutes were just strengthened by the passage of ESHB 1539, and now provide that anyone who digs within 35 feet of a transmission pipeline without first calling to have the utilities located is guilty of a misdemeanor and subject to a \$10,000 fine.

Be aware!▶

## **Errata**

A "gremlin" got into the editing process for one of the "Ask MRSC" answers in the spring edition of *Municipal Research News*. In part of our response to a question about whether a supermajority was needed to amend a city budget, we said ... "the transfer of funds from one item to another within the same fund requires a supermajority" That is **incorrect**, and a number of you caught the error. Transfers within a fund may be made by the mayor or city manager (subject to any regulations imposed by the city legislative body). Look for an article on city and county budget amendments in the upcoming *Budget Suggestions for 2006*.

# HEADS UP

## Emerging information for local government

### Pasco and the Canine Good Citizen

In January, the Pasco City Council adopted a pit bull regulation (Ordinance 3714 <http://www.mrsc.org/ords/P35o3714.pdf>) that employs a new twist. The owner of a pit bull can avoid the special licensing, insurance, and containment rules if his/her dog successfully passes the "Canine Good Citizen Test" offered by the local animal control vendor. The test is sanctioned by the American Kennel Club. Despite initial opposition, some owners are now taking their dogs to "training" so they can pass the test by July 2005 when the new rules become effective. (From *WCMA Newsletter*.) You can see the American Kennel Club "Canine Good Citizen Test" at [http://www.akc.org/events/cgc/training\\_testing.cfm](http://www.akc.org/events/cgc/training_testing.cfm)

### ASCE Infrastructure Report Card – Washington State

In March 2005, the American Society of Civil Engineers released its *2005 Report Card for America's Infrastructure* assessing the same 12 infrastructure categories as in 2001, with three new categories added. The URL for Washington's page is <http://www.asce.org/reportcard/2005/page.cfm?id=87> (See also AWC's "State of the Cities: Assessing the Health of Washington's Cities and Towns" at <http://www.awcnet.org/stateofthecities/index.htm>)

ASCE reports the following conditions for Washington State:

#### Roads

- 34% of Washington's major urban roads are congested.
- 28% of Washington's major roads are in poor or mediocre condition.
- Vehicle travel on Washington's highways increased 23% from 1990 to 2003.
- Washington's population grew 26% between 1990 and 2003.

- Driving on roads in need of repair costs Washington motorists \$838 million a year in extra vehicle repairs and operating costs – \$198 per motorist.
- Congestion in the Seattle metropolitan area costs commuters \$820 per person per year in excess fuel and lost time.
- Congestion in the Spokane area costs commuters \$166 per person per year in excess fuel and lost time.

#### Bridges

- 26% of Washington's bridges are structurally deficient or functionally obsolete.

#### Dams

- There are 31 state-determined deficient dams in Washington.
- Washington has 140 high hazard dams. A high hazard dam is defined as a dam whose failure would cause a loss of life and significant property damage.
- The rehabilitation cost for Washington's most critical dams is estimated at \$75.9 million.

#### Water & Wastewater

- Washington's drinking water infrastructure need is \$4 billion over the next 20 years.
- Washington has \$2.74 billion in wastewater infrastructure needs.

#### Solid Waste

- Washington generates 1.43 tons of solid waste per capita.
- Washington recycles 34.1% of the state's solid waste.

#### Schools

- 60% of Washington's schools have at least one inadequate building feature.

- 74% of Washington's schools have at least one unsatisfactory environmental condition.

### Sharing Ideas – AWC Municipal Achievement Award Data Base

Is your city looking for new ideas, or innovative programs, or special projects being done by other cities? Reminder – summaries of the AWC annual Municipal Achievement Awards appear in a database that may be browsed or searched. Project summaries may be searched for by population category, year of submission, or by specifying one of 15 project categories. See <http://www.awcnet.org/Apps/ma/search.asp>.

### Youth Job Programs

Several Washington cities and counties are sponsoring programs that provide learning and employment opportunities for youth in their communities. Some are part of the U.S. Department of Labor's Youth Opportunities Program for disadvantaged youth, while others are partnerships with nonprofit and private entities. Here are a few program descriptions and links for more information.

#### Bellevue – Well K.E.P.T (Kids Environmental Project Training) Trainee Program

The Well KEPT program is a summer youth employment program designed to offer disadvantaged Bellevue youth job skills training and career development in the field of park resource management. The program serves 20-25 youth per year and incorporates a strong educational component with on-the-job training to help build self-esteem, improve social behavior, and develop leadership skills. See <http://www.cityofbellevue.org/page.asp?view=36370>.

#### Kent Employment for Teens (Web site)

Provides information on internships, the King County "Work Training Program," partnerships, job fairs, career expos, and the "Work Your Way Back to School"

program for teens. See <http://www.ci.kent.wa.us/teens/employment.asp>.

#### **Kent Teen Internship Program (TIPs)**

Is a school year program running from September through June. Internships are 100 hours of entry-level work in a variety of settings. TIPs works with various city departments and private businesses to provide stepping stones to success. See <http://www.ci.kent.wa.us/teens/tips.asp>.

#### **King County Work Training Program – Stay In School Program**

Provides a comprehensive mix of year 'round services to help at-risk teenagers increase academic success, learn about career and post-secondary school options, and build the skills needed to be successful at home, school, work, and in the community. It is a collaboration of eight school districts and over 20 community organizations including non-profits, local agencies, employers, municipalities, and others. These partnerships allow resources to be used more efficiently to impact the lives of youth and their families. See <http://www.metrokc.gov/dchs/csd/WorkTraining/In-School.htm>

#### **Mercer Island Job Link (Web site)**

A community employment service connecting job seekers and employers sponsored by Mercer Island Youth & Family Services (MIYFS). MIYFS is supported as a public/private partnership through the city of Mercer Island, the Mercer Island School District, King County, private contributions and grants, fundraising and special events, and revenues generated by the volunteer-based Thrift Shop. See <http://www.mijoblink.org/>.

#### **Seattle Youth Employment Program (SYEP)**

Links educational support and work-based/service learning to boost academic and vocational skills while developing work maturity. This is made possible through partnerships with community-based agencies, the Seattle Public School District, and other educational institutions. See <http://www.ci.seattle.wa.us/humanservices/fys/SYEP/SYEP.htm>. ▀

# LIBRARY LISTINGS

New resource materials now available

## New Acquisitions

This list contains new publications, ordinances, and other materials recently received by the MRSC library. We also prepare a more comprehensive list of new acquisitions each month which is posted on our Web site at [www.mrsc.org/library/newacq.htm](http://www.mrsc.org/library/newacq.htm). If you would like to borrow one or more of these publications, please contact Electra Enslow in our library at (206) 625-1300 or [library@mrsc.org](mailto:library@mrsc.org).

### ▼Economic Development

*Creating an Economic Development Action Plan: A Guide for Development Professionals*, by Thomas S. Lyons, 2001.

### ▼Environment

*Endangered by Sprawl: How Runaway Development Threatens America's Wildlife*, by Reid Ewing, 2005.

*Wetlands, Streams, and Other Waters: Regulation, Conservation, Mitigation*, by Paul D. Cylinder, 2004.

### ▼Finance

*Stop that Fraud: The Public Treasurers' Handbook on Fraud Deterrence and Detection*, by Joseph R. Dervaes, 2005.

### ▼Governance

*The Public Participation Handbook: Making Better Decisions through Citizen Involvement*, by James L. Creighton, 2005.

### ▼Licensing and Regulation

*Animal Control Management: A Guide for Local Governments*, by Geoffrey L. Handy, 2001.

### ▼Metropolitan and Regional Government

*Case Studies of City-County Consolidation: Reshaping the Local Government*, 2004.

### ▼Personnel

*Domestic Partner Benefits: An Employer's Guide*, by Joseph S. Adams, 2003.

*Overtime Ins and Outs: How to Comply with the FLSA*, by Julie Athey, 2004.

### ▼Planning

*Local Government Urban Forestry Toolkit*, (computer file), ICMA, 2004.

*Too Big, Boring, or Ugly: Planning and Design Tools to Combat Monotony, The Too-Big House, and Teardowns*, by Lane Kendig, 2005.

### ▼Transportation

*Still Stuck in Traffic: Coping with Peak-Hour Traffic Congestion*, by Anthony Downs, 2004.

*The High Cost of Free Parking*, by Donald C. Shoup, 2005. ▀

## See You at the AWC Conference!

Be sure to look for MRSC's booth at the 2005 AWC Conference in Kennewick, June 21-24. This offers a great opportunity to learn more about our research and consultation services and meet with MRSC staff members. We look forward to seeing you!



Municipal Research and Services Center  
2601 4th Avenue, Suite 800  
Seattle, WA 98121-1280

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