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Life Cycles of Boards

By Lynn Nordby, Public Policy and Management Consultant, Municipal Research and Services Center

I was attending a training session being conducted by the manager of our county-wide department of emergency management. He opened the session by asking each of the participants to state, not only the jurisdiction they represented, but also any volunteer affiliation outside of their primary employment to which they devoted time and energy. Nearly all present stated a specific affiliation or participation in one or more volunteer organizations serving their communities.

Since that time, I have reflected on my own public service career of over 30 years and the volunteer service organizations with which I have been involved. I noted some interesting themes common to the evolution of leadership of both public agencies and private nonprofits.

I believe the origins and evolution of these agency boards, whether volunteer or elected, share common patterns we can observe and learn from. Examining the relationship of the policy-makers to the organization and how the policy-making body develops and matures may help managers understand and recognize the phases of that process and how that development process affects the ability of the organization to fulfill its mission.

Two Nonprofits and a City

A Sheltered Workshop

While I was serving a city in the greater Seattle area, our city council was approached by the board of directors of an agency that provided skills training and employment experience for developmentally disabled adults. The state of Washington had grant money available for buying and renovating facilities for such agencies, provided the agency had a local government sponsor to apply for and administer the grant. This nonprofit had been renting space in a large warehouse from a bank that had repossessed it. The bank was looking for a potential buyer. The agency saw this as an opportunity to stop paying rent and have a permanent home. The bank saw an opportunity to dispose of a liability. The city council was promised that no city funds would be needed. The match would come from money that had already been raised and through a discount from the appraised value offered by the bank. The basic terms of the grant were easily satisfied, and the city council agreed to apply for the grant, take title to the property, and lease it to the nonprofit agency.

One of the terms of the grant was that the city had to maintain the agency (or another

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providing the same services) for a minimum of 20 years or turn the property back to the state. Without going into the financial details, suffice it to say the agency eventually fell into financial difficulty, and I was asked by the city council to join the agency's board of directors to help stabilize it. The city council reasoned that it was better to try that than to recruit and establish a new tenant that would meet the state's grant terms.

I quickly realized that the board had been initially made up primarily of the parents of many of the clients. Their motivation was the welfare, healthy development, and potential independence of their children. With that positive motivation, they had established this sheltered workshop and nurtured it through the first several years of operation. Now it appeared to be finally established in what they saw as a permanent home. Their intentions were good, and they accomplished a great deal. Eventually board membership began to turn over as founding members aged and were replaced. The type of commitment shared by board members with a personal stake in the organization was supplanted by new members who were required to make business decisions detached from the direct connection to the workers/clients. There was strain between long-time board members who viewed the work of the agency as a personal service to the clients and new board members who were grappling with the realities of trying to close the gap between the subsidy provided by state and federal agencies and the income derived from contracted piece work.

Without the vision and dedication of the founders to the goal of training and potential self sufficiency of their children, the agency wouldn't have existed. Yet without the evolution toward a more business-like model, the agency risked failure.

A Habitat for Humanity Affiliate

A second example of this aspect of organizational development involved the establishment of a Habitat for Humanity affiliate in the county in which the city I was serving was located. Looking for a way to put my personal values to work, as well as all those episodes of "This Old House" I'd watched, I sought out a meeting of the local board of Habitat for Humanity. As it turned out, they were in the process of preparing their charter application to Habitat for Humanity for official recognition. Although what I really wanted to do was pound nails, I jumped right in.

Once we received our charter, the really hard work began. As we expanded the board from the first few enthusiastic

volunteers, we recognized the need for many different skills to form the variety of committees necessary to raise funds and to recruit and prepare the future occupants for the responsibility of homeownership of the houses we intended to build.


As the board expanded, so did conflict. All those associated with the organization wanted just one thing, to be able to provide decent, affordable housing for people living in substandard conditions. With the variety of talents needed to meet the needs of the board, however, came a variety of interpersonal styles. New board members, recruited for their business acumen, were impatient with many of the older board members who were more motivated by altruistic goals. Success in meeting the real human needs required a strong business model that would show donors, vital to keeping

the projects affordable, that we were responsible and capable of achieving the goals we set. I knew they all wanted to succeed in eliminating poverty housing, but there were board meetings when an outside observer might not have been so sure. Hard noses ran headlong into tender hearts. Feelings were hurt. Some board members resigned. With perseverance, the organization moved through this phase and successfully built, and continues to build, many homes throughout the county.

The City

After multiple attempts over many years to gain a measure of home rule through incorporation or annexation, success was finally achieved when the voters approved, by a very narrow margin, an annexation to the adjacent small city, increasing the population nearly 850% overnight.

The small city had a council of five members under the laws of the state, but, with the increased population, the law required two additional councilmembers be appointed for a total of seven. Statutorily, the council could have asked for applicants, reviewed them, and appointed the two additional members directly. Instead, they announced they would hold an advisory election and appoint the two candidates receiving the highest number of votes. Approximately a dozen candidates filed for the election. Not surprisingly, reflecting the results of the annexation election, the top two vote getters were one of the leaders of the "Home Rule" committee and the former co-chair of the "No City" committee. The incumbent city council kept its promise and appointed both to seats on the new seven-member council. A clear majority of the new group had favored the annexation. In fact, it was essentially six to one. However, even the newly-appointed

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member formerly from the “No City” camp acknowledged that the election was over. While he had opposed the measure, he now believed it was his obligation to see that the new city did the best it could to keep the promises made during the campaign and create an efficient organization.

For the next eleven years, as issues and councilmembers came and went, the composition of the city council was largely drawn from a fairly large pool of citizens who had been involved in the home rule campaign. Throughout this time, even though there was turnover in the membership, a majority of the city council shared the experience of working toward home rule and getting the new city off and running.

With the passage of time and population growth, new members of the community became involved in the issues of the day and wanted a voice on the city council, hoping to influence public policy. Eventually, a majority of the city council was composed of individuals who did not share in the common experience of the home rule campaign. They had other concerns related to current issues important to them. A group that had been relatively collegial became more confrontational as the newcomers challenged the other councilmembers and the staff. A lot of time, energy, and money were spent trying to define roles and responsibilities and establish effective working relationships. Although the collegial bond shared by the council for many years was not a prerequisite to effective local government, once it was lost, much organizational energy was expended simply trying to figure out how to work together. There was nothing similar to the shared goal of

establishing the new city that the councilmembers once had in common.

True Believers, New Blood, Conflict

Each of these examples shares a common pattern. Beginning with a foundation of shared values and a focus on a common goal, whether it is social, political, or economic, the people involved initially join together for that primary purpose. These are what one might call the *true believers*. They are the visionaries willing to start organizations and institutions in order to achieve a goal they believe in.

At some point, whether from outside influences or because the founding group recognizes a need for additional skills, *new blood* is injected. Even when the injection is intentional and desired, there is a reaction. The founders may feel threatened by the questions, challenges, and ideas offered by the newcomers. They may perceive that the new members do not share their commitment to the principles on which the organization was founded. They may feel that their contributions are not recognized or appreciated. The new members sense these reactions as resistance and can become frustrated. Each faction feels that its contributions aren't valued, and original goals of the group that initially motivated its formation can fall victim to the *conflict*.

Recognizing that these stages can affect any organization allows the members of the board and the staff to anticipate them before change occurs and to take measures to integrate the new members. This is especially important when several new members

are added simultaneously or over a short period of time. Private, nonprofit boards may be able to do this more deliberately than public agencies with elected boards. Elections may tend to emphasize differences rather than commonalities but, nevertheless, it is preferable to make a concerted effort rather than to do nothing. It may be helpful to provide formal and informal orientation sessions and make available as much background information as possible. Staff members who have not been involved in the electoral process can make presentations and provide orientation.

Acknowledge that there will be a difference in the perspective of the continuing members versus the new members and talk about it. Concentrate on what they may already have in common and build on that. This should be recognized as more than just a “get acquainted” exercise, as important as that may be. The purpose is not, as a former city councilmember complained, to “stand in a circle, hold hands, and sing Kum ba yah” at the end of the day. Focusing on the organization's reason for existence and what skills the individuals bring to it can minimize the potential for trivializing this process.

Regardless of the tensions, misunderstandings, and conflicts that inevitably seem to accompany the life cycle of policy-making bodies, all the members share an underlying goal, even if they have vastly different visions of how to achieve it. If not, they wouldn't have joined in the first place. Keeping that first and foremost can help you through. ■

MRSC Celebrates 75 Years

Wow! 75 years! That's a long time, and we are proud!

The year 2009 will mark the 75th year that our organization has been serving local governments in the state of Washington. The Bureau of Governmental Research, which later became known as Municipal Research and Services Center (MRSC), was established at the University of Washington in 1934 to help local governments with the harsh times they faced during the Great Depression. Our research during that startup period was instrumental in aiding cities with issues such as applications for federal grant programs, research reports to improve efficiency, direct consultation about particular local issues, and many other functions that helped cities cope with the economic stresses of the times. MRSC,

a non-profit, independent organization, was established in 1969 to continue these programs. In 1997, Washington counties joined cities in funding MRSC, and in 2007, special districts were added.

MRSC's mission is "working together for excellence in local government through professional consultation, research, and information services." For 75 years, our services have aided local efforts to provide more effective and efficient local government services. Because citizens expect government to be open, transparent, inclusive, fair, responsible, and responsive, MRSC has assisted local governments in facilitating good governance.

Thomas Jefferson believed that democracy at the national level could

not exist unless local democracy is strong. MRSC plays an important role in supporting local democratic government in Washington State. That is the root of what we do and for that we are proud!



Come visit us on our website in January when we kickoff our 75 years of services to local governments in the state of Washington. We will host an interactive display that will revisit MRSC's legacy of service and also highlight the generous support we have received from local governments.

Share Your Story

How Has MRSC Helped You?

We have a special section on the home page of our website for you, our valued customers, to share your stories about how our advice or information has helped you and your community. Won't you take a moment to go to our website at www.mrsc.org, find the section "Share Your Story" on the right side of the page, and click on the link? We would love to hear from you!

Irresponsible Contractors?

By John Carpita, PE, Public Works Consultant, Municipal Research and Services Center

So, your agency or company is still using its “tried and true” boilerplate language for public works construction contracts in Washington State. You know, the language in your bidding documents that gives some basic definitions (or tries to) of what constitutes a responsible contractor. There is usually a section that asks contractors to list previous public works for the past five years and to provide contact information so your project engineers can call these references and see how the contractors performed on those contracts. When the agency gets a response or two that says “we don’t want this contractor working within 50 miles of our city,” then it seems easy to recommend that the council/commission reject that bidder as not responsible.

Who-o-o-a! Cash your reality check before it bounces!

You need to update your boilerplate to reflect the reality of RCW 39.04.350, the “new” bidder responsibility statute that became effective on July 22, 2007. So, what does RCW 39.04.350 say? And why is it a big deal? Well, before RCW 39.04.350 came along, allowable responsibility criteria were primarily defined by the courts, not by statute, and were based on very fact dependent, individual court cases. RCW 39.04.350 establishes mandatory bidder responsibility criteria and authorizes adoption of supplemental bidder responsibility criteria and RCW 39.06.020 applies the mandatory responsibility criteria to subcontractors. Both statutes apply to all public works contracts in Washington State. In this year’s “Purchasing, Bidding, and Contract Management Workshops” that Mike Purdy and I co-teach, I have been surprised by the number of agencies and consultants not aware of these statutes.

The mandatory and subcontractor responsibility criteria parts are very straightforward. A contractor must meet these criteria before you can accept their bid:

- be a registered contractor at the time of bid submittal (RCW 18.27.020);
- have a current Unified Business Identifier number;
- have industrial insurance coverage;
- have an employment security department number;
- have a state excise tax registration number; and
- never been disqualified from bidding under RCW 39.06.010 or 39.12.065(3).

RCW 39.06.020 requires contractors to verify that subcontractors of any tier meet these criteria as well and that they are also licensed as an electrical contractor or elevator contractor, if required.

RCW 39.04.350 allows your agency to adopt relevant supplemental bidder responsibility criteria for a particular project. The bidding documents must include the adopted supplemental criteria and:

- a basis for evaluation;
- a deadline for bidder to submit responsibility documentation; and
- a deadline for bidder to appeal a “not responsible” determination

A potential bidder may request changes to the supplemental criteria, and the agency is to evaluate the request. If it agrees to change the criteria, it must issue an addendum.

Supplemental bidder responsibility criteria describe the experience and/or certification requirements or qualifications that must be met by the low bidder, its subcontractors, suppliers, or employees in order for the bidder to be considered responsible and thus awarded the project. These criteria must be objective, apt, and clearly related to the specific project out for bids. The bidding documents must include an appeal process so a bidder can appeal a determination that he/she is not responsible.

So, what is the problem, you are asking yourself? This is all good stuff!

Reality bites hard in three big ways:

One – If your agency does not adopt and apply supplemental criteria under RCW 39.04.350, then it can only apply the mandatory criteria, which means that your current boilerplate language requesting references, experience, equipment, financial resources, etc. is of no value. This does not mean you cannot ask for this information, but it does mean that you must fit it into the framework of supplemental criteria.

Two – If you adopt and apply supplemental criteria under RCW 39.04.350 to a project, then a bidder must meet all the criteria in order to be considered responsible. You should not just develop new boilerplate language; supplemental responsibility criteria must be tailored to each project, unless you can develop criteria that are relevant for almost all projects. Look at the relationship of your responsibility criteria to the bidding pool for each project. Consider the necessity for qualifications and the aptness of each criterion.

Three – If you adopt and apply supplemental criteria under RCW 39.04.350 to a project, then you must ask bidders to show that they meet those criteria. If you ask all bidders to submit documentation with their bid and your favorite contractor - who also has the lowest bid - doesn’t submit his/her documentation, then the bid is non-responsive. Do not require that bidders submit this information with their bid, but rather within a time specified in the bidding documents (say, 24-48 hours after the bid deadlines). Use a structured form to collect information from the two or three lowest bidders. If a bidder fails to supply information within the time specified in the bidding documents, the agency may base determination of responsibility on any available information related to the

supplemental criteria, provided the agency has independent knowledge that the bidder meets the criteria, or find the bidder not responsible.

If you determine, after evaluating a bidder's submittals or other information, that he/ she is not responsible, you must provide your reasons in writing. The bidder may appeal within a given time specified in the bidding documents and submit additional information. The agency must consider this additional information, but if it feels the bidder is still "not responsible," it issues a final determination, but it must not award to another bidder until two business days after the bidder receives this final determination.

Resources to help you adapt to the "new" reality of RCW 39.04.350 include:

- "Suggested Guidelines for Bidder Responsibility" on the CPARB website at <http://www.ga.wa.gov/CPARB>
- Michael E. Purdy, Contracts Manager, University of Washington Capital Projects Office, (206) 221-4235, mpurdy@u.washington.edu
- Ronald R. Leaders, Contract Solutions Group, (206) 463-7487, rlleaders@contractsolutionsgroup.com (See "New Responsibility Criteria Available to Improve Construction Bidding Documents" in the spring 2008 issue of *Washington Public Works*)
- John W. Carpita, PE, MRSC Public Works Consultant, 206-625-1300, jcarpita@mrsc.org
- There will be a pre-Spring APWA Conference workshop on "Bidder Responsibility and Bid Responsiveness" on April 7, 2009 at the Tacoma Convention Center.▶

New Acquisitions

New resource materials now available

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. If you would like to borrow one or more of these publications, please contact Peter Breen in our library at (206) 625-1300 or library@mrsc.org.

Economic Development

"Infrastructure 2008: A Competitive Advantage," Ernst and Young, *Urban Land Institute*, 2008 [ED 4.1000 I54 2008]

"Harnessing the Power of the Arts: Capitalizing on the Economic Power of the Creative Industry," by Robert Lynch, *Public Management*, October 2008 [ED 5.6000]

Environment

Growing Cooler: Evidence on Urban Development and Climate Change, by Reid Ewing, 2008 [EN 10.6000 G86 2008]

Information Services

"The Need for a Dynamic Rural Web Presence," by Paul Schuytema, *Research Rural Report*, Illinois Institute for Rural Affairs, 2007 [IS 4.2000]

Parks

Parks, Recreation and Open Space Long Range Plan, city of Snohomish, 2008 [P 3.2000 S6 P37 2007]

"Promoting the Benefits of Parks and Recreation," by Chris Brewer and Ann Austin, *Illinois Municipal Review*, June 2008 [P 0.0009]

Personnel

"Determining Whether a Worker is an Independent Contractor or an Employee," by Diane M. Juffras, *The Municipality* [Wisconsin], December 2008 [PE 2.8000]

"Update: New Legal Developments Affect Employers with Employees in the Military," by William R. Hanna, *Ohio Villages and Towns*, September/October 2008

Planning

"The Zoning of Religious Institutions in the Wake of RLUIPA--A Guide for Planners," by Adam Kingsley, *Zoning Practice*, September 2008 [PL 8.3740]

"Zoning Tools: Conditional Uses and Special Exceptions," by Daniel M. Olson, *The Municipality* (Wisconsin), October 2008 [PL 8.5300]

Public Works & Utilities – Sewer & Wastewater

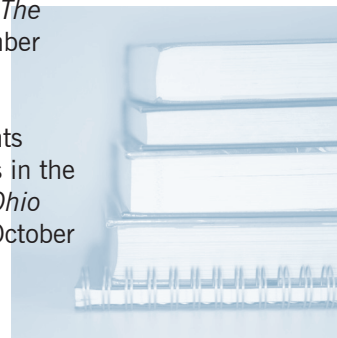
"The Future of Stormwater Management: Bioswales and Environmentally Friendly Stormwater Control," by Jeremy C. Lin and Dean M. Frieders, *Illinois Municipal Review*, October 2008 [US 5.0000]

Stormwater Management and Site Development Manual, Pierce County, 2008 [US 5.5100]

Transportation

Trip Generation, 8th edition, Institute of Transportation Engineers, 2008 [T 4.1100 T75 2008]

"Walkable Community...Is Much More than Just Sidewalks: Common Characteristics of Pedestrian Friendly Communities," U.S. Department of Transportation, Federal Highway Administration [brochure] [T 6.2000]▶



Heads Up

Emerging information for local government

The Ultimate in Streetlight Design

In 2004, New York City's Department of Design and Construction, in partnership with the city's Department of Transportation, launched an international design competition for a new streetlight design for the city. The competitors were to create an innovative, state-of-the-art design that responds to the unique diversity of the city's architecture and urban landscape while meeting the technical performance standards for a New York City streetlight.

Utilizing LED lighting technology, the winning design was created by architects Thomas Phifer and Partners and Office for Visual Interaction, Inc. (OVI) of New York City. The streetlight has a slim, elongated profile enabled by the tiny size of its LED light source. (See picture on OVI website – link below.) The thin arc of the luminaire itself provides the necessary surface area for housing and cooling the LED. Replacing a sodium lamp with LED lights is expected to reduce energy consumption by 25-30%.

In August 2008, the city contracted with OVI to install and test six L.E.D. street lights. The installation is targeted for spring 2009.

Further Reading

- "New York City Launches Competition in Search for New Streetlight Design," *New York City Mayors Archive*, January 2004 http://www.citymayors.com/made4cities/nyc_streetlights.html
- "LED Design Wins New York City Streetlight Competition," *LEDs Magazine*, December 2004 <http://www.ledsmagazine.com/features/1/12/2>
- "Lighting the Big Apple with L.E.D.'s," by Eric A. Taub, *New York Times*, August 20,

2008 <http://bits.blogs.nytimes.com/2008/08/20/lighting-the-big-apple-with-leds/>

- "New York Architect Firm, LSG to Build Prototype LED Streetlights," *LEDs Magazine*, August 29, 2008 <http://www.ledsmagazine.com/news/5/8/23>
- New York City Street Light (picture and description), Office of Visual Interaction http://www.oviinc.com/projects/New_York_Streetlight/

Seismic Sirens on Public Safety Vehicles – The Rumbler

Loud music, the use of ear phones, and other distractions often prevent drivers from hearing an approaching emergency vehicle's siren. Federal Signal has introduced a new concept, The Rumbler, which uses low-frequency sound waves to accompany the traditional siren. The sound waves can be felt up to 200 feet away. The Rumbler has the ability to interact with 100/200-watt siren amplifiers and provide secondary, low frequency duplicate tones. Low frequency tones have the advantage of penetrating and shaking solid materials. Drivers may not hear the siren, but they will feel the sound waves.

Further Reading

- "The Rumbler," Federal Signal <http://www.fedsig.com/products/index.php?id=253>
- "Seismic Siren Shakes Up Distracted Drivers," *Wired Magazine*, 16.12, December 2008 http://www.wired.com/gadgets/miscellaneous/magazine/16-12/st_subsiren

King County's Award-Winning Recycling and Transfer Station

King County's Recycling and Transfer Station in Shoreline has won several awards since it reopened in February

2008 following a two-year-long, \$24 million, ground-up redevelopment. The facility's energy-saving and sustainable features include:

- Solar panels that generate electricity, even during cloudy days, and provide up to 5 percent of the building's energy needs.
- The facility uses natural daylight as the primary light source through the translucent wall panels and overhead skylights, reducing energy costs by 50 percent a year.
- A natural ventilation system pushes air through the building, reducing energy needs for ventilation by 80 percent.
- Low volatile organic compound paints and adhesives contribute to healthy indoor air.
- Green building materials include recycled content steel, Forest Stewardship Council-certified wood, and fly ash concrete.
- Landscaped bioswales slow water flow to reduce stream bank erosion along Thornton Creek, a nearby salmon-bearing stream.
- Plants filter contaminants and sediment from surface water runoff.

The U.S. Green Building Council awarded the LEED platinum certification to the Recycling and Transfer Station. This is the only solid waste processing facility and the only industrial building in the country to be awarded this level of certification. *Waste News* honored King County's Solid Waste Division with the 2008 Environmental Award in the public sector category. The Northwest Construction Consumer Council's "Grand Award – Project of the Year" and the "Green Project of the Year" awards were also given to the project.

Additional Reading

- “New Shoreline Recycling and Transfer Station Earns Rare National Top Rating for Green Building,” *King County Department of Natural Resources News*, September 12, 2008 <http://www.kingcounty.gov/environment/dnrp/newsroom/newsreleases/2008/september/0912Shoreline-LEED-Platinum.aspx>
- “Shoreline Recycling Station is a Model of Green – and Platinum,” *Daily Journal of Commerce*, November 24, 2008 <http://www.djc.com/news/en/12000411.html>
- “Reduce, Reuse, Recycle,” by Heather Larson, *American City and County*, October 2008 http://americacityandcounty.com/pubwks/solid_waste/reduce_reuse_recycle/

Salt Shortage?

Across the nation, the costs of salt used to keep public roads free of ice have been significantly increasing and

supplies have been decreasing. According to the Salt Institute, last year’s heavy snows and high salt demands left both customers and salt miners tapped out at the end of the winter. The industry suffered from a shortened shipping season and a competition for barges, trucks, rail cars, and ships. While there is an inexhaustible supply of salt, the logistics bottlenecks and current market conditions are augmented this year by a severe capacity crunch of historic proportion as the industry rebuilds stock.

The Salt Industry Fact Sheet says, “While no one can predict the weather and, therefore, the actual need for deicing salt, either for roadways and parking lots or for home sidewalks and driveways, the current concern about the ability of salt companies to bid on business for bulk salt for roads and parking lots should have no impact on homeowners’ access to bagged deicing products. Within salt companies, these products are handled through different marketing channels and the packaged product group would have registered its order to the mines for the quantity it wants to bag for consumers.”

Further Reading

- “Will There Be Enough Road Salt This Winter? ‘Why No Bids?’ A Salt Industry Fact Sheet, Salt Institute President Richard L. Hanneman, September 17, 2008 (with addenda) http://www.saltinstitute.org/pubstat/salt_shortage-2008.html
- Pacific Northwest Snow Fighters Association – Technical experts that develop specifications for chemicals related to snow and ice control <http://www.wsdot.wa.gov/partners/pns/default.htm>
- Application of Deicers – MRSC website <http://www.mrsc.org/subjects/pubworks/snow.aspx#Deicers>

Ask MRSC

Summaries of recent inquiries answered by MRSC consultants

May a collective bargaining agreement have a 4-year term?

Yes. As of 2007, collective bargaining agreements may be up to six years in duration. See RCW 41.56.070.

May the mayor in a mayor-council code city break a tie vote on a procedural motion to amend the motion that adopts an ordinance?

Yes. Under RCW 35A.12.100, the mayor has tie-breaking authority “with respect to matters *other than the passage of any ordinance*, grant, or revocation of franchise or license, or any resolution for the payment of money.” (Emphasis added.) A vote on a motion that has the affect of amending a motion to adopt an ordinance is a procedural step and does not, in our opinion, constitute a vote on the ordinance itself, such that the mayor can break the tie vote. It is similar to a secondary or incidental motion, and MRSC takes the position that a mayor has a tie-breaking vote on such motions. It is only the actual vote to adopt the ordinance that the mayor may not break a tie vote.

Is there a requirement that all interlocal agreements must be posted on a city website?

No. There is a requirement related to this in RCW 39.34.040, as amended in 2006, providing that, prior to its becoming effective, an interlocal agreement must “be filed with the county auditor or, alternatively, listed by subject on a public agency’s website or other electronically retrievable public source.” So, posting of the agreement on the agency’s website is an alternative that is now available. The requirement before was that all interlocal agreements had to be filed with the county auditor. Posting on a website is

an easier way to comply and not a new burden.

Are cities required by the state to provide police, fire, and emergency medical services to their citizens?

As to law enforcement, there is very little guidance in state law. We have interpreted statutes requiring cities to have a police chief or town marshal as consequently requiring some degree of law enforcement services. (See RCW 35.23.021 and RCW 35.23.161 for second class cities; RCW 35.27.070 and RCW 35.27.240 for towns; RCW 35A.12.020 and RCW 35A.13.090 for code cities.) Though, in AGO 1996 No. 7, the Attorney General’s office asserted that “[e]ach classified and code city in the state is constitutionally or statutorily entitled, but not legally obligated, to appoint a police chief and other police officers, and to form a police department.”

However, there is no particular level of law enforcement that cities are required to provide. In AGO 1990 No. 4, the Attorney General’s office opined that the county sheriff’s duty to enforce state law applies equally in incorporated and unincorporated areas of the county and that, if a city is unable to provide adequate police protection, the county sheriff must take this factor into account in allocating the resources of the sheriff’s office. Obviously, financial considerations are probably the most significant considerations for cities when they consider what level of law enforcement services they will provide. Many cities contract with their county sheriff’s department for law enforcement within their boundaries, so that they may obtain a specified level of service.

As to fire protection, cities and towns are not legally required to provide such. Various statutes provide that cities and

towns have the power or authority to provide fire protection services, but there is no statutory language specifically mandating that they establish fire departments. (See e.g., RCW 35.22.280(22) for first class cities; RCW 35.23.440(21) for second class cities; RCW 35.27.370(6) for towns; but see RCW 35.103.030 and RCW 35A.92.030, regarding performance measures for fire departments.)

Nevertheless, cities and towns are required to enforce the International Fire Code (IFC), which is part of the state building code that is in effect in all cities and towns. (See RCW 19.27.031; RCW 19.27.050.) The IFC, at Sections 103.1 and 103.2, requires the appointment of a “fire code official” to enforce the provisions of the code. The IFC, however, does not require or address fire protection (fire fighting) activities.

Cities are not required to provide ambulance/emergency medical services.

May transportation impact fees be used to fund a transportation impact fee study update for that same area?

Transportation impact fee money cannot be used for a study update. RCW 82.02.050(4) states that impact fees may be “spent only for the public facilities as defined in RCW 82.02.090 which are addressed by a capital facilities plan element” The definition of “public facilities” in RCW 82.02.090(7) is:

“Public facilities” means the following capital facilities owned or operated by government entities: (a) public streets and roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and (d) fire protection

facilities in jurisdictions that are not part of a fire district.

A fee study is not a public facility.

May a city parks department charge more for a program for disabled persons to recoup costs associated with providing additional personnel and services necessary to provide the program for disabled persons?

Clearly, under the American with Disabilities Act (ADA), the city may not charge disabled persons more for the cost of accommodating the special needs of such a group. ADA regulations, specifically 28 CFR §35.130(f), provides:

A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to

cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

However, this does not mean that the city cannot recover those costs through recreation program fees that all participants are responsible for. In *The Americans with Disabilities Act, Title II Technical Assistance Manual*, the Department of Justice discusses this regulation prohibiting surcharges:

II-3.5400 Surcharges. Although compliance may result in some additional cost, a public entity may not place a surcharge only on particular individuals with disabilities or groups of individuals with disabilities to cover these expenses.

ILLUSTRATION: A community college provides interpreter services

to deaf students, removes a limited number of architectural barriers, and relocates inaccessible courses and activities to more accessible locations. The college cannot place a surcharge on either an individual student with a disability (such as a deaf student who benefited from interpreter services) or on groups of students with disabilities (such as students with mobility impairments who benefited from barrier removal). ***It may, however, adjust its tuition or fees for all students.***

(Emphasis added.)

For these reasons, we recommend that the city fold such additional costs into the costs of the entire recreation program and, if necessary, adjust the fees for all programs.

How to “**Ask MRSC.**” Assistance from MRSC may be obtained by **Phone** (206) 625-1300 or 1-800-933-6772; **Letter** 2601 4th Avenue, Suite 800, Seattle, WA, 98121-1280; **Fax** (206) 625-1220; or **E-mail** 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.

Best wishes
for a new year of happiness
in a world of peace.



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