

# Municipal Research News

Municipal Research and Services Center of Washington

Fall 2005

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## Job References *Are they safe?*

Many employers are reluctant to give job references for fear they will be sued for defamation based upon the information provided. This is because an employer who makes false statements about current or former employees to a prospective employer is subject to potential liability under a defamation theory for the damage caused to the employee by the false statements. While employers did not intend to provide "false" information, they simply did not want to get into a debate (and litigation) about whether the reference included any false information. Thus, many employers provide only the employee's job title, last date of employment and most recent wage rate when responding to a reference check. As a result, it is increasingly difficult for employers to obtain good reliable information regarding potential new employees. New legislation (Chapter 103, Laws of 2005) clarifies that employers cannot be held liable for providing job references unless they provide information that is not only false, but is deliberately misleading or made with reckless disregard for the truth.

The new legislation, which became effective July 24, 2005, provides that an employer will be presumed to have provided a job reference in good faith and shall be entitled to immunity if the following is true:

(1) The information is provided at the request of another employer or employment agency; and (2) The disclosed information relates to:

- the employee's ability to perform his or her job;

- the employee's diligence, skill, or reliability in carrying out job duties; or
- illegal or wrongful acts committed by the employee when related to job duties.

The presumption of good faith may be rebutted by clear and convincing evidence that the information disclosed was knowingly false, deliberately misleading, or made with a reckless disregard for the truth. The statute advises that employers should keep a written record of the identity of persons or entities to whom the disclosure is made for a minimum of two years from the date of the disclosure. However, if such a record is kept, it must be included in the employee's personnel file, which the employee has the right to inspect.

The new legislation makes it clear that an employer cannot be held liable for responding truthfully to a request for a job reference; however, the question then becomes whether an employer has an obligation to inform a potential new employer about problems with the employee. The Washington Court of Appeals has held that there is no common law requirement to fully disclose all potentially negative information to a potential new employer. Thus, while an employer can be held liable for making misrepresentations or false statements, there is no liability for omitting potentially negative information when providing a reference. The one possible exception is where the information withheld would disclose that the employee is a threat to the safety of others.

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Municipal Research News is published quarterly by the Municipal Research and Services Center  
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## Job References continued from page 1

The leading case on this is *Richland School Dist. v. Mabton School Dist.* 111 Wn. App. 377 (2002). The Washington Court of Appeals addressed the question of what obligation an employer has to reveal negative information about a former employee to a prospective employer. The Mabton School District had employed a custodian who resigned in exchange for the dismissal of charges of child molestation. Mabton officials believed that the charges were false and a product of a nasty divorce battle. While the custodian had been reprimanded for making inappropriate comments, he had not physically harmed any students during his employment by Mabton. Mabton officials wrote letters of recommendation on the custodian's behalf without mentioning the molestation charges.

As part of a grievance dispute two years after hiring the custodian, Richland was alerted to the prior molestation charges. It then decided that he had been dishonest about his reasons for leaving Mabton, and terminated his employment. The custodian grieved his termination and an arbitrator ordered him reinstated with back pay. Richland chose instead to pay the custodian a six-figure settlement in exchange for his resignation. It then sued the Mabton School District, alleging that Mabton negligently

misrepresented the custodian's employment record.

Following summary judgment rulings in the trial court, the Washington Court of Appeals was confronted for the first time with the issue of whether a former employer may be held liable for failing to disclose negative information about a former employee. Because the court found that the reference letters supplied by Mabton officials did not contain false information, it concluded that Mabton could only be held liable if it had an affirmative duty to disclose negative information. The court first determined that there is no "quasi-fiduciary" relationship between former and potential employers that imposes such a duty. The court then considered whether to adopt a standard used in some other states through which liability may be imposed on a former employer for failing to disclose information where the safety of others may depend on the accuracy of the information in the employee recommendation. The court concluded that adoption of this theory was not warranted in light of the facts of the case since there was no showing that the custodian actually presented a risk of harm to students.

The Richland case suggests that failing to reveal negative information (as opposed

to deliberately giving false information) is not likely to result in liability, at least where the withholding is not likely to lead to physical harm of others. It does not mean that employers cannot, as a matter of policy, decide to provide truthful information about former employees. And, in fact, the employer cannot be held liable for doing so under the new legislation. ▀

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## New Web Page I

### *Infill development: completing the community fabric*

Infill development is the process of developing vacant or under-used parcels within existing urban areas that are already largely developed. Most communities have significant vacant land within city limits, which, for various reasons, has been passed over in the normal course of urbanization. Ideally, infill development involves more than the piecemeal development of individual lots. Instead, a successful infill development program should focus on the job of crafting complete, well-functioning neighborhoods. Successful infill development is characterized by

overall residential densities high enough to support improved transportation choices as well as a wider variety of convenience services and amenities. Infill development can return cultural, social, recreational and entertainment opportunities, gathering places, and vitality to older centers and neighborhoods.

Attention to design of infill development is essential to ensure that the new development fits the existing context and gains neighborhood acceptance. A cooperative partnership between govern-

ment, the development community, financial institutions, non-profit organizations, neighborhood organizations, and other resources is essential to achieve infill success.

In the long view, the public and private costs of continuing to favor sprawl development patterns will far exceed the resources needed now to facilitate infill development. See MRSC's web page on infill development at <http://www.mrsc.org/Subjects/Planning/infilldev.aspx>. ▀

# ASK MRSC

Summaries of recent inquiries answered by MRSC consultants

## **ANNEXATION – Does RCW 28A.335.110 prevent school district property from being included within an area proposed for annexation by the election method?**

No. RCW 28A.335.110, which limits the authority of a school district to petition for annexation only when the annexation is limited to its property, has no relevance to an annexation by the election method. That statute has to do only with petitioning for annexation and the authority of a school district to do so. Since an annexation election is decided by registered voters, the school district has no authority it can exercise in an election method annexation.

## **IMPACT FEES – Have any jurisdictions imposed impact fees under chapter 39.92 RCW (Local Transportation Act)?**

MRSC is not aware of any jurisdictions that have done so. In the past, Bellevue and King County started to develop transportation impact fee programs under chapter 39.92 RCW, but following the adoption of the Growth Management Act, these jurisdictions opted to use the authority of chapter 82.02 RCW instead. The GMA impact fees authorized under chapter 82.02 RCW are a bit more flexible and less restrictive than those that could be imposed under the Local Transportation Act.

## **MAINTENANCE OF PARKING/PLANTING STRIP – May a city require that property owners maintain parking or planting strips?**

In our opinion, it may. A somewhat similar issue was addressed in the case of Northern Pacific Railway Company v. Adams County, 78 Wash. 53, 58 (1914). There the court determined that owners of property adjacent to a street or highway are responsible for those lands up to the center of the highway, including the responsibility for destroying noxious weeds. The court went on to state that

the legislature “may require property owners within the state to cut noxious weeds to the center of highways in front of their property” and such an ordinance would not be unconstitutional as it is part of the government’s police powers. The court likened its analysis to the requirement that property owners are responsible for the removal of snow and ice from abutting sidewalks, stating that “the rule which permits the abatement of the one nuisance will also permit the abatement of the other.” In addition, RCW 35.21.310 authorizes cities to adopt ordinances that require property owners to remove or destroy grass, weeds, etc. that are growing on or overhang any sidewalk or street or that pose a fire or public safety hazard.

## **PERSONNEL – Is a city or county required to collect union dues if that issue is not addressed in the union contract.**

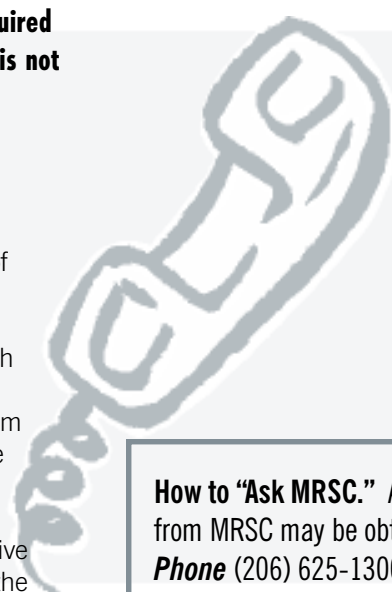
This issue is covered by RCW 41.56.110, which states:

Upon the written authorization of any public employee within the bargaining unit and after the certification or recognition of such bargaining representative, the public employer shall deduct from the pay of such public employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

Basically, this statute provides that a public employer, such as a city or county, is required to deduct from the employee’s pay the monthly dues to a union upon written authorization of the employee. This statute does not require that the labor contract provide for such collection of dues by the employer, and it does not allow the public employer to avoid collecting dues if it desires not to.

## **PUBLIC DISCLOSURE – Must a city or county disclose private e-mail addresses found in correspondence it receives, or may it redact such information?**

In our opinion, it must disclose. While the public disclosure statutes exempt the disclosure of certain residential addresses, such as the residential addresses of an agency’s employees and volunteers and those from lists of utility customers, there is no general exemption for addresses and, in any case, an e-mail address is not a residential address. To conclude otherwise would require an expansive reading of the exemption for “residential addresses,” which is contrary to statute that requires public disclosure exemptions be “narrowly construed.”



**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.

# HEADS UP

## Emerging information for local government

### Flexcar Motor Pool

Portland's Bureau of General Services is partnering with Flexcar, a Seattle-based company, in an experiment to replace the municipal motor pool with car-sharing accounts. Over the next year, the city will try phasing out its 16 motor pool sedans. Instead of using a government car, city officials and staff will check out a Flexcar. *Oregonian*, August 5, 2005.

### COPS Program Effective in Crime Reduction

In June, the Government Accounting Office released the interim results of a study to determine whether and how much the \$5 billion investment in the Community Oriented Policing Services (COPS) program between 1994 and 2001 contributed to the decrease in crime rate during those years. The Department of Justice began making community policing grants to state and local law enforcement agencies in December 1993.

The total effect of COPS grant expenditures on crime rates depended upon the level of all COPS grant expenditures in a given year, and the level of expenditures varied from year to year. The results of a sample analysis were used to estimate the annual reductions in crimes attributable to COPS funds nationwide.

For the years 1998 through 2000, it was estimated that COPS grant expenditures were associated with reductions in index crimes from their 1993 levels that ranged from about 200,000 to 225,000 index crimes. About one-third of these were violent crimes and about two-thirds were property crimes. In 1998, it was estimated that the crimes reduced due to COPS grant expenditures amounted to about 8 percent of the total decline in index crimes and about 13 percent of the total decline in violent crimes from their 1993 levels. During the years 1999 and 2000, it was calculated that the COPS-funded reductions in crimes accounted for about 5 percent of the total reduction in index crimes and about 10

percent of the total reduction in violent crimes from their 1993 levels.

The final report is expected in the fall of 2005. *Interim Report on the Effects of COPS Funds on the Decline in Crime during the 1990s*, Government Accounting Office, June 2005. <http://www.gao.gov/new.items/d05699r.pdf>

### King County Adopts a Healthy Incentives Program

The county and its employee unions created new 2007-2009 health insurance plans for employees and their families called Healthy Incentives. While the covered services provided by the Healthy Incentives program remain the same, a participant's out-of-pocket expenses, such as deductibles and co-pays, will depend on active participation and the healthy actions individuals choose to take. The goal is to encourage employees to adopt healthy behavior and save costs. The voluntary Healthy Incentives program ensures everyone will receive the same benefit package. However, participants can make healthy choices that can help reduce out-of-pocket medical expenses. Some of these choices include participating in annual, confidential wellness assessments and follow-up programs such as disease management programs. [http://www.metrokc.gov/employees/health\\_matters/hip.aspx](http://www.metrokc.gov/employees/health_matters/hip.aspx)

### Where the Tax Money Goes – Educating Citizens

Increasingly, citizens are viewing tax and/or fee increases with distrust. What is the city/county doing with all our money? The budget shows the expenditures, but the average person probably will never see the budget. Many jurisdictions post their budgets on the web, but unless the content is sectioned into smaller computer files, its readership may be limited.

Several jurisdictions are using the web to respond to the question, where does the money go? Here are some examples illustrating how to communicate the

information. (Note: users of Windows XP may need to download the files to view contents.) Included also are explanations about spending cuts and requests for additional funding that provide details as to how the money will be spent. It is thought that when citizens are provided with a plan, they may be more apt to vote in a tax increase. Budget messages presented as documents separate from the budget can be an effective way to summarize the revenue and expenditure position of the city in a narrative form. Several cities post quarterly or mid-year financial reports on the web.

- **Bellevue – Where the Money Comes from – and Where it Goes** – A short article in "Its Your City," June 2005, shows the source of general fund revenue and its allocation by percentages. The charts (in the form of \$ bills) are accompanied by short lists of major revenue sources and expenditures. <http://www.cityofbellevue.org/localservices/News/pdf/JUN2005Issue.pdf#Page=3>
- **La Conner – Do you Know Where your Taxes Go?** Three pages (8-10) in the 2005 budget present tax information in simple terms. *Do You Know Where your Sales Taxes Go?* is a chart that shows sales tax distribution of 7.9 cents on each dollar: Washington State 6.5 cents, Town of La Conner 1.0, Skagit Transit .2, Criminal Justice .2, Emergency Communication .2. The page *YOUR Property Tax Dollar Serving YOU* explains the city's share of the property tax, how much of the budget comes from the property tax, and how the remainder of the budget is funded. The last page of the series, *What do YOU get for YOUR property tax dollar?*, shows what property owners receive for a monthly expenditure on a house valued at \$100,000. [http://www.laconner.net/uploads/2005\\_Budget-PDF.pdf#Page=15](http://www.laconner.net/uploads/2005_Budget-PDF.pdf#Page=15)

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- **Shelton – Where Do Your Tax Dollars Go?** One page provides information on the distribution of property tax dollars by school district area (Shelton and Sunnyside). A second page provides information on the street fund, including gas tax, general fund, grant revenues, LIDs, and capital construction. <http://www.ci.shelton.wa.us/Tax%20Dollars.htm>
- **Port of Bremerton – How is the Port Spending Your Tax Dollars?** These words appear in a box on the Port's home page with the following text: "The Port's main mission is economic development, which is, of course, providing buildings, infrastructure, facilities and programs for businesses and employers, who in turn hire people and provide employment. We use our limited tax dollars to cover general operations and capital project costs. The Port strives to keep operating costs as low as possible without sacrificing maintenance of facilities. Our long-term goal is to reduce reliance on taxes to cover operations and use those dollars to provide capital improvements for the Port and the community." There are links to meeting agendas, minutes, and the budget. <http://www.portofbremerton.org/>
- **Spokane Budget Calculator** – While the city of Spokane leaders struggle to determine what services to fund for 2006, citizens can tackle those same budget issues using an online tool on the city's web site called the "Budget Calculator." Citizens can see detailed explanations of all the services the city provides using general fund dollars—that's tax dollars, primarily sales tax, property tax, and utility tax. And they'll see how much money the city's department managers have asked for to provide each of those services. <http://www.spokanecity.org/services/articles/?ArticleID=1235>
- The **Spokane Valley** web site presents a calculator similar to Spokane's called "My Priorities - Budget Calculator." <http://www.spokanevalley.org/sub.aspx?id=256>
- **Richland Mid-Year Budget Cuts** – City council and staff used a careful, conservative approach to develop Richland's 2005 budget. This included combining and eliminating positions and reducing other operating costs. Since council adopted the 2005 budget late in 2004, the city has received financial projections for 2007-2008. These projections identified substantial deficits in 2007 and 2008. Consequently, the city made another round of 2005 budget reductions for travel, meeting expenses, tuition and conferences, and contract and seasonal employees totaling \$426,000. City council and staff expect to make further budget reductions this year, including the elimination of six full-time positions, and are planning ahead for 2006-2008. Planned increases in the city's share of the mandated state retirement program will represent an additional \$624,000 in 2006, \$878,000 in 2007, and \$666,000 in 2008. <http://www.ci.richland.wa.us/RICHLAND/info/index.cfm?PageNum=154&CFID=858456&CFTOKEN=22117638>
- **City of Bingen Proposed Sales Tax Increase** – Bingen provides a one-page explanation of the proposed sales tax. The city of Bingen is looking for a way to continue to provide funding for community development. It is considering an increase of one-half percent in the city's sales tax beginning January 1, 2006. The explanation tells what the fund does, explains current funding, and what the additional tax will do. The funds from the additional one-half percent increase in sales tax will not be used to fund staff salaries and benefits or day-to-day operations of the city. It will be used for improvements to city infrastructure, to purchase new equipment, and for community development projects identified in the Community Action Plan. <http://www.bingenwashington.org/proposed%20sales%20tax%20increase.pdf>
- **Cowlitz County Tax Ballot Measure: 0.2% Local Sales and Use Tax Dedicated to Attacking Problems of Drug Abuse and Drug-Related Crimes** – The county is asking voters to authorize a 0.2% local sales and use tax on the September 20, 2005 primary ballot. The measure includes an eight-year sunset clause and allows for the proceeds to be shared by Cowlitz County and the cities of Castle Rock, Kalama, Kelso, Longview, and Woodland. The commissioners recently finished a series of 13 public forums held around the county and an additional 40 presentations at service clubs and various organizations. The tax would add \$0.02 on each \$10.00 purchase that would equate to approximately \$25.00 per person yearly. The tax increase would raise a total of about \$2.3 million per year to attack problems of drug abuse and drug-related crimes. The spending plan includes portions of the county sheriff and city police chief's proposed Street-Level Enforcement Team at a cost of \$1 million dollars. The team includes 9 new police officers representing the county and the cities of Kelso, Longview, and Woodland, a deputy prosecuting attorney, and three clerks dedicated to the courts and police. The plan also includes \$440,000 annually to fund drug treatment programs and \$550,000 in drug education and prevention programs. The second year of the plan shifts \$100,000 from the Criminal Justice section to Education and Prevention. See press release <http://www.co.cowlitz.wa.us/commissioners/pressrelease.htm>

## New Web Page II *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 communities, 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

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# 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).

### ▼Construction

*ADA & Accessibility: Let's Get Practical*, by Michele S. Ohmes, 2004

*Administration of Building Regulations: Method and Procedures for Enforcement*, 1999

### ▼Environment

*Wetlands, Streams, and other Waters: Regulation, Conservation, Mitigation Planning*, by Paul D. Cylinder, et al., 2004

### ▼Governance

*Effective Council Meetings*, ICMA, 2000

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

### ▼Housing

*Affordable Housing: Designing an American Asset*, by Adrienne Schmitz et al., 2005

### ▼Insurance and Risk Management

*Planning for the Unexpected: Land-Use Development and Risk*, by Laurie Johnson, Laura Dwelley Samant, and Suzanne Frew, 2005

### ▼Personnel

*Washington City and County Employee Salary and Benefit Survey for 2005*, Association of Washington Cities, 2005

### ▼Planning and Land Use

*Better Models for Urban Supermarkets*, by William Neuendorf and Kennedy Smith, 2005

*The Board of Adjustment*, by V. Gail Easley and David A. Theriaque, 2005

*Higher-Density Development: Myth and Fact*, by Richard M. Haughey, 2005

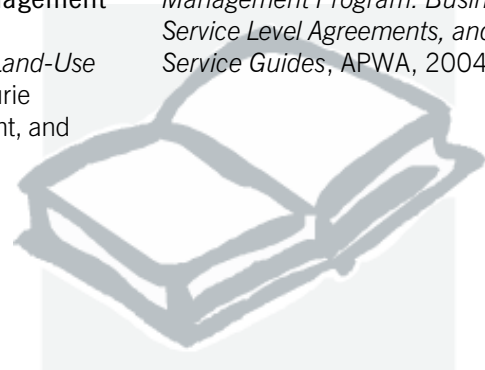
*Historic Preservation Handbook*, by J. Kirk Irwin, 2003

*Streamlining Development and Building Permitting*, L. Edward Purcell

*Urban & Community Forestry: A Practical Guide to Sustainability*, by James R. Fazio, 2003

### ▼Property Management

*Demonstrating the Value of Your Fleet Management Program: Business Plans, Service Level Agreements, and Customer Service Guides*, APWA, 2004



**FYI**  
***Class IV forest practices***

Cities and counties must adopt ordinances or regulations setting standards for Class IV forest practices regulated by local government by December 31, 2005 as required by RCW 76.09.240. The Department of Natural Resources will provide technical assistance until January 1, 2006 to local

governments that have adopted and assumed authority over all Class IV forest practices within their jurisdiction. For more information, see <http://www.mrsc.org/Subjects/Environment/forest/forest.aspx> and <http://www.mrsc.org/Subjects/Environment/forest/ssb5714.aspx>.▶



**New Web Page II** continued from page 7

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>.▶



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