

Fall 2002

Municipal Research News

Municipal Research & Services Center of Washington

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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

State-Wide Measures of Interest to Cities and Counties

Money issues continue to command voter attention. There are three measures of interest to cities and counties on the November 2002 ballot, that, if passed, will affect local government coffers. We have outlined these measures below:

Referendum 51

Referendum 51 (ESHB 2969) provides for various revenue sources that will generate \$7.7 billion for transportation and transit projects in the next ten years. If passed by the voters in November,

- the tax on gasoline and special fuels will be raised by five cents a gallon on January 1, 2003, and four cents on January 1, 2004;
- a one percent sales tax surcharge will be levied on motor vehicle sales beginning April 1, 2003;
- a 30 percent surcharge on gross weight fees on trucks over 10,000 pounds will be added, to be phased in over two years;
- the state will be authorized to issue \$4.5 billion of general obligation bonds for highway and ferry projects with the debt service to be first paid by the new gasoline tax revenues, but backed by the full faith and credit of the state general fund revenues; and
- the state will be authorized to issue \$100 million in general obligation bonds, the receipts of which will be deposited in the multi-modal transportation account, which

can be used to fund transportation projects, including transit, rail, and passenger-only ferries.

The proposed \$7.7 billion dollars of projects include \$5.4 billion for highway improvements, \$819 million for public transportation, \$680 million for ferries, \$294 million for rail, and \$447 million for local governments.

In addition to the revenue measures, the bill establishes a Legislative Transportation Accountability Committee for project review and oversight.

Local Government Funding

If the initiative passes, both *cities with a population of 10,000 and over and counties* will receive a 4.3366 percent share of the new five cent per gallon tax that will be levied in 2003. Based on the Department of Transportation gas tax forecast for 2003, 4.3366 percent of the new five cent tax would generate an estimated \$7.1 million in 2003. However, since the distribution of the tax is made two months after it is collected, cities and counties would receive their first distribution in March of 2003 and *total distributions* would be about \$5.9 million, less than the \$7.1 million collected. This is purely a timing issue. In future years, they would receive distributions in all 12 months.

The counties' money would be distributed on the same basis as their current funding, which considers population, a money need factor, and a road cost factor. The cities' share would be allocated strictly on a per capita basis to cities

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For complete information on these topics, go to www.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

Desktop Designer: Holly Martin

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with a population of 10,000 and would amount to approximately \$1.95 per capita in 2003. A portion of the money the cities would receive would have to be used to match corridor grant money allocated to cities by the Transportation Improvement Board.

For cities with a population under 10,000, the Main Street Pavement Program would receive \$2 million in the remainder of this biennium and \$23 million in future biennia. The Rural Economic Vitality Program, run by the Community Economic Revitalization Board, would get \$2 million for the remainder of this biennium and another \$28 million in the future. The School Safety Enhancement Program would be allocated \$1 million in the coming year and \$14 million more in future years.

Five million dollars would be allocated to both cities and counties for corridor congestion relief in the coming year and \$50 million in future biennia. The Freight Mobility Account would receive \$8.4 million for the remainder of the biennium and \$107.6 million in future years.

Initiative 776

Initiative 776, the “\$30 Tabs for Everyone” measure, is another production of Permanent Offense, formerly headed by Tim Eyman.

Section 3 of the initiative would reduce the license fee that the state collects on light trucks (up to 10,000 pounds) to \$30.

Section 6 repeals the voter-approved 0.3 percent motor vehicle excise tax collected by Sound Transit in parts of King, Pierce, and Snohomish counties for light rail, commuter rail, and express bus services under RCW 81.104.160(1). It states, in part, “Any motor vehicle excise tax previously imposed under the provision of RCW 81.104.160(1) shall be repealed, terminated and expire on the effective date of this act.”

Section 8 repeals the \$15 local vehicle license fee that is currently collected in King, Pierce, Snohomish, and Douglas counties and shared with the cities in those counties under RCW 82.80.020. In 2001,

this revenue source brought in over \$31 million.

Sound Transit has issued bonds, pledging the motor vehicle excise tax under RCW 81.104.160(1) for debt service. Repealing the tax would impair those contracts, and the courts would almost certainly find this to be unconstitutional. Section 7 of the initiative tries to address this problem:

If the repeal of taxes in section 6 of this act affects any bonds previously issued for any purpose relating to light rail, the people expect transit agencies to retire these bonds using reserve funds, including accrued interest, sale of property or equipment, new voter approved tax revenues, or any combination of these sources of revenue.

However, voter expectations (as expressed in Section 7) do not provide a legal remedy for impairment of contracts.

An initiative could be written that would repeal any future increase in the motor vehicle excise tax. (The statutes give Sound Transit the authority to go to the voters and ask for an additional amount of up to 0.51 percent.) This would mean that the only source of new revenue in the future would be the sales tax under RCW 81.104.160(2). And, an initiative could be written that would repeal the current tax once the bonds are paid off. But, it cannot repeal the existing tax immediately without unconstitutionally impairing contracts. Conceivably, if I-776 were passed, the courts might treat it as repealing future increases in Sound Transit’s MVET, and eliminating that MVET when Sound Transit’s bonds are retired. However, the tax would continue as long as the bonds were outstanding.

In similar fashion, if any city or county has issued bonds based on its revenue from the \$15 license fee, it must be allowed to collect that fee until the bonds are retired.

Commentators have noted that it is questionable whether voters across the state can vote to repeal a tax approved by the voters in these three counties. Or, that voters across the state could repeal a license fee passed by the legislative bodies in the four counties that assess this fee. However, an initiative to the people can do what the legislature can do. The legisla-

ture could repeal the relevant statutes (in a manner that did not impair existing contracts, of course). Therefore, it is probably legal to have a state-wide initiative do the same thing, even if it is flawed.

Initiative 790

This initiative would create a new board to oversee the pensions of LEOFF 2 police officers and firefighters. The board would consist of eleven members: three police officers, three firefighters, three local government officials, one member of the Senate and one of the House of Representatives, all appointed by the governor.

Within certain cost limits, the board would recommend increases in benefits each year to the legislature on January 1. Unless the majority of each house voted to repeal the benefits within 90 days, they would become effective. If the board proposed benefits that are outside these limits, a vote of the legislature would be required. The legislature could only vote to accept or reject the proposal. It could not be amended.

Since local governments contribute 30 percent of the pensions and the state contributes 20 percent, some state and local government officials have expressed concerns of rising pension costs if this initiative passes.

According to a fiscal analysis done by the State of Washington Office of Financial Management (www.ofm.wa.gov/initiatives/i790.htm), Initiative 790 could significantly increase state and local government costs for the law enforcement officers and fire fighters pension system. There is a wide range of possible fiscal impacts, depending on how provisions for increased benefits are implemented. In the highest cost scenario described, the cost in the first full biennium would be 1.3 billion – \$262 million for the state, \$392 million for local government, and \$654 million for active pension plan members. If benefits were not increased and the board adopted the lower cost option of administration, the total cost for the first full biennium would be administrative – \$1.7 million.■

Adapted from Budget Suggestions for 2003
Judy Cox
Finance Consultant
Municipal Research & Services Center

Caution

Elections Ahead

The election season is again upon us. Therefore, it is a good time to review the rules regarding the use of public facilities and staff for political purposes.

The Rules

Elected officials may not:

- Use or authorize the use of public facilities, either directly or indirectly, to support or oppose a candidate for public office or a ballot measure.
 - A municipality may make meeting rooms or facilities available on a nondiscriminatory, equal access basis for political uses.

Elected officials may:

- Express a collective decision supporting or opposing a ballot proposition.
 - Requires special notice for the meeting, which must include the title and number of ballot proposition.
 - Opposition comments must be allowed.
- Make a statement at an open press conference or in response to a specific inquiry.
- Engage in activities that are part of “normal and regular conduct” of elected officials. Municipalities may make an “objective and fair presentation of facts relevant to a ballot proposition,” such as providing details about the financial impact of an initiative on the local government, or how revenues will be impacted by passage.

Public employees may not:

- Work on an election campaign during office hours.
- Use any municipal facilities, equipment, or supplies for political purposes. This includes office space, stationery, postage, computers, machines, vehicles, etc.

Public employees may:

- Provide neutral information about the impact of ballot propositions on municipal activities. (See WAC 390-05-271.)
- Research the potential impact of ballot issues to respond to citizen inquiries or to determine how the proposition will affect the municipality.
- Respond to public records requests.
- While on their own time, work in support of or opposition to a ballot measure or express their own personal opinions and support for candidates.

Excerpted from an article titled, “Elections: Reminders and Cautions,” Municipal Research News, Fall 2000.

Questions? The MRSC legal staff and/or the Public Disclosure Commission (PDC) are both available to answer any questions regarding election and campaign issues. MRSC may be contacted by phone at (206) 625-1300; e-mail mrsc@mrsc.org. The PDC may be reached by phone at (360) 753-1111 or by fax at (360) 753-1112.▶



E-Mail Meetings and Public Records

MRSC continues to receive many questions regarding public record requirements and e-mail meetings. In an effort to help our readers sort out some of these issues, we are reprinting the following article, written by Paul Sullivan, MRSC Legal Consultant, which appears in the recent MRSC publication, *Budget Suggestions for 2003*.

Ten years ago, few people had even heard about e-mail. Now everyone, it seems, knows about and uses email to communicate with others. Regulations that previously applied only to slower, more face-to-face forms of communication must now be analyzed to determine their applicability to e-mails. This article explores the problems e-mail may pose to open meeting and public record requirements.

Meetings by E-Mail

1. *Is it possible to hold a meeting by e-mail?* Yes. Under the Open Public Meetings Act, a "meeting" takes place when action occurs, and the term "action" is very broadly defined. Action occurs when business is transacted by a governing body, including when the body engages in discussions, considerations, reviews, evaluations, and the taking of final actions. Given e-mail's ability to link people together and allow them to share and respond to ideas almost instantaneously, it is possible for members of a governing body to join one another in a meeting, even though the members of the body are in different locations. These inadvertent meetings would *not* be in compliance with the Open Public Meetings Act.

Until recently there was only conjecture whether a meeting could be held by e-mail; that speculation, however, has now been confirmed. In *Wood v. Battle Ground School District*, 107 Wn. App. 550, 564, 27 P.3d 1208 (2001), the court of appeals held:

[I]n light of the OPMA's [Open Public Meetings Act] broad definition of "meeting" and its broad purpose, and considering the mandate to liberally construe this statute in favor of coverage, we conclude that the exchange of e-mails can constitute a "meeting." In doing so, we also recognize the need for balance between the right of the

public to have its business conducted in the open and the need for members of governing bodies to obtain information and communicate in order to function effectively. Thus, we emphasize that the mere use or passive receipt of e-mail does not automatically constitute a "meeting."

The OPMA is not violated if less than a majority of the governing body meets. And the participants must collectively intend to meet to transact the governing body's official business. See 1971 Op. Atty. Gen. No. 33, at 19 (social function can be a meeting if it is scheduled or designed to discuss official business); *Roberts v. City of Palmdale*, 5 Cal. 4th 363, 853 P.2d 496, 503, 20 Cal. Rptr. 2d 330 (1993) (Brown Act applies to collective action, not the passive receipt of e-mail by members absent a concerted plan to engage in collective deliberation). Finally, the governing body members must communicate about issues that may or will come before the Board for a vote; in other words, the members must take "action" as the OPMA defines it. (Footnotes and some authority omitted; emphasis supplied.)

2. *Does this mean that an elected official cannot receive or share information by e-mail?* No, but it does mean that officials may not use e-mail to "meet" and take action with other officials. Receiving or sending out information would not violate the Open Public Meetings Act, but replies and comments shared with a majority of the governing body, or decisions made and shared on-line as result of an e-mail (e.g., "Yes, I can (or will) support . . .") would be a violation. Of course, if *less than a quorum* were involved in the e-mail discussion, there would be no violation.

3. *May an unlawful meeting by e-mail be cured by making the meeting public?* No. The problem with an inadvertent and therefore unlawful meeting, one that has been triggered by the exchange of e-mails by a majority of a governing body, is that it is inherently unlawful. It is not scheduled, written notice has not been given, and the public is excluded. There is no way the "unlawfulness" can be cured. (In any case, it is doubtful that an e-mail meeting, even one that has been

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New Washington State Law

Personal Information Disposal

A new law regarding personal information in employee records (Substitute House Bill (SHB) 2015, Chapter 90, Laws of 2002) took effect June 13, 2002. It requires all employers (including governmental entities) to take all reasonable steps to "destroy, or arrange for the destruction of, personal financial and health information and personal identification numbers issued by government entities in an individual's records within its custody or control when the entity is disposing of records that it will no longer retain." "Destroy" means "shredding, erasing, or otherwise modifying personal information in records to make the personal information unreadable or undecipherable through any reasonable means."

So, it is no longer acceptable to dispose of inactive personnel files containing such personal information by simply placing in the dumpster or recycle bin. They must be destroyed so that they cannot possibly be read.

Personal information covered is:

- information that is identifiable to an individual, such as account numbers, access codes or passwords, credit card numbers, etc;
- information relating to a person's medical history or status;
- identification numbers issued by a government entity, such as a tax identification number, social security number, or driver's license number.

This law applies to personal information recorded or preserved by *any* means. So, it not only covers paper files, but also includes electronic or digital files. Something to remember before disposing of old computers - be sure all data contained within them is gone.

Monetary penalties and attorney fees could result from failure to comply with this new law.■

ASK MRSC

Summaries of recent inquiries answered by MRSC consultants

Anti-Posting Ordinance • Does the new case, *Seattle v. Mighty Mover's Inc.*, apply to other cities and to state highways and, therefore, require them to allow signs to be placed on telephone poles?

It depends. In the Seattle case, the state court of appeals determined that the city's utility poles adjacent to streets and sidewalks are a "traditional public forum." That being the case, to justify its posting regulations, the city was required to show these regulations were content neutral, narrowly tailored to serve a compelling interest, and left open ample alternative "channels" of communication. Although Seattle's ordinance was found to be content neutral, the court found that the city failed to show that the signs (which were wrapped around utility poles) posed a danger to workers or to traffic. So, the court found no compelling interest to justify the prohibition. (Note that RCW 70.54.090 prohibits attaching signs to utility poles where the sign "presents a hazard to, or endangers the lives of, electrical workers." This statute is not in conflict with the court's decision.)

The court did not find that *all* rights-of-way were public fora, or that signs in the rights-of-way could *never* pose a danger; but Seattle did not prove its justifying facts. A different result might be possible if a city could provide the justifications necessary to support the restrictions. For example, it may be that utility poles in another city never gained the status of a traditional public forum.

Candidates' Forum • Is it permissible to allow candidates for local public office to speak at a regular city council or county commission meeting for the purpose of "introducing themselves" to the governing body?

The Public Disclosure Commission has never ruled on the question of whether individual candidates can be allowed to make presentations at meetings of local governing bodies. MRSC's advice is that the best way to handle such requests is for the lo-

cal government to arrange for a candidate forum where all candidates are invited to speak. Such a forum could be held as part of a council meeting or as a separate event.

Council Voting • What is the result if three members of a five-member council vote on a procedural motion, with two voting for the motion and one abstaining?

According to *Robert's Rules of Order*, an abstention does not count as a vote, does not affect the voting result, and does not destroy the quorum. In this case, since a majority of the quorum voted in favor of the motion, it would pass. Where a certain number of votes is required for an action, an abstention, which does not count as a vote, may prevent the action from passing.

If a council has not adopted *Robert's Rules of Order*, it will be necessary to adopt its own rules regarding abstentions.

Dangerous Dogs • Has the statutory definition of "dangerous dog" been recently changed by the legislature?

Yes. Chapter 244, Laws of 2002 (SSB 6635) amended the definition of "dangerous dog" as follows:

"Dangerous dog" means any dog that ((according to the records of the appropriate authority,)) (a) ((has inflicted)) inflicts severe injury on a human being without provocation on public or private property, (b) ((has killed)) kills a domestic animal without provocation while the dog is off the owner's property, or c) has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks, or endangers the safety of humans ((or domestic animals)).

(The language in parentheses is omitted and the underlined language is added.)

Facility Use for Political Purpose • May a local government allow a political group use of a public park for a rally and picnic?

Yes, as long as the group is allowed to use the park on the same terms as the general public or any other political group, and all groups and citizens have access to the park on an equal basis.

FLSA • What is an "exempt" employee?

This term refers to employees who are exempt from the overtime provisions of the federal Fair Labor Standards Act (FLSA) and/or the Washington Minimum Wage Act (MWA) in chapter 49.46 RCW. The FLSA sets the federal minimum wage and overtime pay requirements for employers, including local governments. Employees who work in professional, administrative, or executive positions are "exempt" for purposes of the FLSA's overtime requirements. The MWA sets similar standards and has similar exemptions for Washington employers and employees. When there is a difference between the two laws, the municipality must comply with the most liberal law when viewed from the perspective of the employee.

FLSA • May a county transit operator perform work at the county fair and be compensated at straight time?

The issue is whether volunteer hours count as regular compensable time under the Fair Labor Standards Act. The 1985 amendments to the FLSA provide that when local government employees, at their option, work occasionally or sporadically on a part-time basis for the same agency in a different capacity from their regular employment, the hours worked in the different job do not have to be combined with the regular hours for the purpose of determining overtime liability.

Employment at a county fair probably would be considered occasional or sporadic, and as long as the decision to work is made

freely and without coercion, the employee may perform work at the fair at straight time rates, even if the total hours worked exceed 40.

Public Records Request • Must a city or county comply with a standing request for copies of meeting agenda packets?

RCW 42.17.270 requires municipalities to respond to “requests for identifiable public records.” If a request is for records that have not yet been created, as would be the case with a request for future meeting packets, this would not be, in our opinion, a request for “identifiable documents” as required by RCW 42.17.270. It is not known in advance what documents will be contained in subsequent packets, and many of them would likely not yet be in existence. If a document does not exist, it is not identifiable.

Public Records Request • Are building plans submitted by a developer for approval by the local government considered disclosable information?

Building plans submitted to a local government for approval are considered public records and copies should be given to individuals requesting them. There is no public disclosure exemption that applies to such plans. If a municipality has reason to believe that the developer may object to the disclosure of the plans, the municipality has the option of notifying the developer before disclosure so that the developer can attempt to obtain a court order prohibiting disclosure. ▀

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. 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.

Affordable Housing

Affordable Housing Assistance Now Available from NACo

The National Association of Counties (NACo) has been awarded a technical assistance grant from the National Affordable Housing Training Institute (NAHTI) and the U.S. Department of Housing and Urban Development (HUD) to help counties develop programs and improve services in the area of affordable housing.

Through the grant, NACo provides training to counties, highlights best practices in an effort to offer successful strategies, and acts as a general liaison between counties and HUD. NACo’s program addresses all issues surrounding affordable housing, including homeownership, rehabilitating blighted properties, improving substandard living conditions, and subsidizing rental payments for those individuals and families who simply are paying too much for shelter.

See <http://www.naco.org/pubs/cnews/current/Articles/14Affordable.html> for more information on affordable housing assistance, HOME, and NAHTI, or contact Simone Griffin at (202) 942-4262 or sgriffin@naco.org.

Affordable Housing Conference

Washington state’s largest affordable housing conference, *Housing Washington 2002*, will take place October 30 to November 1 at the Hilton Seattle Airport Hotel & Conference Center.

Top speakers at this year’s conference will include Sarah Susanka, architect and author, who will present *Reframing the Way We Think about Home*; and Marja Hoek-Smit, of Wharton Real Estate Center, who will present *Affordable Housing around the World*.

The conference is presented by the Washington State Housing Finance Commission and the Washington State Office of Community Development in partnership with the Washington Low Income Housing Network and the Blue Mountain Action Council.

For more information, visit www.wshfc.org/conf, e-mail conf@wshfc.org, or call the conference hotline at 1-800-767-HOME (4663) ext. 773. ▀

Anti-Posting Ordinance Declared Invalid

In a decision announced on August 5, the state court of appeals held that Seattle’s prohibition on posting signs, handbills, or posters on city-owned property, including utility poles, violates the state constitution’s free speech provision. The court determined that posting on poles adjacent to city streets and sidewalks is a “traditional public forum,” and that the city had failed to demonstrate a compelling governmental interest to justify banning such posting. (See “Ask MRSC” column for additional information.)

HEADS UP

Emerging information for local government

Citizen Participation

Two useful articles on citizen participation appear in the spring issue of *On Tap*, a newsletter of the National Drinking Water Clearinghouse - "Public Participation Helps Communities and Residents: Getting Citizens Involved" and "Good Public Relations Makes the Job Easier: Communicating Your Message." The articles may be found at http://www.nesc.wvu.edu/ndwc/ndwc_ot_spring_online.htm.

To help local officials with community meetings, International City Managers' Association (ICMA) has a new *IQ Report*, "Managing Community Meetings," that describes various types of community meetings and how to select the best type for your desired outcome. The report presents recommendations for meeting formats and logistics, such as announcements, room arrangements, and agendas. It offers advice on getting the meeting off to a successful start, practicing active listening, and using nonverbal messages. Also included are detailed suggestions of ways to deal with angry citizens and techniques for handling difficult questions. This report is available on loan from the MRSC library or for purchase from ICMA at <http://icma.org>.

About Fair Housing: How Much Do We Know?

A HUD Fair Housing survey assessed public awareness of and support for fair housing laws and individual perceptions concerning whether they had ever experienced housing discrimination. The survey involved a series of scenarios in which respondents were asked whether specific behaviors were covered by existing federal fair housing law. The findings show widespread knowledge of and support for most fair housing protections and prohibitions. However, the public understands and supports some areas of the law more than others. The report offers HUD's reason for encouragement in its continued efforts to combat housing discrimination and identifies specific areas in which public information and attention need to be di-

rected. From HUDUSER at <http://www.huduser.org/publications/fairhsg/hmwk.html>.

Effective Ordinance for Shading Parking Lots

Approximately 10 percent of the land in many cities is occupied by parking lots. The asphalt of parking lots acts as a heat island where temperatures soar. In some cities, ordinances have been adopted that provide minimum standards for parking lot shade. For example, the city of Sacramento, CA, requires shade in 50 percent of the total parking lot surface area. The Center for Urban Forest Research has produced a fact sheet that outlines the steps necessary to make shade ordinances more effective. The fact sheet addresses adding trees to parking lots, increasing soil volume, caring for the trees, and proper planning for a parking lot retrofit. See <http://www.igean.org/documents/parkinglottrees.pdf>

Lakewood Photo Traffic Enforcement

Lakewood was the first city in Washington to participate in a Washington State Traffic Safety Commission (WTSC) pilot project using photo devices at stoplights. Last year, two pilot programs were authorized - photo radar enforcement in school zones and photo enforcement of red lights at two intersections.

The Lakewood program results show that the pilot programs have been successful in dropping school-zone speeds and red-light violations. Photo enforcement in school zones has reduced speeds an average of 7 mph, with impacts in some zones as high as 11 mph. Red-light violations dropped from 1,585 during its first month, July 2001, to 614 violations in May 2002.

During its one-year trial, Lakewood issued 11,537 citations and collected \$581,106. However, the program wasn't a "money maker" for the city. Revenues are distributed among the state (a portion of which

goes to WTSC), Pierce County, and payment to the equipment provider with whom Lakewood has a contract. In addition, Lakewood had photo enforcement-related court and policing costs. See more about Lakewood's program and other information on automated traffic enforcement on MRSC's Web site at <http://www.mrsc.org/pubworks/traffic/t-autoenforce.htm>.

Evolution of the "Lowly" Traffic Signal

Unless you are involved with traffic planning or get frustrated while caught in traffic, little thought is given to what traffic signals have become. *Wired Magazine* has a short, informal, but informational, item on the lowly red-yellow-green traffic signal, which has undergone a quiet high tech revolution. See "Stoplights that Keep Tabs on Traffic - and Offenders" at <http://www.wired.com/wired/archive/10.09/start.html?pg=4>. ▀

WEB TALK

News and information about www.mrsc.org

What's New?

In response to the recent court decision restricting the petition method of annexation, we've added a number of sample ordinances and forms on the election method of annexation.

You will also find an extensive page on Referendum 51, the statewide transportation improvement funding package.

Also, see our new page on "Public Health Administration." The page includes infor-

mation on public health funding, improvement plans, local health boards and officers, health districts, and links to public health-related organizations and agencies.

After six and a half years, we are happy to say that we have now completely phased out use of the Folio site Director search program for the municipal codes. Our new program can search both HTML and PDF files. We have recently updated the court

decisions database, and we continue to add new city and county codes regularly.

What's Coming?

In the near future, we will implement a new design to our Web site. In this new design, all the main features are on a pull-down navigation bar that appears on every page on the site. We are also adding "My MRSC links" that allows you to add links to the pages that you use most often. We will be pleased to hear what you think of the new design. ■

E-Mail Meetings and Public Records continued from page 5

publicly noted, could be held, as it would be difficult, if not impossible, for the public to be able to attend, listen, and observe as is allowed under the Open Public Meetings Act.)

4. *Is there a problem if a member of the public or a staff member e-mails information to all of the elected officials?* No. Passive receipt of information is not a violation. However, if the information is then shared with the other officials, along with comments and conclusions of the official first receiving the information, there may be a violation.

5. *Can the mayor and his or her staff make decisions by e-mail?* Yes. The Open Public Meetings Act only affects meetings by governing bodies such as city and town councils and boards of county commissioners. Communications to or from a mayor, although the mayor is an elected official, are not constrained by the Act.

E-Mails and Public Records

The term "public record" for purposes of the Public Disclosure Act, chapter 42.17 RCW, is very broadly defined; it is

any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any . . . local agency regardless of physical form or characteristics.

RCW42.17.020(36). This definition, along with the equally-broad definition of a "writing" (handwriting, typewriting, printing and every other means of recording any form of communication, including but not limited to letters, words, pictures, sounds, or symbols, and magnetic or paper tapes) supports the conclusion that most official e-mail is a public record, potentially subject to disclosure.

1. *If an e-mail is a public record, does that mean a county or city needs to retain it for possible public review and copying?* Yes. The public has the right to inspect and copy public records, unless inspection is prohibited or the records are otherwise exempt from inspection or copying. E-mails should not be "trashed" or deleted; they must be retained like any other public record.

2. *How should e-mails be retained?* Obviously, e-mails could be retained in each computer. However, since memory space may be scarce and computers are sometimes replaced, it is a good idea to transfer e-mails to a disk, or copy them to a central computer, or print out and retain the messages in paper form.

3. *Does this mean a commissioner or a councilmember should retain e-mails from a home computer?* Yes, if the e-mails relate to county or city business. The same rules that apply to letters sent from or received at home apply: if they

contain information regarding the conduct of government, they are public records which should be retained and made available, upon request, for inspection and copying. Obviously, if the e-mail sent or received contains personal, non-governmental information, those portions may be removed or redacted. Based upon the content of the e-mail, it is also possible that an exemption or prohibition against inspection and copying may exist.

4. *What should an official do if he or she has a public record e-mail on a personal computer?* While the official could probably entertain public record requests at his or her home or business, it is preferable to have the public records functions handled by county or city personnel who are more familiar with the public disclosure procedures. The necessary "transfer" could occur on a piecemeal basis, with each receipt of a governmental e-mail forwarded to the government offices or each e-mail initiated by the official "cc'ed" there. Alternatively, the official could regularly provide disk or paper copies of all emails to appropriate city or county officials for retention purposes.

Persons with questions about the interplay between e-mails and public disclosure or open meetings laws are encouraged to discuss their questions with their city, town, or prosecuting attorney or with the legal consultants at Municipal Research. ■

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. If you would like to borrow one or more of these publications, please contact Amy Harper in our library at (206) 625-1300.

▼Construction

ICC performance Code for Buildings and Facilities, International Code Council, 2001

▼Counties

Inside Olympia: Panel of County Commissioners, TVW Productions, 2002

▼Economic Development

Developing Retail Entertainment Destinations, 2nd ed., 2001

▼Finance

Spec Writing 101: A Quick Guide to Purchasing Public Works Vehicles and Equipment, developed by APWA's Vehicle Specifications Task Force, 2002

Tax Increment Financing and Economic Development: Uses, Structures, and Impacts, edited by Craig L. Johnson and Joyce Y. Man, 2001

▼Housing

The Link between Growth Management and Housing Affordability: The Academic Evidence, by Arthur C. Nelson, 2002

Multifamily Housing Development Handbook, Urban Land Institute, 2000

▼Planning and Land Use

Clues to Rural Community Survival, by Vicki Luther and Milan Wall, 1998

Everyday Ethics for Practicing Planners, by Carol D. Barrett, 2001

How Green is the City?: Sustainability Assessment and the Management of Urban Environments, edited by Dimitri Devuyst, Luc Hens and Walter De Lannoy, 2001

Land Market Monitoring for Smart Urban Growth, edited by Gerrit J. Knaap, 2001

Old Cities/Green Cities: Communities Transform Unmanaged Land, by J. Blaine Bonham, Jr., Gerri Spilka, Darl Rastorfer, 2002

Open Space Protection: Conservation Meets Growth Management, by Linda E. Hillis and William Fulton, 2002

Project Management for Planners: A Practical Guide, by Terry A. Clark, 2002

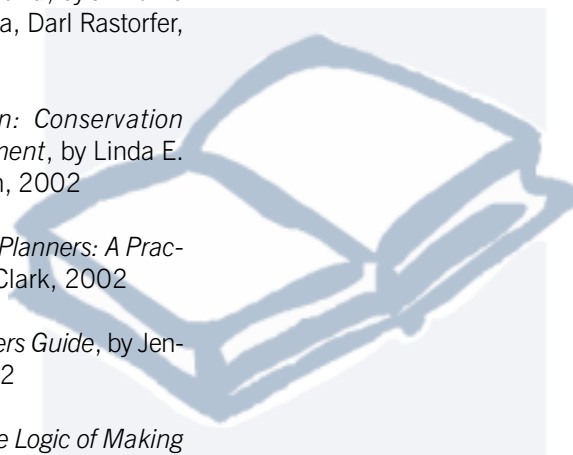
Telecom Hotels: A Planners Guide, by Jennifer Evans-Cowley, 2002

Urban Development: The Logic of Making Plans, by Lewis D. Hopkins, 2001

Vacant Properties: Revitalization Strategies, by Joseph Schilling, 2002

▼Utilities - Water

Excellence in Action: Water Utility Management in the 21st Century, by William C. Lauer, 2001



Resource Sharing

The *Information Partnership Program* seeks and collects current materials from Washington local governments. The materials received provide answers and support to the challenges faced by cities and counties every day. You may order the materials below by contacting the MRSC library at (206) 625-1300 or 1-800-933-6772 or e-mail us at mrsc@mrsc.org. Due to space limitations, the list below may not be complete. A comprehensive list of IP materials received may be requested from the library or viewed on our Web site at www.mrsc.org/library/rshare.htm.

▼Annexation Election Documents

Des Moines Ord. 1166 annexing certain territory to the city pursuant to the election method, 4 p., 6/27/96 (G 3.1320); Petition for annexation and call for an election to vote upon annexation, 5 p., 1994 (G 3.1310); Everett Res. 4860 establishing a ballot title and the date of election for annexation, 6 p., 1/12/00 (G 3.1340); Olympia Res. M-1109 approving for election the proposed annexation to the city of Olympia, 3 p., 1979 (G 3.1310)

▼RFPs for Debt Collection Services

Olympia Request for proposals by City of Olympia for collection services, 9 p., 1994 (F 0.0008); Vancouver Request for proposal for collection services, 11 p., 1998 (F 0.0008)

▼Interlocal Agreements - Development Standards for Unincorporated Urban Growth Areas

Olympia Agreement between Thurston County and the cities of Lacey, Olympia, and Tumwater on adoption and implementation of the UGA zoning and development standards, 2 p., 1995

▼Local Habitat Conservation or Restoration Plans

Everett Snohomish estuary wetland integration plan, 175 p., 1997 (EN 4.1000); Salmon overlay to the Snohomish Estuary wetland integration plan, 200 p., 2001 (EN 4.1000); Olympia Memorandum of agreement watershed planning, Nisqually WRIA 11, 5 p., 1999 (UW 7.2000); Port Angeles Intergovernmental agreement regarding local watershed planning for the Elwha-Dungeness basins (WRIA 18), 6 p., 1998; Valley Creek phase 2 fish passage/habitat restoration agreement (Washington Dept. of Fish and Wildlife, City of Port Angeles, North Olympic Salmon Coalition, Lower Elwha Klallam Tribe, and Port of Port Angeles) 9 p., 2002 (EN 4.2000);

▼Park and Recreation District Documents

Gig Harbor Interlocal agreement between the Peninsula School District, City of Gig Harbor, and Pierce County relating to the creation and operation of a joint recreation program, 6 p., 2002 (P 1.5000); Leavenworth Interlocal agreement creating the Upper Valley Park and Recreation Service Area, 9 p., 1998 (P 1.5000); Res. 8-1998 authorizing application for funding for the Upper Valley Park and Recreation Service Area aquatics center, 2 p., 1998 (P 2.0000); Res. 5-1998 identi-

fying the preferred site for the proposed Upper Valley Park and Recreation Service Area aquatics center, 2 p., 1998; Olympia Consultant agreement with Washington Recreation and Park Association for professional services (research funding needs, opportunities, and strategies for local park and recreation services), 6 p., 2001 (P 2.0000); Agreement with Olympia School District for use of each other's facilities, 5 p., 1995 (P 1.5100)■

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