



Anacortes City Council
Municipal Building Council Chambers
904 6th Street

January 14, 2019
6:00 p.m.

PRELIMINARY AGENDA

[Packet Materials](#) / [Watch Meeting](#)

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Announcements and Committee Reports**
 - a. Port/City Liaison Committee
 - b. Skagit County Law & Justice Council
 - c. Finance Committee
 - d. Planning Committee
4. **Public Comment**
5. **Consent Agenda (Action)**
 - a. Minutes of January 7, 2019
 - b. Approval of Claims in the amount of: \$366,244.61
6. **Public Hearings**
 - a. * Public Hearing: Ordinance 3031 Updating AMC Titles 16, 17 and 19 for Low Impact Development (Discussion)
7. **Other Business**
 - a. WA Cities Insurance Authority 1-Hour Elected Official Training Regarding Liability Exposures and Recommended Risk Controls (Discussion)
 - b. * Resolution 2029: City of Anacortes Legislative Priorities (Discussion/Possible Action)
8. **Adjournment**

Per Resolution 1949, citizens wishing to comment on items not on the agenda may do so under the Public Comment portion of the agenda. Citizens wishing to comment on agenda items indicated with an asterisk () may do so as those items are considered by Council during the course of the meeting. Citizens wishing to speak will please sign in at the back of the Council Chambers prior to the start of the meeting. The Mayor may limit comments to those who have signed in, and may limit the time allotted to each speaker to facilitate the orderly progress of the meeting.*

The City of Anacortes encourages people with disabilities to participate in public meetings.
For assistance with special needs, please contact the City Clerk at 360-299-1960 in advance of the meeting.



Anacortes City Council

Proposed Agenda Items for the Next Eight Weeks Beginning January 22, 2019

Subjects listed below have been tentatively suggested for consideration by the Anacortes City Council on the dates indicated. Items may be added to, removed from or rearranged on this list. Routine business such as approval of minutes and vouchers are not included. The complete Preliminary Agenda for each meeting is published at 3:00 on the Wednesday prior to the meeting. Published Agendas are subject to change and may be updated following the posting period. For additional information on agenda topics, please contact the City Clerk's office at 360-299-1960 to be directed to the sponsoring staff member.

January 22, 2019

January 28, 2019

- Ordinance ____: Municipal Code Chapter 1.30, Contracting (Discussion/Possible Action)
- Purchasing Policy Update (Discussion/Possible Action)

February 4, 2019

- Ordinance 3035: Safety Suggestion Incentive Program for Employees (Discussion/Possible Action)

February 11, 2019

- Planning Commission Recommendation: Development Regulations and Zoning Map Amendments
- Ordinance 3030: Fire Impact Fees (Discussion/Possible Action)

February 19, 2019

- Planning Commission Recommendation: Development Regulations and Zoning Map Amendments (Discussion)

February 25, 2019

- Planning Commission Recommendation: Development Regulations and Zoning Map Amendments (Discussion)

March 4, 2019

Upcoming City Council Committee Meetings

The public is welcome to attend City Council Committee Meetings.

- Planning, Monday, Jan 14, 2019, 5:00 PM, Main Conference Room, City Hall
- Public Works, Tuesday, Jan 22, 2019, 5:00 PM, Main Conference Room, City Hall
- Finance, Wednesday, Jan 23, 2019, 5:00 PM, Main Conference Room, City Hall
- Planning, Monday, Jan 28, 2019, 5:00 PM, Main Conference Room, City Hall
- Public Works, Monday, Feb 4, 2019, 5:00 PM, Main Conference Room, City Hall
- Public Safety, Tuesday, Feb 5, 2019, 10:00 AM, Mayor's Office, City Hall

Our mission is to maintain and improve the quality of life reflecting community expectations through a focus on public participation and employees-mayor-council teamwork.



Anacortes City Council

**Municipal Building Council Chambers
904 Sixth Street**

**January 14, 2019
6:00 p.m.**

PUBLIC COMMENT SIGN IN SHEET

Per Resolution 1949, citizens wishing to comment on items not on the agenda may do so under the Public Comment portion of the agenda. Citizens wishing to comment on agenda items indicated with an asterisk (*) may do so as those items are considered by Council during the course of the meeting. Citizens wishing to speak will please sign in at the back of the Council Chambers prior to the start of the meeting. The Mayor may limit comments to those who have signed in and may limit the time allotted to each speaker to facilitate the orderly progress of the meeting. These rules are intended to promote an orderly system of holding a public hearing or meeting, to give every person who wishes to speak an opportunity to be heard, and to ensure that no individual is embarrassed by exercising his or her right to free speech.

Please print your name legibly so we can recognize you correctly in the minutes. Thank you!

Name	Topic
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Continue on back of sheet as needed

City Council Minutes – January 7, 2019

At 6:00 p.m. Mayor Laurie Gere called to order the regular Anacortes City Council meeting of January 7, 2019. Councilmembers Eric Johnson, Ryan Walters, Anthony Young, Brad Adams, Liz Lovelett, Bruce McDougall and Matt Miller were present.

The assembly joined in the Pledge of Allegiance.

Announcements and Committee Reports

Confirmation of Parks and Recreation Director Jonn Lunsford: Mayor Gere requested Council confirmation of her appointment of Jonn Lunsford as Parks and Recreation Director. The mayor described the extensive search for the position and Mr. Lunsford's qualifications, both as summarized in her memorandum included in the packet materials for the meeting. Mr. Walters praised the open and inclusive search process for the position. Mr. Walters moved, seconded by Mr. Johnson, to approve the appointment of Jonn Lunsford as Parks and Recreation Director. The motion carried unanimously by voice vote. Mr. Lunsford said that the entire Parks and Recreation Department looked forward to building on its tradition of service to the community.

Pride in Service Award to Carla Bray: Mayor Gere summarized Ms. Bray's 35 years of service in the Finance Department at the City of Anacortes, recalled her prior recognition as a Mayor's Award of Merit recipient, and praised her exceptional customer service. Mayor presented the Pride in Service award to Carla Bray, to an ovation from the entire audience.

Fire Department Oath of Office: Lieutenant Promotions: Mayor Gere administered the oath of office to Lieutenants Chris Byer, Ryan Frazier, and Dan Lamp. Family members pinned on the badges of the new lieutenants.

Fire Department Oath of Office: Firefighter-Paramedics: Mayor Gere administered the oath of office to Firefighter-EMT Tristan Lucas and Firefighter-Paramedics Nick Jessen, Joel Pratt, Mike Tribble and Holly VanSchaick. Family members pinned on the badges of the new Fire Department staff members.

Fire Chief Dave Oliveri honored Assistant Chief Jack Kennedy and Division Chief Nick Walsh for exemplary and outstanding effort during the departmental transitions in 2018. He presented the chiefs with File Commendation Letters.

Public Works Committee: Ms. Lovelett reported from the committee meeting earlier in the evening. She elaborated on topics discussed including the sanitary sewer storage study, a new budget amendment request process to be instituted in 2019 and possibly adopted by other departments, the pavement overlay fund and the impact of ADA compliance requirements on overlay projects given the current adopted overlay policy, and new Craley technology that provides added security and leak detection for water pipes.

Skagit County Population Health Trust: Ms. Lovelett reported from Trust meeting the prior Thursday. She elaborated on continuing implementation of the opioid program, possible changes to the composition of the Board of Health, housing goals and policies and maternal and child health.

Mayor Gere announced that the State Dept. of Commerce would be visiting Anacortes on Friday to learn more about the city's municipal broadband project.

Public Comment

No one present wished to address the Council on any topic not already on the agenda.

Consent Agenda

Mr. Young removed Item 5b, Approval of Claims, from the Consent agenda. Ms. Lovelett moved, seconded by Mr. Miller, to approve the following Consent Agenda items. The motion carried unanimously by voice vote.

a. Minutes of December 17, 2018

The following vouchers/checks were approved for payment:

EFT numbers: 91678 through 91751, total \$948,510.08

Check numbers: 91675 through 91677 and 91752 through 91841, total \$273,715.61

Wire transfer numbers: 242298 through 243192, total \$24,822.70

b. Approval of Claims

Mr. Young mentioned \$6,692 of Amazon purchases on the voucher list and pressed staff to consider local businesses for discretionary spending. He acknowledged that the purchasing policy was currently under revision. Mr. Young moved, seconded by Mr. Johnson, to approve the voucher list. The motion carried unanimously by voice vote. Mayor Gere reported recent conversations with department heads who had obtained local quotes for goods but found those quotes significantly higher than from Amazon.

OTHER BUSINESS

Resolution 2029: City of Anacortes Legislative Priorities

Administrative Services Director Emily Schuh invited Council to consider draft Washington State legislative priorities for the 2019 legislative session. Ms. Schuh's slides were added to the packet materials for the meeting. She first presented the three top priorities for Anacortes: a Community Youth Recreation Center, Municipal Broadband and Trail Systems. Mr. Walters requested one-page talking point summaries for each of those priorities. Ms. Schuh indicated those would be finalized pending councilmember input. Mr. Young suggested that the Community Youth Recreation Center could serve a larger audience than just youth. Ms. Schuh and Mayor Gere explained that the terminology was consistent with established partnerships and donor expectations for the facility.

Ms. Schuh then presented a slide with four General Principles to guide the legislative session. Councilmembers provided extensive revisions. Ms. Lovelett mentioned access to infant care and early childhood services, also fish-blocking culverts referenced in the AWC legislative priorities. Mr. Walters asked to remove the first bullet, combine or condense the two infrastructure bullets, and separate health and homelessness into their own bullets. Mr. Johnson referenced his email earlier in the day suggesting support for SHB 2367 establishing a Child Care Collaborative Task Force.

Ms. Schuh then presented additional draft priorities drawing on AWC priorities. Mr. Young and Mr. McDougall emphasized supporting means for small cities to compete and prosper. Mr. McDougall mentioned quality of life and environmental stewardship as important Anacortes values. Ms. Lovelett mentioned investment in and incentives supporting public transportation and alternative energy sources. Councilmembers suggested alternative wording to strengthen the Public Works Trust Fund priority. Regarding affordable housing, Councilmembers urged state offset of Anacortes impact fee deferral for low income housing and focus specifically on workforce housing. Councilmembers discussed with Ms. Schuh the shortfalls in the current behavioral health system, citing the need for more services and better delivery, particularly in rural areas.

Mr. Johnson invited public comment on the priorities

Heather Brennan agreed with comments by Mr. Young regarding insufficient mental health care facilities. Speaking as a volunteer at Anacortes High School, Ms. Brennan attested to a lack of timely access to mental health care.

Ms. Schuh thanked councilmembers for their input. She indicated that she would revise the documents accordingly and bring them back to Council for further consideration in the near future.

Laserfiche Update

City Attorney Darcy Swetnam presented an update on the Laserfiche implementation project. Ms. Swetnam's slides were added to the packet materials for the meeting. She recapped the purpose of the electronic content management system acquired in 2018. Ms. Swetnam then summarized the progress made during the first year of the phased implementation, including installation, testing, training, and conversion of records and processes by selected departments with the first 50 user licenses funded in 2018. She also described the integration of Laserfiche records storage with the city's existing transactional applications and the new electronic document web portal that has made over 20,000 public records available to the public on the web. Ms. Swetnam demonstrated the range of documents and search tools available on the portal. Ms. Swetnam then shared the next steps of the implementation to be undertaken in 2019 as the phased project continued through the 2019/2020 biennium. She cited the increased efficiency, increased transparency, and increased accountability that would continue to accrue as the implementation proceeded.

Mr. Young advocated for archival retention of information for historical purposes, beyond legal requirements. Ms. Swetnam explained the state records retention schedules, then described the challenges and legal liabilities of storing documents beyond the mandated durations. Councilmembers discussed with Ms. Swetnam the challenges of email archiving. Mr. Walters requested a City Council session devoted to the topic of cloud-based solutions, devices for councilmembers, and related topics. Mr. Young asked that staff track public records requests to see if their number was reduced as more public records became available through the web portal. Mr. Walters urged more promotion of the web portal and suggested some specific target audiences. Ms. Lovelett suggested additional document categories to prioritize for addition to the portal. Mr. Miller suggested additional links on the city website to direct end users to the document portal.

At approximately 8:03 p.m. Mayor Gere called a 3-minute break. At 8:06 p.m. the mayor called the meeting back to order.

Public Works 2018 Year in Review

Public Works Director Fred Buckenmeyer and Administrative Manager Nicole Tesch presented an abbreviated version of the Public Works year in review, referring to the slide presentation included in the packet materials for the meeting. Mr. Buckenmeyer summarized the major projects and accomplishments of 2018 for the Engineering, Operations, Facilities, Water, Wastewater Treatment, GIS, Stormwater, Resource Conservation Divisions and the Director's Office. Ms. Lovelett thanked staff for installing the mid-block crossing on M Avenue at Whitney School. Mr. Young requested more information about how Anacortes water quality ranks against other Washington state water purveyors. Mr. Johnson inquired about vulnerability of the water treatment plant intake structure to Skagit River flood events. Mr. McDougall thanked public works staff for the tremendous amount of fine work achieved. He also congratulated the city on its successful efforts at digitization (notably GIS and Laserfiche) which boosts staff productivity and increases government transparency. Mayor Gere concurred.

There being no further business, at approximately 8:42 p.m. the Anacortes City Council meeting of January 7, 2019 was adjourned.

The following claims against the City of Anacortes have been preaudited and certified by the Clerk-Treasurer as ready for City Council approval at the January 14, 2019 City Council meeting:
[Download this file in OpenDocument spreadsheet format.](#)

Invoice Doc #	Transaction Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
243492	8/20/2018	18-31303	EDGE ANALYTICAL, INC	THM HAA5 SAMPLING-DISTRIBUTION	\$ 962.00	dwtp
243475	9/6/2018	87396	VECA ELECTRIC & TECHNOLOGIES	CONNECT WWTP PUMP CONTROL PANELS	\$ 6,069.31	dwtp
243485	10/4/2018	18-37728	EDGE ANALYTICAL, INC	TOC ANALYSIS WTP	\$ 98.00	dwtp
243498	10/8/2018	18-38083	EDGE ANALYTICAL, INC	FLUORIDE ANALYSIS BLUE HERON	\$ 24.00	dwtp
243519	10/30/2018	18-38541	EDGE ANALYTICAL, INC	EFFLUENT TESTING	\$ 321.00	dwtp
243510	10/31/2018	68694	LAKESIDE INDUSTRIES, INC.	GRAVEL FOR DISK GOLF COURSE	\$ 41.06	parks
243502	11/12/2018	18-42335	EDGE ANALYTICAL, INC	FLUORIDE ANALYSIS BLUE HERON	\$ 24.00	dwtp
243477	11/15/2018	Travel Reimb	KAUFMAN, MATT	PARKING & MILEAGE REIMB - KAUFMAN	\$ 24.01	finance
243537	12/6/2018	37740904	INGRAM LIBRARY SERVICES, LLC	BOOKS - ADULT	\$ 949.32	publib
243478	12/10/2018	1200161045	HDR ENGINEERING, INC	WTP CHLORINE CONVERSION PROJECT - 10/28/18-11/24/18	\$ 12,801.28	pw1
243503	12/12/2018	18-46227	EDGE ANALYTICAL, INC	COLIFORM ANALYSIS WTP	\$ 41.00	dwtp
243507	12/17/2018	18-46731	EDGE ANALYTICAL, INC	COLIFORM, E COLI ANALYSIS WTP	\$ 49.00	dwtp
243091	12/18/2018	2-553331-18	DIAMOND RENTALS, INC.	PORTABLE UNITS- COMM. GARDEN/CEMETERY/THOMPSON TRAIL	\$ 272.00	parks
243480	12/18/2018	115380	STILLY RIVER MECHANICAL, INC.	INSTALLATION OF DRYER AT SHOP	\$ 781.20	pw1
243589	12/19/2018	609439	MISTER T'S AWARDS &	NAME TAG - WALTERS	\$ 20.07	hr
243458	12/20/2018	APD Q1 19	SKAGIT- 911	2019 - 911 1ST INSTALLMENT FISCAL YEAR	\$ 47,914.00	apd
242976	12/26/2018	17084596	4IMPRINT, INC	MARKETING BANNER	\$ 1,006.23	libcc
242924	12/26/2018	114-1068206-4045037	AMAZON.COM SERVICES, INC	YS MEDIA	\$ 241.60	libcc
242979	12/26/2018	114-0384162-6199407	AMAZON.COM SERVICES, INC	YS MEDIA	\$ 184.38	libcc
242970	12/26/2018	57918	COMMERCIAL FIRE PROTECTION INC	FIRE EXTINGUISHER CHARGE	\$ 391.50	dshop
243465	12/26/2018	18-47597	EDGE ANALYTICAL, INC	COLIFORM TESTS	\$ 73.00	dwtp
243019	12/26/2018	8561 00001 69227	HOME DEPOT	4X8 POLYSTYRENE - OPS REMODEL	\$ 46.98	shopcc
242973	12/26/2018	0193922-IN	NURNBERG SCIENTIFIC	SODIUM THIOSULFATE	\$ 42.36	wwtpcc
242974	12/26/2018	0193923-IN	NURNBERG SCIENTIFIC	MFC BROTH ROSOLIC ACID	\$ 213.69	wwtpcc
242971	12/26/2018	R0007401	PAINTER'S ALLEY	PAINT	\$ 52.07	pwfacc
242972	12/26/2018	D51789	SEBO'S DO-IT CENTER	FACILITY USE ITEMS	\$ 13.01	pwfacc
242978	12/26/2018	D51770	SEBO'S DO-IT CENTER	FASTENERS	\$ 1.22	shopcc
242981	12/26/2018	D51765	SEBO'S DO-IT CENTER	FASTENERS	\$ 11.49	wdistcc
243361	12/26/2018	114-7832498	UNITED SITE SERVICES, INC	INTAKE STATION PORTA-POTTI RENTAL	\$ 22.98	dwtp
243354	12/26/2018	9821152086	VERIZON WIRELESS	WTP SCADA MODEM 10/27-12/26/18	\$ 1,007.07	dwtp
242980	12/27/2018	114-0384162-6199407	AMAZON.COM SERVICES, INC	YS MEDIA	\$ 104.83	libcc

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243471	12/27/2018	5004672624	FERRELLGAS, LP	DECEMBER PROPANE INVOICE - AUTOGAS ACCOUNT	\$ 1,180.94	finance
243014	12/27/2018	H25579	FRONTIER BUILDING SUPPLY	MOULDING, NAILS CAULK, SCREWS	\$ 9.87	shopcc
243021	12/27/2018	H25434	FRONTIER BUILDING SUPPLY	DAP SILICONE, PLYWOOD	\$ 26.77	wdistcc
243518	12/27/2018	801827050	LIBERTY MUTUAL INSURANCE CO	TERRORISM RISK INSURANCE	\$ 1,644.00	finance
243020	12/27/2018	351575	MY TAILOR	PATCHES ON CLASS B UNIFORMS	\$ 22.50	afdcc
243017	12/27/2018	0193730	NURNBERG SCIENTIFIC	NURNBERG ERROR CHARGE	\$ 1,548.74	wtpcc
243013	12/27/2018	D52169	SEBO'S DO-IT CENTER	SENIOR CENTER STEAMER REPAIR	\$ 21.17	pwfacc
243022	12/27/2018	D52170	SEBO'S DO-IT CENTER	FASTENERS OPS REMODEL	\$ 22.85	wdistcc
243072	12/28/2018	C07342/1	ACE HARDWARE	SUPPLIES- OPS REMODEL PHASE 2	\$ 13.00	shopcc
243076	12/28/2018	662 14 10 36	COSTCO WHOLESALE CORPORATION	MATTRESS TOPPER, TV MOUNT - 29-3	\$ 216.98	afdcc
243082	12/28/2018	4348362	FAMILY CARE NETWORK PLLC	CDL PHYSICAL	\$ 160.00	shopcc
243175	12/28/2018	61502/2	HB JAEGER	FITTINGS FOR AIR-VAC	\$ 63.67	dwwtp
243177	12/28/2018	61503/2	HB JAEGER	FITTINGS FOR AIR-VACS	\$ 98.37	dwwtp
243070	12/28/2018	8561 02 53955	HOME DEPOT	PLASTIC TOTE BINS - STA 3	\$ 108.39	afdcc
243069	12/28/2018	351592	MY TAILOR	PATCHES ON CLASS B UNIFORMS	\$ 36.00	afdcc
243501	12/28/2018	3026	NW CLEANERS	JANITORIAL SERVICES/CITY HALL /ASAC	\$ 1,840.00	pwfacc
243075	12/28/2018	D52811	SEBO'S DO-IT CENTER	ADAPTER - 29-3	\$ 7.15	afdcc
243077	12/28/2018	D52619	SEBO'S DO-IT CENTER	LED BULBS - 29-3	\$ 54.37	afdcc
243079	12/28/2018	D52697	SEBO'S DO-IT CENTER	SEALANT	\$ 5.31	wdistcc
243073	12/28/2018	41122325552	STORMWATERONE.COM	2018 WEBINAR HENNEBERT	\$ 99.00	pwfacc
243509	12/28/2018	9821195009	VERIZON WIRELESS	City Cell Phones 11/29-12/28/18	\$ 10,640.89	finance
243080	12/29/2018	113-5618783-8185027	AMAZON.COM SERVICES, INC	4 SETS OF BEDDING FOR STATION 3	\$ 338.43	afdcc
243081	12/29/2018	112-3963872-0369846	AMAZON.COM SERVICES, INC	PAPER TOWELS	\$ 92.91	wwtpcc
243167	12/31/2018	114-1068206-4045037	AMAZON.COM SERVICES, INC	YS MEDIA	\$ 561.85	libcc
243534	12/31/2018	18-160-FAC-0011	BLYTHE PLUMBING & HEATING, INC	RELEASE RETAINAGE	\$ 913.90	pw1
243166	12/31/2018	AN 63451	CENTRAL WELDING SUPPLY CO, INC	PROPANE - HEATING 29-3 AUXILIARY ACCOMODATION	\$ 2.98	afdcc
243455	12/31/2018	190-1840-00	CITY OF ANACORTES	UTILITY BILL	\$ 4,746.56	dwwtp
243457	12/31/2018	052-0010-00	CITY OF ANACORTES	DECEMBER WATER/SEWER/GABAGE FOR OPS	\$ 896.07	dshop
243169	12/31/2018	588365734755963	FABRICS PLUS	MESSY ME SUPPLIES	\$ 8.66	parksc
243540	12/31/2018	12/31/2018	ISLAND HOSPITAL	AMBULANCE SUPPLIES - DECEMBER	\$ 1,827.66	medic
243535	12/31/2018	0000638723	OCLC, INC	CATALOGING, ILL, FIRSTSEARCH/WORLDCAT DISCOVERY	\$ 358.15	publib
243527	12/31/2018	16-042-WTR-0011	PEOPLES BANK FOR, TIGER CONSTRUCTION LTD	RETAINAGE DEPOSIT TO ESCROW ACCOUNT FOR PAY APP 3	\$ 319.09	pw1

Invoice Doc #	Transaction Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
243528	12/31/2018	200000666863	PUGET SOUND ENERGY INC	LIBRARY 10TH STREET LED 12/1 - 12/31/18	\$ 6.57	publib
243531	12/31/2018	200000667218	PUGET SOUND ENERGY INC	LIBRARY 10TH & M ST 12/1 - 12/31/2018	\$ 20.87	publib
243591	12/31/2018	300000290043	PUGET SOUND ENERGY INC	STREET LIGHTS 10/31-11/30/18	\$ 18,310.36	ap direct
243594	12/31/2018	300000325005	PUGET SOUND ENERGY INC	STREET LIGHTS: 11/07- 12/07/18	\$ 91.47	ap direct
243595	12/31/2018	300000006951	PUGET SOUND ENERGY INC	STREET LIGHTS: 11/29-12/27/18	\$ 81.54	ap direct
243596	12/31/2018	300000340004	PUGET SOUND ENERGY INC	STREET LIGHTS: 11/29- 12/27/18	\$ 66.44	ap direct
243170	12/31/2018	39001631063	SAFEWAY INC	MESSY ME SUPPLIES	\$ 17.34	parksc
243162	12/31/2018	D53811	SEBO'S DO-IT CENTER	SUPPLIES- STREET DEPT	\$ 19.51	shopcc
243163	12/31/2018	D53706	SEBO'S DO-IT CENTER	FACILITY USE ITEMS	\$ 11.85	pwfacc
243165	12/31/2018	D53948	SEBO'S DO-IT CENTER	CABLE TIES - 29-3	\$ 3.88	afdcc
243530	12/31/2018	1169	SKAGIT CONSERVATION DISTRICT	NPDES PHASE II PUBLIC OUTREACH AND EDUCATION - DECEMBER 2018	\$ 2,201.79	pw1
243593	12/31/2018	1409	SKAGIT COUNCIL OF GOVERNMENTS	GROWTH MANAGEMENT ACT ADMINSTRATIVE SERVICES	\$ 1,696.38	finance
243164	12/31/2018	1541661354	STORMWATERONE.COM	2018 WEBINAR HENNEBERT	\$ 79.00	pwfacc
243536	1/1/2019	1394	SKAGIT COUNCIL OF GOVERNMENTS	SCOG DUES 2019	\$ 14,723.00	finance
243546	1/1/2019	095657902	XEROX CORPORATION	XEROX COLOR CUBE PRINTER USAGE 11/21-12/21/18	\$ 317.87	finance
243489	1/2/2019	19-00164	EDGE ANALYTICAL, INC	FLUORIDE ANALYSIS BLUE HERON	\$ 24.00	dwt
243255	1/3/2019	1991052752	ARAMARK	STA 2 MAT SERVICE: 1/3	\$ 21.70	medic
243259	1/3/2019	1991052753	ARAMARK	STA 1 MAT SERVICE: 1/3	\$ 21.70	medic
243265	1/3/2019	1991052762	ARAMARK	OPS: MAT CLEANING 01/03/19	\$ 36.50	dshop
243342	1/3/2019	1991052756	ARAMARK	APD NYLON MATS CLEANED	\$ 16.28	apd
243505	1/3/2019	795013	BAYSHORE OFFICE PRODUCTS INC	MISC OFFICE SUPPLIES - H/R	\$ 44.80	finance
243244	1/3/2019	3854924	CARDINAL HEALTH 110, INC.	PHARMACEUTICALS	\$ 415.49	medic
243253	1/3/2019	3854960	CARDINAL HEALTH 110, INC.	PHARMACEUTICALS	\$ 26.38	medic
243201	1/3/2019	316423	DOORMAN COMMERCIAL, LLC	DOOR OPENERS FOR ASAC	\$ 329.60	pwfac
243515	1/3/2019	253512047001	OFFICE DEPOT, INC.	PAPER & MISC OFFICE SUPPLIES	\$ 121.40	finance
243249	1/3/2019	001-422208	PISTON SERVICE OF ANACORTES	PART- VEH #182	\$ 5.24	dshop
243250	1/3/2019	001-422118	PISTON SERVICE OF ANACORTES	PARTS- VEH #511	\$ 91.31	dshop
243252	1/3/2019	001-422100	PISTON SERVICE OF ANACORTES	PART- VEH #145	\$ 96.46	dshop
243516	1/3/2019	171773	SCOTT RICHARDS INSURANCE, INC	INLAND MARINE - RENEW POLICY	\$ 11,941.00	finance
243180	1/3/2019	January	SKAGIT LAW GROUP PLLC	PROSECUTING ATTORNEY SERVICES JAN. 2019	\$ 6,120.00	legal
243514	1/4/2019	795559	BAYSHORE OFFICE PRODUCTS INC	RESEARCH LIBRARY BOOK	\$ 61.36	museum
243520	1/4/2019	795319	BAYSHORE OFFICE PRODUCTS INC	OFFICE SUPPLIES	\$ 79.01	admin
243541	1/4/2019	795140	BAYSHORE OFFICE PRODUCTS INC	OFFICE SUPPLIES	\$ 143.31	finance
243360	1/4/2019	92546093	CHEMTRADE CHEMICALS US LLC	ALUMINUM SULFATE	\$ 4,927.24	dwt
243463	1/4/2019	19-00209	EDGE ANALYTICAL, INC	WEEKLY BAC-T SAMPLING	\$ 15.00	dwt

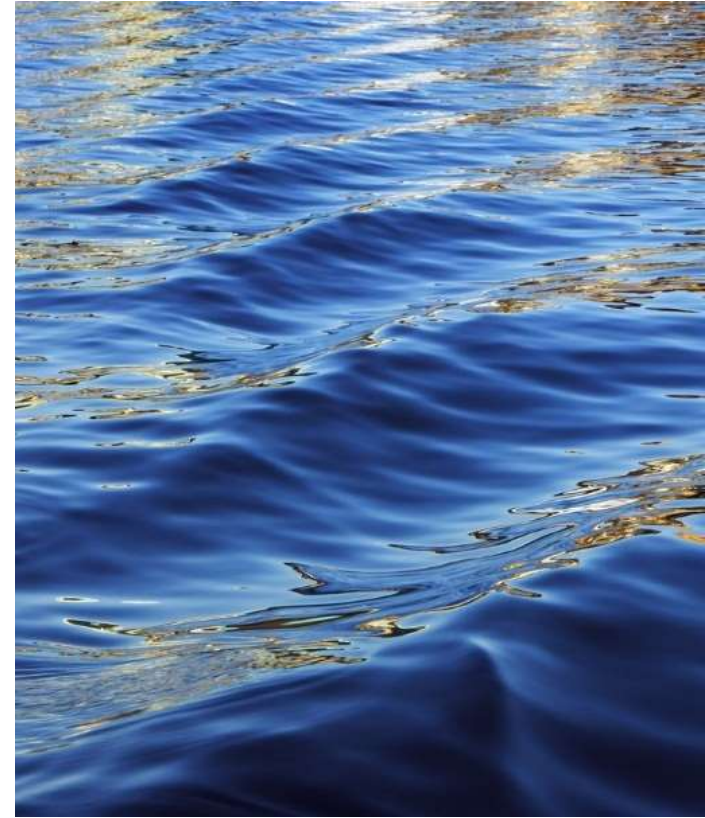
Invoice Doc #	Transaction Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
243464	1/4/2019	19-00281	EDGE ANALYTICAL, INC	TCR SAMPLING	\$ 165.00	dwtp
243359	1/4/2019	WABUR208008	FASTENAL COMPANY	NITRILE GLOVES	\$ 59.57	dwtp
243461	1/4/2019	779102	JCI JONES CHEMICALS INC	CHLORINE X 3	\$ 2,700.00	dwtp
243260	1/4/2019	WDA2019	WASHINGTON DEFENDER	PUB DEF DUES	\$ 200.00	court
243472	1/5/2019	December 2018	BROOKS MIDDLETON ARCHITECT	FIRE STATION 3 UPGRADES - DESIGN - DECEMBER 2018	\$ 4,228.75	medic
243468	1/7/2019	Pay App 2	ALLIED TRENCHLESS	2018 SANITARY SEWER LINE REHAB	\$ 189,372.65	pw1
243543	1/7/2019	Chamber #1	ANACORTES CHAMBER OF COMMERCE	LTAC CHAMBER HANGING BASKET HARDWARE	\$ 1,998.00	plan
243547	1/7/2019	Chamber Invoice #2	ANACORTES CHAMBER OF COMMERCE	LTAC CHAMBER HOLIDAY WREATHS	\$ 1,981.06	plan
243466	1/7/2019	cpls	DEPARTMENT OF LICENSING	CPLS TO D.O.L.; DECEMBER 2018	\$ 507.00	ap direct
243341	1/7/2019	010719	FIDALGO CLEANING	APD CLEANING & SUPPLIES	\$ 700.00	apd
243343	1/7/2019	REIMB	LELAND, JACOB	2019 BOOT REIMBURSEMENT; OFC LELAND	\$ 219.14	apd
243470	1/8/2019	246942	ANACORTES ANIMAL HOSPITAL	BOARD & DISTRAINER; DECEMBER 2018	\$ 165.90	ap direct
243449	1/8/2019	1991056574	ARAMARK	LAUNDRY SERVICE FOR WWTP	\$ 72.00	dwtp

Total **\$366,244.61**



Public Hearing on Ordinance 3031: Interim Zoning Ordinance on Low Impact Development

January 14, 2019



Background

- On November 19, 2018, Council adopted Ordinance 3031, effective for six months
- Ord 3031 incorporated low impact development in Titles 16, 17, and 19:
 - Updated regulations to further clarify that low impact development is preferred
 - Updated certain development regulations on issues like grading, drainage, landscaping, street design, and parking
 - Made criteria for exceptions/variances to stormwater requirements consistent with permit requirements
- RCW 36.70A.390 requires a public hearing within 60 days of adoption of an interim zoning ordinance
- Upcoming new development regulations will replace current code, including the interim zoning provisions adopted in Ordinance 3031



Questions?

Thank you!



City Council Agenda Bill

Meeting Date: 1/14/2019

Agenda Item: 6a

Subject: Public Hearing on Ordinance 3031

Staff Contact: Darcy Swetnam

Approved for Submittal to Council by	
	Laurie Gere, Mayor
	Steve Hoglund, Finance Director
x	Darcy Swetnam, City Attorney

Action Type	
	Ordinance No.
	Code Revision?
	Resolution No.
	Contract
	Public Hearing
	Staff Report

Summary Statement: On November 19, 2018, Council adopted Ordinance 3031, updating certain sections of Titles 16, 17, and 19 for low impact development. The Ordinance was adopted as an interim ordinance per RCW 36.70A.390, which allows the City to adopt interim zoning controls effective for up to six months, provided a public hearing is scheduled within sixty days of adoption. This public hearing is to meet the requirements of [RCW 36.70A.390](#).

Budget Impact	
Amount Budgeted	
Budget Account (BARS)	
Proposed Expenditure	
Budget Amendment Required?	
Revenue Source	

Proposed Contract	
Contractor	
Amount	
Start Date	
End Date	

Previous Council/Committee Action: City Council adopted [Ordinance 3031](#) on [November 19, 2018](#).

Competing Viewpoints Considered: N/A

Recommended Motion: N/A, no action at this time

Alternative Actions: N/A

Attachments (listed in order presented): Ordinance 3031

**City of Anacortes
Ordinance No. 3031**

An Interim Zoning Ordinance of the City of Anacortes, Washington, updating certain sections of Titles 16, 17, and 19 to further establish low impact development as the preferred method for controlling stormwater in the City of Anacortes.

Whereas the City of Anacortes is covered and subject to the Western Washington Phase II permit under the Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit program; and

Whereas as a Phase II city, Anacortes is subject to the rules and requirements of the 2012 Stormwater Management Manual for Western Washington, as Amended in December 2014 (the 2014 SWMMWW); and

Whereas the City adopted Ordinance 2991 on November 28th, 2016, which amended certain sections of the Anacortes Municipal Code, and adopted new standards for stormwater management to establish low impact development as the preferred method for controlling stormwater in the City of Anacortes, with the intent of further incorporating low impact development requirements into the City's upcoming rewrite of its development regulations; and

Whereas the City is currently reviewing a draft rewrite of all City development regulations, with the draft currently at the City Planning Commission, and adoption anticipated by the end of the first quarter of 2019; and

Whereas RCW 35A.11.020 and RCW 35A.21.160 provide that the City has all the power of any class of cities; and

Whereas RCW 36.70A.390 allows the City to adopt interim zoning controls effective for up to six months, provided a public hearing is held within sixty days of adoption; and

Whereas the City now wishes to supplement current development regulations to further encourage Low Impact Development while the remaining public process is completed on the new development regulations;

Now, therefore, the City Council of the City of Anacortes does ordain as follows:

Section 1. That certain sections of Titles 16, 17, and 19 are hereby amended as shown in Exhibit A; and

Section 2. This ordinance shall take effect five (5) days from and after its passage, approval and publication in the manner required by law.

Section 3. This ordinance shall be effective for six months from the date of adoption, and the provisions provided in Exhibit A shall expire on May 19, 2019.

Section 4. The City Council shall hold a public hearing within sixty days of adoption of this ordinance, no later than January 18, 2019.

PASSED and APPROVED this 19th day of November, 2018.

CITY OF ANACORTES:



Laurie Gere, Mayor

Attest:



Steve Hoglund, City Clerk-Treasurer

Approved as to Form:



Darcy Swetnam, City Attorney

EXHIBIT A

TITLE 16

16.04.030 Purposes.

Subsection (J) of Section 16.04.030 is hereby amended as follows:

J. To prevent the pollution of air, streams, and ponds; to utilize infiltration of stormwater into project site if feasible; to assure the adequacy of drainage facilities; to safeguard the water table; and to encourage the wise use and management of natural resources throughout the city in order to preserve the integrity, stability and beauty of the community and the value of the land;

16.04.080 Definitions.

The following definition is hereby added to section 16.04.080

“Low Impact Development” (LID) is a stormwater and land-use management strategy that strives to mimic the pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing the following techniques:

- Conservation
- Use of on-site natural features
- Site planning
- Distributed stormwater best management practices (BMPs) integrated into a project design

LID BMPs are distributed stormwater management practices, integrated into a project design that emphasize the pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration. Common LID BMPs include, but are not limited to: bio-retention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, minimal excavation foundations, vegetated roofs, water re-use, and rainwater harvesting.

16.08.030 Application process.

A. All short plat applications shall be submitted to the administrator together with the application fee. The administrator shall tentatively approve, disapprove or return the short plat for modification within thirty days of the determination of complete application; however, if the application requires city council action this period may be extended for a further thirty days.

B. If the administrator finds that the proposed short plat is consistent with the comprehensive plan, SEPA requirements, and zoning requirements for the district, and that there is adequate provision for drainage and stormwater infiltration when feasible, sewage disposal, water supply and access for each lot, that requirements of this title are met, and the short plat would not landlock other parcels, he or she shall approve the application. (Ord. 2706 § 2 (part), 2005: Ord. 2315 § 1 (part), 1994)

16.08.050 Application requirements. Subsection A shall be amended to read as follows:

A new subsection (A)(10) shall be added to Section 16.08.050 as follows:

10. The results of a soil analysis of the project site to determine the feasibility of on-site stormwater infiltration.

16.10.050 Requirements for a binding site plan map.

Subsection (Q) of Section 16.10.050 shall be amended as follows:

Q. Other restriction and requirements as deemed necessary by the city subdivision administrator, including those contained in street circulation policies, street standards, stormwater ordinances, including low impact development requirements, geologic hazards and other city standards. (Ord. 2528 Att. B § 4 (part), 2000)

16.10.120 Standards for review of commercial binding site plan.

A new subsection (J) shall be added to Section 16.10.120 as follows:

J. Stormwater infiltration facilities shall be identified and protected with maintenance plan.

16.12.010 Requirements of preliminary plats.

Section 16.12.010 shall be amended as follows:

Any person desiring to subdivide land shall submit, together with the preliminary plat application fee required by the city fee ordinance, a preliminary plat application to the administrator which shall contain:

A. The original and at least fifteen copies of one or more accurately scaled and dimensioned maps of the proposed plat showing the following:

1. The name of the proposed plat;
2. True north point;
3. Horizontal scale acceptable to the city engineer for street and sewer profiles;
4. Names of subdivider(s) and drafter;
5. Legal description and accurate lines to scale showing the parcel to be subdivided, the block lines, and the lot lines;
6. Numbers assigned to each block and lot and dimensions of each lot and dimensions and square footage to each lot;
7. Existing monuments of record and monuments as required;
8. Location, width, and names of all existing and proposed streets or other public ways within or adjacent to the proposed development and other important features,

such as permanent buildings, water courses, wetlands, power lines, telephone lines, railroad lines, municipal boundaries, township lines, and section lines;

9. Location and pipe sizes, of all existing sewers, water mains, culverts, electrical conduits, telephone conduits and other underground installations within the tract and immediately adjacent thereto, all as shown on existing utility drawings;

10. Contours with intervals of five feet or less referenced to either the United States Coast and Geodetic Survey datum, the city of Anacortes datum or such other datum acceptable to the city engineer. Note on plat which one is used;

General information shall be provided relative to:

11. Location, names and tentative grades of streets;

12. Areas proposed to be dedicated or reserved for school, park, playground, open space or aesthetic uses;

13. Locations and tentative sizes of proposed water distribution system, proposed sanitary sewer system and proposed storm drain system;

14. A general tree clearing plan indicating site vegetation to be removed;

15. Plantings required for buffering, screening, or soil erosion protection;

16. A landscaping plan (See Section [16.20.110](#), Landscaping);

17. A large, or small, parcel stormwater plan prepared pursuant to SWMMWW Vol.1 Minimum Technical Requirements December 2014 Chapter 3 – Preparation of Stormwater Site Plans, or comparable requirements in a later SWMMWW as amended by the Washington Department of Ecology.

B. The preliminary plat sheet shall include:

1. Vicinity sketch at the scale of fifty feet or less to the inch which shall show all adjacent subdivisions, streets, tract lines of acreage parcels, with the names of owners or record of such parcels. It shall show how the streets and alleys in the proposed subdivisions may connect with existing and proposed streets and alleys in neighboring subdivisions or unplatted property to produce the most advantageous development of the entire neighborhood;

2. County assessor's or county engineer's map showing the parcel numbers and current assessed owners of the land included in the preliminary plat and of all parcels of land within three hundred feet thereof;
3. Names and addresses of the fee simple owners of all land within three hundred feet of the perimeter of the preliminary plat;
4. Names, addresses and telephone numbers of the contact persons for the preliminary plat and their interest in the land included in the preliminary plat;
5. Title report showing all persons having an interest in the land included in the plat and in the land over which any easements are proposed to serve the plat;
6. A copy of the proposed private restrictions and covenants to be included in the deeds to the lots;
7. A copy of the environment checklist, impact statement or other documents prepared pursuant to the city SEPA ordinance. If an EIS is required the final EIS shall be distributed at least fifteen days prior to any hearing on the proposal;
8. Such other information as the administrator deems necessary for an adequate review of the public use and interest to be served by the plat;
9. Section, township and range (STR);
10. Tax lot numbers;
11. Scale of drawing;
12. Date of drawing;
13. Previous subdivision lots, blocks, streets and easements shown as dotted lines;
14. Proposed lot lines shown as solid lines;
15. Legal description(s) of existing lot(s) shown. Locate and show all encroachments along property boundaries;
16. Location of all existing structures shown on lots and distance to proposed lot lines;

17. Location of all existing easements shown with recording number;
18. Proposed easements;
19. Topography of the land indicated by two-foot contours for slopes less than twenty percent and five-foot contours for slopes greater than twenty percent. Indicate sixty percent breakline on and within fifty feet of the site;
20. Parcels of land intended to be dedicated to the city (detention ponds, open space, pedestrian pathways, water quality treatment facilities, parks etc.);
21. Name, address and phone number of developer and each property owner;
22. Name, address and phone number of professional land surveyor;
23. Professional land surveyor seal and signature;
24. Proposed use and ownership of any non-building tracts.

C. Supplemental application materials:

1. A narrative discussion, prepared by a professional engineer, describing how the proposed project meets the intent of the city's drainage ordinance, including the results of wet and dry season soil analysis, and consideration of infiltration of stormwater on site.
2. A preliminary grading plan showing cuts and fills for public improvements and private development. The grading plan shall be coordinated with the tree clearing plan, landscape and buffering requirements and sensitive area protection;
3. A reconnaissance level geotechnical evaluation of the site with a report characterizing the site and indicating suitability of limitations to development. A full scale geotechnical report identifying detailed design and construction requirements shall be provided upon preliminary approval to aid the engineering review and approval of the development. The reports shall be prepared by a professional engineer. (Ord. 2702 § 3 (part), 2005; Ord. 2592 § 15, 2002; Ord. 2557 (part), 2001; Ord. 2315 § 1 (part), 1994)

16.12.020 Approval criteria.

Subsection (3) of Section 16.12.020 shall be amended as follows:

3. Makes appropriate provisions for:
 - a. Open spaces and landscaping,
 - b. Stormwater infiltration, retention, detention, and control consistent with LID BMPs when feasible,
 - c. Streets, alleys, sidewalks and other public ways,
 - d. Water supplies,
 - e. Sewage disposal,
 - f. Parks and playgrounds,
 - g. Sites for schools and school grounds,
 - h. Other utilities;

16.16.020 Requirements of final plan applications.

A new subsection (B)(11) shall be added to Section 16.16.020 as follows:

11. Completed Stormwater Site Plan, including Stormwater Maintenance Plan for all stormwater elements of the plat.

16.20.060 Streets and roads.

Subsections (A) and (B) of Section 16.20.060 shall be amended to read as follows:

A. All roadway improvements, including pavement, curbs, sidewalks, and drainage, shall be constructed in accordance with these regulations and such other standard construction specifications as may be adopted by the city.

B. The arrangement, type, extent, width, grade, and location of all streets shall be considered in their relation to existing and planned streets, to topographical conditions, to LID design requirements and LID infiltration BMPs, to public convenience and safety, and to the proposed uses of the land to be served by them.

C. *General Street and Road Standards.*

. . . .

14. All roadway and sidewalk improvements shall comply with LID designs found in the engineering standards.

16.20.070 Grading and drainage.

Subsection (A) of Section 16.20.070 shall be amended to read as follows:

A. The subdivider shall provide a complete grading and drainage plan with accurate dimensions, courses and elevations, showing the proposed grades of streets and drainage improvements. Calculations of pre-development and post-development runoff volumes shall be provided. Soils analyses conducted during wet and dry seasons shall be used to determine the feasibility of street ROWs to utilize LID BMPs for stormwater infiltration.

16.20.110 Landscaping.

Subsection (A) of Section 16.20.110 shall be amended as follows:

A. Each and every new plat shall set aside twenty percent of the gross site area for landscaping under the terms and conditions set forth in Chapter [17.41](#) of the zoning code except that the exclusion for single-family homes in Section [17.41.020\(G\)](#) shall not apply. Landscaped areas shall incorporate LID BMPs for stormwater infiltration if feasible.

16.30.030 Underlying zoning and density.

Manufactured home subdivisions shall conform to the underlying zoning and density, provided in no instance shall the minimum lot size for the subdivision be reduced below five thousand square feet. (Ord. 2756 Att. A (part), 2006)

16.30.040 Standards.

Subsection (A) of Section 16.30.040 is hereby amended as follows:

- A. The developer shall utilize the subdivision regulations.

16.32.010 Minimum street standards.

Section 16.32.010 shall be amended to read as follows:

- A. Functional Classification. The Transportation Element of the Anacortes Comprehensive Plan designates public right-of-way and streets based on their functional classification and must be consulted to determine which standards in this chapter apply.
- B. Unclassified and new streets. Classification of new streets or existing streets not already identified or classified on the Roadway Functional Classification map, for the purpose of determining the appropriate design of a roadway or development, must be done by the public works director.
- C. Conflicts. Any conflicts or ambiguity that arises about the right-of-way or street improvement standards shall be resolved by the public works director based on consideration of public health and safety and facilitating implementation of low impact development preference.

Existing Table 16.32.010 is replaced with the following new table:

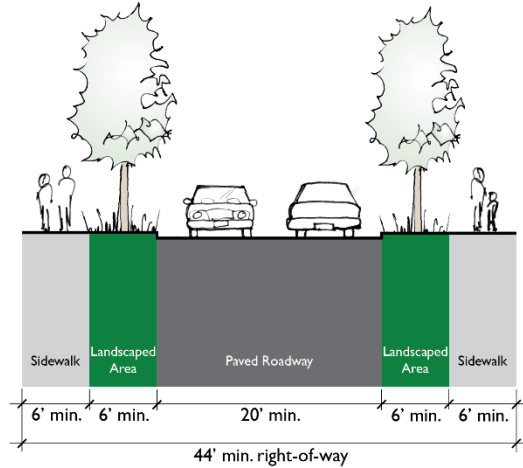
Table 16.32.010

Street design standards.

Right-of-way descriptions, standards, and rules of interpretation are in Subsection (C) below.

(A) Low-volume local

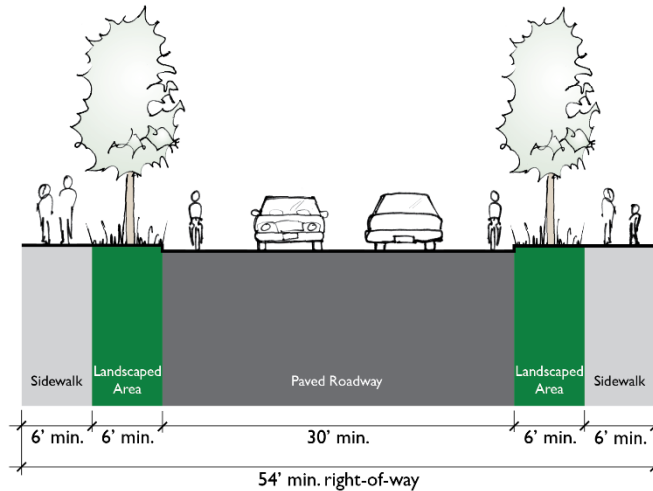
(B) Right-of-way	44 ft. minimum
(C) Landscaped area	6 ft. minimum on each side
(D) Pavement width	20 ft. except where parking lane(s) are included
(E) Grade	12% maximum
(F) Sidewalks	6 ft. minimum
(G) Bike lanes	NA



Note: All residential subdivisions must accommodate provisions for guest parking and applicable service deliveries and activities typical to the size, type, and density of the proposed development. Guest parking may be accommodated by integrating on-street parking lanes and/or pockets, off-street parking areas, or other methods to the satisfaction of the public works director.

(A) Minor arterial, collectors, or high volume local

(B) Right-of-way	54 ft. minimum
(C) Landscaped area	6 ft. minimum on each side
(D) Pavement width	30 ft. except where parking lane(s) are included
(E) Grade	12% maximum
(F) Sidewalks	6 ft. minimum
(G) Bike lanes	Yes



Note: On-street parking lanes may be integrated or required along key street segments to support adjacent land uses (including service access and delivery) based on the existing and planned context of the area.

Table 16.32.010

Street design standards.

Right-of-way descriptions, standards, and rules of interpretation are in Subsection (C) below.

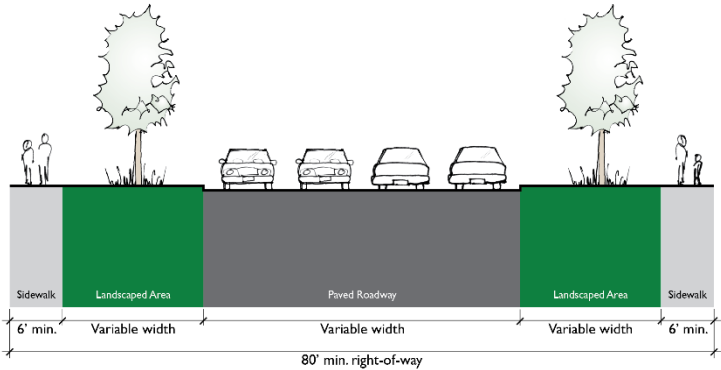
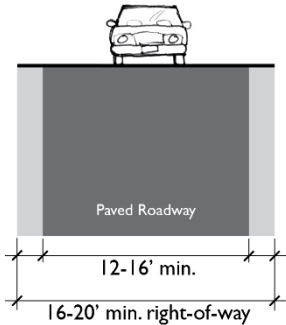
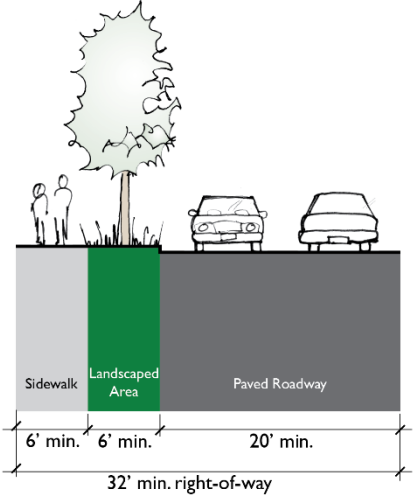
(A) Principal arterial			
(B) Right-of-way	80ft. minimum		
(C) Landscaped area	Varies per block		
(D) Pavement width	Varies		
(E) Grade	12% maximum		
(F) Sidewalks	6 ft. minimum		
(G) Bike lanes	Yes		
(A) Alley			
(B) Right-of-way	16-20 ft.		
(C) Landscaped area	No		
(D) Pavement width	12-16 ft.		
(E) Grade	12%		
(F) Sidewalks	No		
(G) Bike lanes	No		
(A) Lane			
(B) Right-of-way	32 ft.		
(C) Landscaped area	6 ft. minimum one side		
(D) Pavement width	20 ft.		
(E) Grade	12%		
(F) Sidewalks	6 ft. minimum (one side)		

Table 16.32.010		
Street design standards.		
Right-of-way descriptions, standards, and rules of interpretation are in Subsection (C) below.		
(G) Bike lanes	No	
For rules of interpretation, see subsection (C) above.		

16.50.010 Purpose.

A new subsection (G) is hereby added to Section 16.50.010:
G. Native species shall be preferred for Anacortes tree stock.

TITLE 17

17.05.030 Concurrency facilities and services.

Subsection (C) of Section 17.05.030 is hereby amended as follows:

C. All development approvals shall include a finding as to the application of this chapter, and those approvals for which concurrency improvements are required under this chapter shall be expressly conditioned thereon. If a proposed development would cause the level of service to decline below adopted level of service standards for an affected facility, the proposed development may nonetheless be approved if the zoning administrator finds that an improvement will be completed that will result in meeting adopted level of service standards of all affected concurrency facilities at the time of development, or that a financial commitment is in place to complete the improvement or implement the strategy within six years. This conditional approval shall not apply to stormwater and sanitary sewer systems.

17.16.100 Off-street parking and landscaping requirements.

Section 17.16.100 shall be amended as follows:

Off street parking shall be provided in the industrial district with a minimum of one parking space for each two employees on the largest shift and in accordance with the specifications in Chapter [17.46](#). Floor area calculations may be affected by parking requirements. Landscaping in and abutting parking lots shall be designed to infiltrate stormwater if feasible. (Ord. 2794 § 1 (Att. A), 2008; Ord. 2528 Att. A § 3, 2000: Ord. 2521 Att. A § 3 (part), 2000: Ord. 2353 § 1 (part), 1995: Ord. 2316 (part), 1994)

17.16.110 Basic design standards.

Subsections (D) and (G) of Section 17.16.110 are hereby amended as follows:

D. *Vegetation.* Any vegetation shall be low-water-usage plants or native vegetation. If the lot area exceeds ten thousand square feet, an in-ground irrigation system shall be installed in all landscaped areas. All vegetation shall be maintained in a healthy condition, free of weeds and trash, and damaged or unhealthy plants shall be promptly replaced. A landscaping plan shall be approved by the planning commission. Maintenance of soils and vegetation for stormwater infiltration shall be included in the landscaping plan.

G. *Building Standards.* In order to make large new buildings compatible with the scale of existing city development, and create a pedestrian-friendly environment, the apparent size of buildings and parking areas shall be broken down to relate to human scale by the following means:

If a building facade exceeds fifty feet in length, and is within twenty feet of an esplanade, trail, sidewalk, plaza, courtyard, or similar pedestrian area, it shall be broken down into smaller elements by jogging the wall in or out a minimum of four feet for at least ten feet of length, or by adding an element such as a porch, recessed entry, bay window, projecting trellis, or similar substantial architectural feature at least four feet deep by ten feet wide by one story high, at intervals so that no continuous wall plane is more than fifty feet in length.

If a building exceeds thirty feet in height, its apparent height shall be modulated wherever it is within ten feet of an esplanade, trail, sidewalk, plaza, courtyard, or similar pedestrian area, by adding shorter (twenty feet or less) building elements such as a wing of the building, arcade, trellis, lower roof overhang, horizontal projection at least two feet deep, awning, balcony, or other architectural feature to reduce the apparent height to a more human scale.

If a building wall is within twenty feet of a sidewalk, plaza, courtyard, or similar pedestrian area, it shall incorporate human-scale elements such as windows, arcades, lower roof overhangs, small-scale textural and color changes, moldings, balconies, projecting and recessed elements, doorways, landscaped areas, trellises, artwork, and/or other small-scale architectural features so that people will not be walking past large blank wall surfaces.

Primary building entrances shall be clearly visible from streets, pedestrian ways, and parking areas, with recessed or covered entrance areas to protect people from the rain. Projects shall be designed to facilitate pedestrian access, with pedestrian walkways connecting building entrances to adjacent public ways in locations which provide access to pedestrian street crossings.

Service and loading areas shall be located away from the primary parking and pedestrian areas to minimize conflicts. Dumpsters, loading platforms, storage areas, and similar functions shall be screened from direct view from pedestrian areas by attractive view-obstructing fencing or dense landscaping.

Parking lots in this zone shall provide landscaped areas distributed throughout the parking areas, totaling not less than five percent of the parking lot area, in addition to the perimeter landscaping required by subsection [17.46.080](#)(A). In order to limit impervious surface and avoid excessively large parking areas, parking lots in the industrial zone shall not exceed the minimum number of spaces required for each use under Chapter [17.46](#) by more than ten percent. Landscaping in and abutting parking lots shall be designed to infiltrate stormwater if feasible.

17.17.100 Off-street parking and landscaping requirements.

Section 17.17.100 is hereby amended as follows:

Off-street parking shall be provided in the manufacturing and shipping district with a minimum of one parking space for each one and one-half employees on the largest shift, and in accordance with specifications in Chapter [17.46](#), Parking. (Ord. 2794 § 1 (Att. A), 2008; Ord. 2521 Att. A § 3 (part), 2000)

Landscaping shall include LID infiltration BMPs if feasible.

17.21.110 Basic design standards.

Subsection (G) of Section 17.21.110 is hereby amended as follows:

G. *Building Standards.* In order to make large new buildings compatible with the scale of existing city development, and create a pedestrian-friendly environment, the apparent size of buildings and parking areas shall be broken down to relate to human scale by the following means:

If a building facade exceeds fifty feet in length, and is within twenty feet of an esplanade, trail, sidewalk, plaza, courtyard, or similar pedestrian area, it shall be broken down into smaller elements by jogging the wall in or out a minimum of four feet for at least ten feet of length, or by adding an element such as a porch, recessed entry, bay window, projecting trellis, or similar substantial architectural feature at least four feet deep by ten feet wide by one story high, at intervals so that no continuous wall plane is more than fifty feet in length.

If a building exceeds thirty feet in height, its apparent height shall be modulated wherever it is within ten feet of a sidewalk, plaza, courtyard, or similar pedestrian area, by adding shorter (twenty feet or less) building elements such as a wing of the building, arcade, trellis, lower roof overhang, horizontal projection at least two feet deep, awning, balcony, or other architectural feature to reduce the apparent height to a more human scale.

If a building wall is within twenty feet of a sidewalk, esplanade, trail, plaza, courtyard, or similar pedestrian area, it shall incorporate human-scale elements such as windows, arcades, lower roof overhangs, small-scale textural and color changes, moldings, balconies, projecting and recessed elements, doorways, landscaped areas, trellises, artwork, and/or other small-scale architectural features so that people will not be walking past large blank wall surfaces.

Primary building entrances shall be clearly visible from streets, pedestrian ways, and parking areas, with recessed or covered entrance areas to protect people from the rain. Projects shall be designed to facilitate pedestrian access, with pedestrian walkways connecting building entrances to adjacent public ways in locations which provide access to pedestrian street crossings.

Service and loading areas shall be located away from the primary parking and pedestrian areas to minimize conflicts. Dumpsters, loading platforms, storage areas, and similar functions shall be screened from direct view from pedestrian areas by attractive view-obstructing fencing or dense landscaping.

Parking lots in this zone shall provide landscaped areas distributed throughout the parking areas, totaling not less than five percent of the parking lot area, in addition to the perimeter landscaping required by subsection [17.46.080](#)(A). In order to limit impervious surface and avoid excessively large parking areas, parking lots in this zone shall not exceed the minimum number of spaces required for each use under Chapter [17.46](#) by more than ten percent. Parking lot design shall include LID infiltration BMPs if feasible.

17.41.010 Purpose and intent.

A new subsection (F) shall be added to Section 17.41.010 as follows:

F. Reduce erosion and stormwater runoff, and infiltrate stormwater using low impact designs.

17.41.020 General site landscaping.

A new subsection (N) shall be added to Section 17.41.020 as follows:

N. Suitable soil media shall be used and maintained consistent with LID infiltration BMPs if feasible.

17.46.010 General requirements.

A new subsection (L) shall be added to Section 17.46.010 as follows:

L. Parking and building dimension ratios shall be used to reduce impermeable surfaces and increase stormwater infiltration if feasible.

17.46.020 Spaces required.

The minimum number of off-street parking shall be determined in accordance with the following table while incorporating LID BMPs when feasible. One bicycle rack space shall be provided for every five parking spaces.

Use	Parking Spaces Required
Auditorium/assembly room/exhibition hall/theater/commercial recreation	1:4 fixed seats or 10:1,000 net square feet (nsf*) if no fixed seats

Use	Parking Spaces Required
Boat moorage, public or semi-public	1:2 docking slips
Boat storage	1:3 storage spaces
Funeral home/mortuary/religious inst.	1:5 seats
Hospital/in-patient treatment, outpatient surgical facility	1:patient bed
Hotel/motel	1:guest room
Manufacturing/assembly	1.5:1,000 nsf
Adult concessions:	
Adult entertainment	1:3 seats plus 1 space for every 2 employees on largest shift, or 1:100 nsf whichever is greater
Adult panorama theater or arcade	1:2 panorama device, or 1:300 nsf, whichever is greater
Adult retail	5:1,000 nsf
Office	4:1,000 nsf
Personal services:	
Without fixed stations	3:1,000 nsf
With fixed stations	1.5:station
Residential:	

Use	Parking Spaces Required
Single-family detached	2:unit
Multiple-unit structure:	
One-bedroom or studio unit	1.2:unit
Two-bedroom unit	1.6:unit
Three or more bedroom unit	1.8:unit
Restaurant	14:1,000 nsf
Retail/mixed retail/shopping center uses:	
Less than 15,000 nsf	5:1,000 nsf
More than 15,000 nsf	4:1,000 nsf
Senior housing:	
Nursing home	0.33:bed
Congregate care senior housing	0.5:unit
Senior citizen dwelling	0.8:unit
Rooming/board	1:rented room
Wholesale, warehouse	1.5:1,000 nsf

* **Net square feet (nsf)** The total number of square feet within the inside finished wall surface of the outer building walls of a structure, excluding major vertical penetrations of the floor (elevator and other mechanical shafts, stair wells), mechanical equipment, parking areas, common restrooms, common lobbies, and common hallways. Storage area is included in the net square feet calculation unless the property owner demonstrates that it cannot be converted to habitable space.

When a use is established which does not use a building, or which uses a very small building in relation to the number of vehicles reasonably expected, or has other unique parking requirements, the planning commission shall establish the number of spaces required to accommodate the reasonably expected parking demand generated by the

use, with the decision appealable to the city council. Examples of such uses include, but are not limited to, passenger ferry service, boat tours, bicycle tours, car or truck rental, taxi service, boat transport services, cruise boat moorage, park-and-ride lot. (Ord. 2992 § 1 (Att. A), 2016; Ord. 2902 § 7, 2013; Ord. 2794 § 1 (Att. A), 2008)

17.46.040 Off-street parking lot layout for commercial and multifamily areas, construction, and maintenance.

Subsection (D) of Section 17.46.040 shall be amended as follows:

D. *Construction.* All required off-street parking area shall be graded and surfaced to a standard comparable to the street which serves the parking area as determined by the city engineer and shall be developed and completed to the required standards before an occupancy permit for the building is issued. All traffic control devices such as parking strips, designated car stalls, directional arrow or signs, bull rails, curbs, and other developments shall be installed and completed as shown on the approved plans. Hard surfaced parking areas shall use paint or similar devices to delineate car stalls and direction of traffic. Where pedestrian walks are used in parking lots for the use of foot traffic only, they shall be curbed, or raised six inches above the lot surface. Pervious pavement should be used if feasible.

17.46.060 Off-street parking; landscaping plans and documents required; performance assurance.

Subsection (B) of Section 17.46.060 shall be amended as follows:

B. *Landscape Development Plan.* Landscape development plans shall indicate all areas to be preserved and planted including proposed fencing and landscape features. The landscaping plan shall also show locations of individual trees and shrubs; and name, size, spacing and quantity of the plant materials. No permit requiring off-street parking shall be issued without the administrator's approval of landscape development plans. Landscape plans shall include maintenance plans for LID infiltration BMPs on site.

17.46.070 Landscape development—Requirements.

A new subsection (E) shall be added to section 17.46.070 as follows:

E. Landscaping shall incorporate LID BMPs when feasible.

17.70.020 Statutory authorization, findings of fact, purpose, and objectives.

A. *Statutory Authorization.* The legislature of the state of Washington has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the city council of Anacortes, does ordain as follows:

1. *Findings of Fact.*

a. The flood hazard areas of Anacortes are subject to periodic inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

b. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood proofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

2. *Statement of Purpose.* It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

a. To protect human life and health;

b. To minimize expenditure of public money and costly flood control projects;

c. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

d. To minimize prolonged business interruptions;

- e. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- f. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- g. To ensure that potential buyers are notified that property is in an area of special flood hazard; and
- h. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.
- i. To incorporate LID BMPs if feasible.

17.70.080 Aquifer recharge areas.

A. *Intent.* This section establishes areas determined to be critical in maintaining both groundwater quantity and quality. This section specifies regulatory requirements to be enacted when development within these areas is proposed to occur and provides a methodology by which the city will determine the level of review and any mitigations required. The intent of this section is to:

1. Define minimum regulatory requirements to protect groundwater quality and quantity for existing and future use;
2. Identify the practices, alternatives, or mitigations that can minimize the adverse impacts of proposed projects; and
3. Ensure adequate design, construction, management, and operations to protect groundwater quality and quantity.
4. To incorporate LID BMPs if feasible.

17.70.340 Performance standards—General requirements.

Subsection 17.70.340(F)(7)(c) is hereby amended as follows:

c. *Stormwater Management Facilities.* Stormwater management outfall facilities, including LID improvements, are allowed in accordance with an approved critical areas report with no net loss of function to the wetland and wetland buffer. However, stormwater facilities beyond those necessary to ensure continued predevelopment stormwater flows to wetlands may only be permitted through the conditional use process.

TITLE 19

19.76.040 Stormwater management manual

Subsection G is hereby amended to read as follows:

G. Exceptions/Variations

1. The director may grant an adjustment to the application of the stormwater management manual and its minimum requirements prior to permit approval and construction consistent with the criteria in the city's NPDES Permit Appendix 1 Section 5, Adjustments.
2. The director may grant an exception/variance from this chapter or the application of the stormwater management manual and its minimum requirements prior to permit approval and construction when consistent with the criteria in the city's NPDES Permit Appendix 1 Section 6, Exceptions and Variations.
3. The director shall keep records, including the written findings of fact, of all local exceptions to the Minimum Requirements.
4. Exceptions/variances (exceptions) to the Minimum Requirements may be granted by the city following legal public notice of an application for an exception or variance, legal public notice of the city's decision on the application, and written findings of fact that documents the city's determination to grant an exception. Project-specific design exceptions based on site-specific conditions do not require prior approval of Ecology. The city must seek prior approval by Ecology for any jurisdiction-wide exception.

5. A request for an adjustment or exception must meet the criteria in the city's NPDES Permit (Appendix 1) and be submitted on a form provided by the department. The city may grant an exception to the minimum requirements if such application imposes a severe and unexpected economic hardship. To determine whether the application imposes a severe and unexpected economic hardship on the project applicant, the director must consider and document with written findings of fact the following:
 - a. The current (pre-project) use of the site, and
 - b. How the application of the minimum requirement(s) restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of the minimum requirements; and
 - c. The possible remaining uses of the site if the exception were not granted; and
 - d. The uses of the site that would have been allowed prior to the adoption of the minimum requirements; and
 - e. A comparison of the estimated amount and percentage of value loss as a result of the minimum requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the minimum requirements; and
 - f. The feasibility for the owner to alter the project to apply the minimum requirements.

In addition any exception must meet the following criteria:

- g. The exception will not increase risk to the public health and welfare, nor be injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and
- h. The exception is the least possible exception that could be granted to comply with the intent of the Minimum Requirements.



City of Anacortes Council Do's and Don'ts

Monday, January 14, 2019

Presented by:

**Ann Bennett
Executive Director**

City Council Do's and Don'ts

Presented by
Ann Bennett
Director
Washington Cities Insurance Authority

Washington Cities Insurance Authority

- **A municipal organization of Washington public entities joined to share risk**
 - Created in 1981
 - 155 members
- **Over \$160 million in assets**
 - Strongest financials of any Washington risk pool

Washington Cities Insurance Authority

- **Provides Self-Insurance for Members**
 - Auto Liability, General Liability, Employment Practices, Errors & Omission
 - \$20,000,000 per Occurrence
 - Look for coverage not exclusions
- **Purchases Insurance**
 - Member Property, Auto & Boiler Machinery
 - Cyber purchased for all members
 - Crime Fidelity purchased by members
- **Provides Insurance Type Services**
 - Claims
 - Risk Management



Common Council Liability Exposures

- **Land Use**
 - Arbitrary and Capricious Decisions
 - Appearance of Fairness Violations
- **Negligent Misrepresentation**
- **Defamation**
- **Personnel**
 - Harassment/Discrimination
 - Straying out of authority
- **Public Works**
 - Road Design



Avoiding Liability

Individuals Can Receive Absolute Immunity for Legislative Activities

- Adoption of budgets, ordinances and resolutions
- Only within context of council meeting as a whole



Avoiding Liability

Land Use

- *Know your role-Quasi Judicial or Legislative ?*
 - *If Quasi Judicial*
 - » *Must be fair and impartial-*
 - Appearance of Fairness Doctrine
 - Cannot communicate with proponent or opponent
 - » *Make findings of fact - Avoid Arbitrary and Capricious Decisions*



Avoiding Liability

Land Use

- Do not insert yourself in the process
 - Westmark v. City of Burien
 - \$10,000,000 verdict
 - Found tortious interference with a business expectancy
 - Mission Springs v. City of Spokane
 - Directed official not to issue permit
 - No legislative immunity
 - Liable under state and federal law
 - Woodview II LLC v. Kitsap County
 - Delay based tort claims evaluated by overall view of the reasonableness of a municipality's actions
 - Avoiding the taint of bad faith remains paramount



Avoiding Liability

Personnel

- Stay in legislative role
 - Set policies, budgets
- Do not stray into Executive role
 - Management of employees, hiring/firing, discipline
 - Can be held personally liable for employment actions
 - Personnel law changes constantly



Avoiding Liability

Personnel

– Harassment/Discrimination

- Know the Law
 - Trainings
 - Policies
- Report to Executive
 - Witnesses behavior
 - Made aware of problem by employee



Avoiding Liability

Negligent Misrepresentation

- Do not make specific promises or assurances
- Refer specific questions to staff
- Do not take matters into your own hands



Avoiding Liability

Defamation

- If the statement/opinion is regarding a legislative concern you have immunity
- Careful discussing individuals
 - Are they a public official, staff or private individual?
 - Any untruth gives rise to liability



Avoiding Liability

Public Works

- Do not “politically engineer”
 - Crosswalks, Signs, Speed Limits
 - Individual council members may ask for staff input outside of council meeting
 - Have staff respond to requests
- Avoid promises, assurances and inflammatory statements



Avoiding Liability

Do not leak Executive Session information

- Resist the temptation to share!
- Disclose conflicts prior to session and recuse yourself
- Claims and Litigation
 - Can jeopardize defense
 - Possible sanctions imposed



Avoiding Liability

Be mindful of written communications

- Email/ Twitter/ Facebook/Texts
 - Always use City email address, not personal
 - Use of a personal computer could subject it to search
 - Be mindful of Open Public Meetings Act with email
 - May lose your legislative immunity





www.wciapool.org

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Tukwila, WA 98138
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Washington Cities Insurance Authority

Washington Cities Insurance Authority (WCIA) is a municipal risk pool authorized under RCW 48.62, RCW 39.34 and WAC 200.100.010. Through Interlocal agreement, 161 cities and public entities create WCIA to self-insure their exposures. WCIA's mission is to take a leadership role to provide professional risk management and stable risk financing programs that respond to members' needs.

WCIA has over \$165 million in assets, of which \$67 million is undesignated member reserves to handle contingencies beyond predicted events. These are the strongest financials of any Washington risk pool. Through the use of an actuary, the group annually creates over \$35 million in assessments to cover liability and property risks. WCIA's administrative budget is approximately \$6.2 million, with \$1.8 million going directly back to the members in the form of training, reimbursements and legal assistance. WCIA believes the Full Board should be fully aware, and in control, of all pool operations-the insured's run the insurance company.

WCIA distinguishes itself from the private insurance industry by evaluating claims based upon legal liability not financial expediency. Annually, WCIA handles approximately 1,700 claims and lawsuits with over \$31 million being paid out on behalf of members in settlements and litigation defense costs. We believe in making good case law that benefits all public entities and actively litigate in the appeals courts, including the US Supreme Court. To reduce the number of claims and lawsuits, WCIA offers pre-loss services, allowing for legal consultation on potential actions which could give rise to liability, i.e. employment practices, land use.

WCIA advances effective risk management practices and procedures and requires active participation as an element of pool membership. Through comprehensive training, and committed field risk management services there is a systematic reduction of loss exposures for members. The WCIA COMPACT is a commitment made by all members to participate in training, risk management and pool governance. The COMPACT has received national honors from the Association of Governmental Risk Pools.

WCIA's Risk Management team is experienced and skilled in municipal risks. Each member has an assigned Risk Management Representative that provides individual attention, personal communication and detailed risk analysis in support of the formal comprehensive COMPACT program. WCIA staff provides on-site risk management

advice, conduct loss control inspections and offer training on specific exposures and controls. The Risk Management Representatives review indemnification, hold harmless and insurance requirements in contracts and are always available to research and analyze liability questions and concerns. Questions or concerns that require a legal review are handled under our Risk Management Consultation Program and often result in Risk Management Bulletins that are available to all members.

As part of the COMPACT, members annually undergo a risk management audit regarding a specific department or loss exposure, i.e. police, employment, land use. The comprehensive audit reviews current policies and procedures with recommendations and mandatory requirements to ensure a reduction in risk exposures.

WCIA has developed an extensive training and education program offering municipal risk management trainings state wide. Annually over 450 educational offerings are provided with approximately 13,000 attendees from the membership. WCIA collaborates with various municipal organizations resulting in an expanded offering of co-sponsored trainings. Members with travel restrictions benefit from our website's Virtual Classroom which offers On-Demand videos.

In addition to the comprehensive training programs offered, WCIA provides a Member Reimbursement program to assist members in the professional development and accreditation of their staff. The membership receives reimbursements for municipal accreditations, individual and group certifications, and registration for association schools and institutes.

For more detailed information on all of our programs and services, please visit our website www.wciapool.org.

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**PUBLIC OFFICIALS TRAININGS-
RISK MANAGEMENT BASICS**

PRESENTED BY:
MICHAEL F. CONNELLY

I. Authority and Responsibility of the Mayor, Council and City Manager.

Cities and towns in the State of Washington are organized, pursuant to statute, in a number of different ways. The authority and responsibility of public officials is different in each classification. This discussion focuses on the respective roles of the public officials within each classification. It does not discuss the many other differences in authority which range from public bidding requirements to the authority to tax.

Cities and towns can be organized in the following ways:

1. First-Class Cities pursuant to RCW 35.01.010 and chapter 35.22 RCW;
2. Second-Class Cities pursuant to chapter 35.23 RCW;
3. Towns pursuant to chapter 35.27 RCW; and
4. Code cities pursuant to chapters 35A.11, 12 and 13 RCW. Code cities can be organized in three ways: By Charter, the Mayor-Council Plan, or the Council-Manager plan. The authority and responsibility of public officials also is different within each code city classification.

Attached as Exhibit A is a listing provided by MRSC setting forth how each city in Washington is currently organized.

Generally, first class cities and code cities have the authority to exercise their police powers in any manner that is not precluded by the Constitution or State statute. See RCW 35.11.050.

Towns and second class cities may be bound by a more restrictive approach.¹ It is also important to keep in mind that officers of a municipality have been found to only have such powers as are conferred upon them, expressly or by necessary implication. See *Meadowdale Neighborhood Committee v. City of Edmonds*, 27 Wn. App. 261, 268 (1980), citing *Campbell v. Saunders*, 86 Wn.. 2d 572, 574-575 (1976); *Othello v. Harder*, 46 Wash. 2d 747, 752 (1955), and *State v. O Connell*, 83 Wn. 2d 797, 824 (1974).²

Specific statutes granting authority are discussed below.

RCW 35.21.010 lists the general corporate powers for all municipal corporations. It also specifically limits the size of towns in certain circumstances.

RCW 35.21.100 allows cities and towns to accept donations.

RCW 35.21.205 allows cities or town to purchase liability insurance for its officials and employees “against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties.” (Emphasis added.)

It is also important to note that chapter 42.23 RCW prohibits the acceptance, by any municipal officer, of any compensation or gratuity “in connection with” a contract from a party beneficially interested in that contract. See RCW 42.23.030. A second more general provision further prohibits the receipt of the same “from a source except the employing municipality” for “a matter connected with or related to” the official or employee’s services for the municipal corporation. See RCW 42.23.070. The *de minimus* and other exceptions established for state employees are not expressly applicable to municipalities. However some cities have adopted these provisions. Finally a municipal officer may not use his or her position to secure a special privilege for himself, herself or others. RCW 42.23.070.

A. First-Class Cities:

First-Class Cities are organized primarily by their respective charters. (RCW 35.22.020).

First-Class Cities are granted numerous general and specific powers. (RCW 35.22.280).

The power and authority to legislate in First-Class Cities is granted by statute to both the mayor and council, “as may be provided for in its charter.” (RCW 35.22.200).

If the charter is in conflict with an express provision of state law the charter will be deemed to be superseded or modified. *Oakwood Co. v. Tacoma Mausoleum Ass’n*, 22 Wn.2d 692 (1945).

¹ See “Dillon’s rule”: holding that municipalities have only the powers expressly granted by the legislature or necessarily implied.

2. Two other forms of government are provided by statute but not currently used by any city or town in Washington; see chapter 35.17 RCW Commission form of government; chapter 35.18 RCW Council-Manager Plan.

If a certain power is not addressed in the charter or state law, the general rule is that such power rests in the city council as its governing body. See *State v. Superior Court of Spokane County*, 153 Wash. 139 (1929).

If a statute or charter calls for an act to be taken by the passage of an ordinance then the power to act cannot be delegated. *City of Seattle v. Auto Sheet Metal Workers Local 387*, 27 Wn. App. 669 (1980) (overruled on other grounds by *City of Pasco v. Public Employment Relations Com'n*, 119 Wn.2d 504 (1992)); see also *State v. Scott* 115 Wash. 124 (1921) (Unlawful delegation of power to fix license fees.)

The court interpreted the words of the charter for the City of Spokane and found that the mayor and council both had the power to initiate litigation, the mayor had the power to manage litigation and council had the sole authority to settle litigation. See also *Washington Public Trust Advocates v. City of Spokane*, 120 Wn. App. 892 (2004).

B. Second-Class Cities:

The general authority of Second-Class Cities is set forth in RCW 35.23.010; its organizations set forth in RCW 35.23.021, which states in pertinent part as follows:

The government of a second-class city shall be vested in a mayor, a city council of seven members, a city attorney, a clerk, a treasurer, all elective . . . PROVIDED, That the council may enact an ordinance providing for the appointment of the city clerk, city attorney, and treasurer by the mayor, which appointment shall be subject to confirmation by a majority vote of the city council . . . The city council by ordinance shall prescribe the duties and fix the compensation of all officers and employees; PROVIDED, That the provision of any such ordinance shall not be inconsistent with any statute . . .

The mayor shall appoint and at his or her pleasure may remove all appointive officers except as otherwise provided herein . . . Every appointment or removal must be in writing signed by the mayor and filed with the city clerk.

RCW 35.23.051 further provides in part, that:

In its [city councils] discretion the council of a second-class city may divide the city by ordinance, into a convenient number of wards, not exceeding six . . . Whenever such city is so divided into wards, the city council shall designate by ordinance the number of councilmembers to be elected from each ward, apportioning the same in proportion to the population of the wards . . .

RCW 35.23.101 provides that:

(1) The council of a second class city may declare a council position vacant if the council member is absent for three consecutive regular meetings without permission of the council . . . Vacancies in offices other than that of mayor or city council members shall be filled by appointment of the mayor . . .

RCW 35.23.091 sets forth the compensation allowed elected and appointed officials as fixed by council ordinance.

RCW 35.23.111 sets forth the duties of the city attorney:

The city attorney shall advise the city authorities and officers in all legal matters pertaining to the business of the city and shall approve all ordinances as to form. He or she shall represent the city in all actions brought by or against the city or against city officials in their official capacity. He or she shall perform such other duties as the city council by ordinance may direct.

The specific powers of the city council of each Second-Class City are listed in RCW 35.23.440.³

Finally chapter 35.23 RCW has a series of provisions addressing the circumstance when a city is classified as a second class city prior to January 1, 1993, is reorganized into a code city but retains its second class city plan of government.⁴ As discussed above, second class cities appear to be bound by the restrictions of “Dillon’s Rule”.

C. Towns:

The rights privileges and powers of Towns are set forth in RCW 35.27.010.

The mayor’s duties are set forth in RCW 35.27.160 as follows:

The mayor shall preside over all meetings of the council at which he or she is present. A mayor pro tempore may be chosen by the council for a specified period of time, not to exceed six months, to act as the mayor in the absence of the mayor. The mayor shall sign all warrants drawn on the treasurer and shall sign all written contracts entered into by the town. The mayor may administer oaths and affirmations, and take affidavits and certify them. The mayor shall sign all conveyances made by the town and all instruments which require the seal of the town.

The specific powers of Town Councils are set forth in RCW 35.27.370.⁵ As discussed above the restrictions of “Dillon’s rule” appears to be applicable.

D. Code Cities:

RCW 35A.11.010 establishes the rights, powers and privileges of both Charter and Non-Charter Code Cities.

RCW 35A.11.020 defines the powers vested in the legislative bodies, stating in pertinent part as follows:

3. Additional powers are set forth in RCW 35.23.452, .454, .455, and .456.

4. See RCW 35.23.805, .810, .815, .820, .825, .830, .835, .840, .845, and .850.

5. Additional powers can be found in RCW 35.27.375, .380, and .385.

The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people . . .

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city . . .

The legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to the acquisition, sale, ownership, improvement, maintenance, protection, restoration, regulation, use, leasing, disposition, vacation, abandonment or beautification of public ways, real property of all kinds, waterways, structures, or any other improvement or use of real or personal property, in regard to all aspects of collective bargaining as provided for and subject to the provisions of chapter 41.56 RCW, as now or hereafter amended, and in the rendering of local social, cultural, recreational, educational, governmental, or corporate services, including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns . . .

Chapter 35A.11 RCW further provides that general powers such as eminent domain, borrowing, taxation, granting of franchises are all vested in the legislative bodies and the duties and procedures to be followed in doing so must be in accord, again, with the general law. (See RCW 35A.11.030)

Some general powers granted are:

1. Ability to act in concert with other municipalities (See RCW 35A.11.040 and chapter 39.34 RCW);
2. Conferring the “greatest power of local self-government consistent with the Constitution of this State.” (RCW 35A.11.050);
3. Full participation in Economic Opportunity Act programs (RCW 35A.11.060);
4. May provide for the powers of initiative and referendum (35A.11.080, 090);
5. Authorization to pass a resolution allowing members to serve as volunteer fire fighters or reserve law enforcement officers and receive compensation (RCW 35A.11.110); and
6. May impose juvenile curfews (RCW 35A.11.210).

Code Cities can be organized in three different ways: (1) elect to be governed by a charter voted upon by the citizens of the City; (2) choose the Mayor-Council Plan of Government; or (3) choose the Council-City Manager Plan of Government.

In a Charter City the specific duties and responsibilities of the elected and appointed officials are defined by that charter to the extent it is consistent with the general law. In a Mayor-Council Plan of Government those duties are defined in chapter 35A.12 RCW, and in a Council-Manager Plan of Government, they are defined in chapter 35A.13 RCW.

The duties of the mayor in a Mayor-Council Plan of Government are described in RCW 35A.12.100 as follows:

The mayor shall be the chief executive and administrative officer of the city, in charge of all departments and employees, with authority to designate assistants and department heads. The mayor may appoint and remove a chief administrative officer or assistant administrative officer, if so provided by ordinance or charter. He or she shall see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city, and shall have general supervision of the administration of city government and all city interests. All official bonds and bonds of contractors with the city shall be submitted to the mayor or such person as he or she may designate for approval or disapproval. He or she shall see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed, and to this end he or she may cause any legal proceedings to be instituted and prosecuted in the name of the city, subject to approval by majority vote of all members of the council. The mayor shall preside over all meetings of the city council, when present, but shall have a vote only in the case of a tie in the votes of the councilmembers 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. He or she shall report to the council concerning the affairs of the city and its financial and other needs, and shall make recommendations for council consideration and action. He or she shall prepare and submit to the council a proposed budget, as required by chapter 35A.33 RCW. The mayor shall have the power to veto ordinances passed by the council and submitted to him or her as provided in RCW 35A.12.130 but such veto may be overridden by the vote of a majority of all councilmembers plus one more vote. The mayor shall be the official and ceremonial head of the city and shall represent the city on ceremonial occasions, except that when illness or other duties prevent the mayor's attendance at an official function and no mayor pro tempore has been appointed by the council, a member of the council or some other suitable person may be designated by the mayor to represent the city on such occasion.

The powers of the council under the Mayor-Council Plan of Government are described in RCW 35A.12.190 as follows:

The council of any code city organized under the mayor-council plan of government provided in this chapter shall have the powers and authority granted to the legislative bodies of cities governed by this title, as more particularly described in chapter 35A.11 RCW.

The Council-Manager Plan of Government has a different approach. RCW 35A.13.010 states in pertinent part:

. . . The council shall appoint an officer whose title shall be “city manager” who shall be the chief executive officer and head of the administrative branch of the city government. The city manager shall be responsible to the council for the proper administration of all affairs of the code city. . .

The mayor’s duties are significantly more limited than those authorized by chapter 35A.12 RCW. Specifically they are described in RCW 35A.13.030 as follows:

Biennially at the first meeting of the new council the members thereof shall choose a chair from among their number unless the chair is elected pursuant to RCW 35A.13.033. The chair of the council shall have the title of mayor and shall preside at meetings of the council. In addition to the powers conferred upon him or her as mayor, he or she shall continue to have all the rights, privileges, and immunities of a member of the council. The mayor shall be recognized as the head of the city for ceremonial purposes and by the governor for purposes of military law. He or she shall have no regular administrative duties, but in time of public danger or emergency, if so authorized by ordinance, shall take command of the police, maintain law, and enforce order.

The authority of the city manager is significant. See RCW 35A.13.100 which states as follows:

The city manager may authorize the head of a department or office responsible to him or her to appoint and remove subordinates in such department or office. Any officer or employee who may be appointed by the city manager, or by the head of a department or office, except one who holds his or her position subject to civil service, may be removed by the manager or other such appointing officer at any time subject to any applicable law, rule, or regulation relating to civil service. Subject to the provisions of RCW 35A.13.080 and any applicable civil service provisions, the decision of the manager or other appointing officer, shall be final and there shall be no appeal therefrom to any other office, body, or court whatsoever.

Council authority over city employees is restricted. See RCW 35A.13.120 which states:

Neither the council, nor any of its committees or members, shall direct the appointment of any person to, or his or her removal from, office by the city manager or any of his or her subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the manager and neither the council nor any committee or member thereof shall give orders to any subordinate of the city manager, either publicly or privately. The provisions of this section do not prohibit the council, while in open session, from fully and freely discussing with the city manager anything pertaining to appointments and removals of city officers and employees and city affairs.

The powers of council are set forth in RCW 35A.13.230:

The council of any code city organized under the council-manager plan provided in this chapter shall have the powers and authority granted to legislative bodies of cities governed by this title as more particularly described in chapter 35A.11 RCW, except insofar as such power and authority is vested in the city manager.

II. Who Does The City Attorney Represent?

This question must be answered to determine whose interests the attorney is protecting; from whom the attorney takes direction; and whose confidences they are obligated to protect. The answer is often contained in the laws and regulations set forth above which define the “authorized constituents” the attorney is charged to represent.

The rules of professional conduct (“RPC”) define the client as the organization. Specifically RPC 1.13 Organization as Client states: “(a) a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.”

The attorney then is charged with representing, taking direction from and maintaining the confidences of those duly authorized by the law to act on the City’s behalf. Often, when, for example the mayor and the council are in dispute, this role gets complicated. The first question however, that has to be answered is who within the adopted city structure is authorized to give the city attorney direction.

Issues concerning city attorneys and public officials have been discussed in several court cases. Each is discussed below.

A. *City of Tukwila v. Todd*, 17 Wn. App. 401 (1977):

In *City of Tukwila*, members of the city council brought an action against the mayor, city clerk, and city treasurer to permanently enjoin increases in salaries of certain city employees above the level set forth in the annual budget. (Tukwila was operating under chapter 35.24 RCW Third Class Cities, which was repealed in 1994.)

This issue began when the council passed the 1975 annual budget and three employees of the Department of the City Clerk were among several employees in various city departments who did not receive increases in pay. The three employees instituted grievance proceedings and a special arbitration committee found no discrimination, but recommended that the salaries of the three employees be increased retroactively. The mayor submitted to the clerk a “Request for Transfer of Funds from the budget of the Department of Mayor to the Department of City Clerk. The City Council then hired an attorney and sued. The council chose not to have the city attorney represent it because council members believed the city attorney was biased in favor of the administrative branch of government.

The court found that the transfer was unlawful by examining the statutory authority to transfer, RCW 35.33.121, and the local ordinances addresses that subject, Tukwila Municipal Code 2.08.010. Even though the mayor had the authority to act in an administrative capacity, he was still regulated by the provisions of the ordinance governing that administrative act. The court also held that where substantial evidence of a conflict exists between the legislative and

executive branches of government a council is justified in retaining private legal counsel and authorize payment to the same.

B. *State v. Volkmer*, 73 Wn. App. 89 (1994):

In *Volkmer*, the Town of Steilacoom's Council filed a Complaint for a Writ of Mandamus seeking to force the mayor to sign a resolution directing payment of public funds under a contract in which the council retained private legal representation to represent it in a dispute with the mayor over a variance issue. The council thought the variance was unnecessary and that the decision to require a variance was not authorized by the council. The Town of Steilacoom was considered a Fourth-Class City organized under the provisions of chapter 35.27 RCW. That statute provided that mayor appoints the town attorney. The court stated:

In Washington, there are two scenarios in which the town council of a municipal corporation has the implied authority to hire outside counsel. One, if the council hires outside counsel to represent it, and it prevails on the substantive issue to the benefit of the town, a court may direct the town to pay the reasonable fees and costs of outside counsel. [Citations omitted.] Two, if extraordinary circumstances exist such that the mayor and/or town council is incapacitated, or the town attorney refuses to act or is incapable of acting or is disqualified from acting, a court may determine that a contract with outside counsel is both appropriate and necessary.

In *Volkmer* the court found that neither circumstance existed due to a lack of evidence that the council had any authority over the variance process or the authority to waive it, and further because there was no evidence that "a conflict of interest existed between the town attorney and the Council to make the town attorney unable to represent the Council."

The court recognized the difficulty with the first criteria which essentially requires the council to "bet" on a favorable outcome when it hires counsel but indicated that that was a problem for the legislature, not the courts.

C. *Sammamish Community Mun. Corp. v. City of Bellevue*, 107 Wn. App. 686 (2001):

This case recognized the conflicts of interest that can arise within the exercise of a City Attorney's duties and accepted practice of appointing outside counsel in the event of such conflict.

In Bellevue, the community councils received legal advice from a Bellevue City Attorney. Whenever a potential conflict arose, the City would provide the community council with independent outside legal representation. A plaintiff challenged the practice, alleging that it violated the rules of professional conduct, specifically, the duty to avoid conflicts of interest. However, the court held that the practice of appointing independent representation whenever an actual conflict of interest is imminent is consistent with the Rules of Professional Conduct.

D. *Eugster v. City of Spokane*, 110 Wn. App. 212 (2002):

This is primarily an Open Public Meeting Act case, but the court did briefly address the issue of a potential conflict between the council and mayor. In this circumstance the city attorney's

office had a number of potential clients: the city, the council, and fewer than all the council members who were parties in a lawsuit with another council member who identified himself in the Complaint as a member of the Spokane City Council, a citizen, voter and taxpayer of the City of Spokane. The initial problem was solved when the city attorney withdrew. Objection to a substitute council for the city and defendant council members were dismissed by the court stating:

Mr. Eugster contends the conflict continues even with substitute counsel because the City's interest in an open and public form of government is directly adverse to the individual Council Members who improperly met. This argument presupposes a likelihood of continuing OPMA violations. Mr. Eugster fails to show evidence that the individual Council Members have a pattern of holding improper meetings or a continuing interest in conducting future meetings offending the OPMA. On the other hand, the record shows prompt, if constrained, corrective action when a likely OPMA violation was pointed out.

E. *Washington Public Trust Advocates v. City of Spokane*, 117 Wn. App. 178 (2003):

In this case a council member brought an action in the name of a non-profit corporation, the City of Spokane and the Spokane Parking Public Development Authority. The court held that he had no authority to bring a suit in the name of the governmental agencies as a taxpayer's derivative lawsuit without the consent of the governmental entities. The court cited in part the language of the City Charter, stating: "[s]ignificantly, under the City's charter only the city attorney or appointed special counsel may represent the City during legal proceedings."

F. *Washington Public Trust Advocates v. City of Spokane*, 120 Wn. App. 892 (2004):

This case arose out of a single question: Who has control of the day to day management of the Riverpark Square litigation, including the power to bring an action against other third parties, the mayor or the council?

The City of Spokane, when this suit was filed, was in the first weeks of a new Strong Mayor Charter. The court's decision was based both upon the language of the Charter itself and, by analogy, decisions concerning other Strong Mayor structures. The court affirmed the finding of the Superior Court that

[t]he Mayor of Spokane has the authority to make all decisions related to the conduct of litigation, subject to the authority of a majority (or super majority) of the Spokane City Council to withdraw funding, or to direct the initiation or termination of lawsuits, and subject to the approval of the Spokane City Council of any settlement requiring the payment of funds by the City of Spokane.

G. *Block v. City of Goldbar*, 180 Wn. App. 1008 (2014) (Unpublished Opinion):

Block dealt primarily with an alleged violation of the Open Public Meetings Act, but is strikingly similar to *Washington Public Trust Advocates*, as it arose out of litigation that also challenged whether the city's mayor had the sole authority to decide if the city would mediate a legal dispute.

As a city organized with a mayor-council plan of government, the mayor of Gold Bar was vested with the authority of the “chief executive and administrative officer of the city, in charge of all departments and employees.” RCW 35A.12.100. The plaintiff challenged a closed session held by the Gold Bar City Council where a discussion regarding the mediation of a legal dispute took place, arguing that the session violated the OPMA. However, because the authority of whether to pursue mediation or litigation ultimately rested with the mayor and not the council or city attorney, the session of the city council was legally permitted. The court further noted that under RCW 42.30.110(1)(i), a governing body may permissibly hold an executive session to discuss with legal counsel representing the agency and litigation or potential litigation in which the city is involved.

III. Roberts Rules of Order.⁶

A. Basic Principles:

1. One subject at a time. “When a motion has been made that matter must receive a determination by the question, or be laid aside before another is entertained.”
2. Alternate presentations between opposite points of view. “[A]nd the party that speaketh against the last speaker is to be heard first.”
3. The chair should always call for a negative vote (all opposed).
4. Confine debate to the merits of the pending question.
5. Division of a question: If a question contains more parts than one and members seem to be for one part and not for the other, it may be moved that the same be divided into two or more questions.

B. Rights of an Assembly or Organization:

1. Constitution.
2. Statute.
3. Charter.
4. Council rules.
5. Rules of order.
6. Custom.

C. Basic Rights of a Member:

1. To attend meetings.

6. All quotes and information from this section are derived from Robert, H. M. (2011). *Robert Rules of Order Newly Revised* (11th ed.). Philadelphia, PA: Da Capo Press. See also *Robert’s Rules of Order Newly Revised in Brief* (2005).

2. To make motions.
3. To speak in debate.
4. To vote.

These rights cannot be impaired without disciplinary action sanctioned by the rules set forth in Section (B) above.

D. Majority Vote:

Most decisions can be made by a majority vote. Certain decisions such as declaring an emergency and amending the budget may require a majority plus one when required by statute. At times there may not be sufficient members to reach this threshold even though a quorum is present.

E. Quorum:

The minimum number of members who must be present at the meetings of a deliberative assembly for business to be validly transacted is the quorum of the body. A Quorum generally is constituted by a majority of members.

F. Order of Business:

1. Calling the meeting to order; “The meeting will come to order.”
2. Reading and approval of minutes.
3. Reports of officers, boards and standing committee (permanently established).
4. Reports of special committees (committee formed for specific tasks).
5. Special orders (matters which have been previously assigned a type of special priority).
6. Unfinished business and general orders (matters which have come over from the preceding meeting or which have been scheduled for the present meeting).
7. New business.
8. Adjournment.

G. Motions:

1. Business is brought before the council by the motion of a member.

A motion may itself bring its subject to the assembly’s attention, or the motion may follow upon the presentation of a report or other communication. A motion is a formal proposal by a member, in a meeting, that the assembly take certain action. The proposed action may be of a substantive nature, or it may express a certain view or direct that a

particular investigation be conducted and the findings be reported to the assembly for possible further action, or the like. Generally the body does not make a motion to receive a report but to take action. Prior to making a motion the moving party must “obtain the floor” by being recognized by the chair. “The chair must recognize any member who seeks the floor while entitled to it.”

2. Process:

- a. A Member Makes the Motion.
- b. Another Member Seconds the Motion.

If there is no second the motion dies. If the moving party wishes to amend the motion and it has been seconded he can do so with permission of the seconding party. “Modifications of a motion that are suggested before the question is stated should usually be limited to changes that are likely to be generally acceptable to the member’s present form, in other words, changes that probably would not occasion debate if proposed as amendments while the motion is pending. In a similar manner, before the question on a motion has been stated, any member who believes that the maker will immediately withdraw the motion if a certain fact is pointed out to him can quickly rise and say (without waiting for recognition), “Mr. chairman, I would like to ask if the member would be willing to withdraw his motion in view of . . . [stating the reasons for the suggested withdrawal].

- c. The Chair States the Question, i.e. “It has been moved and seconded that . . .”
- d. The Members Debate the Motion (unless no member claims the floor for that purpose).

In the debate, each member has the right to speak twice on the same question on the same day, but cannot make a second speech on the same question as long as any member who has not spoken on that question desires the floor. A member who has spoken twice on a particular question on the same day has exhausted his right to debate that question for that day. Without the permission of the assembly, no one can speak longer than permitted by the rules of the body . . . Debate must be confined to the merits of the pending question. Speakers must address their remarks to the chair; maintain a courteous tone, and-especially in reference to any divergence of opinion-should avoid injecting a personal note into debate. To this end, they must never attack or make any allusion to the motive of members . . . speakers should refer to officers only by title and should avoid the mention of other members’ names as much as possible . . . although the presiding officer should give close attention to each speaker’s remarks during debate, he cannot interrupt the person who has the floor so long as that person does not violate any of the assembly’s rules and no disorder arises. The presiding officer must never interrupt a speaker simply because he knows more about the matter than the speaker does.

e. Putting the Question.

When the debate appears to have closed, the chair may ask, “Are you ready for the question?” or “Is there any further debate?” If no one rises to claim the floor the chair then puts the matter to a vote, once more making clear the exact question the assembly is called upon to decide. Often the clerk will read the motion again to the body. It should also be made clear by the chair the consequence of an “aye” vote and a “no” vote. A vote can be taken by voice, by a showing of hands or by the clerk formally polling the body. (Any member may call for a formal vote)

f. The chair announces the result of the vote.

3. Subsidiary Motions.

A member may, while a motion is pending, make a **subsidiary motion** to postpone consideration indefinitely, postpone to a certain time amend the motion or if additional information is needed prior to amending or taking further action “Commit the main question-or refer it to a committee” by making a secondary motion. The body must vote on the secondary motion prior to returning, if necessary to the main motion. Debate should be confined to the secondary motion.

4. Privileged Motions.

A member may, except where there is on the table a motion to amend or for the “Previous Question” may call for the Orders of the Day, if the adopted order of business is not being followed, or Raise a Question of Privilege, if a pressing situation is affecting a right or privilege of the assembly or of an individual member (for example, noise, adequate ventilation, introduction of a confidential subject in the presence of persons not subject to the confidence. This motion permits the member to state the urgent request which can then be dealt with informally or the chair can make a ruling, or a member can move to recess, extend time or adjourn if there is a fixed time to adjourn the body’s rules.

5. Incidental Motions.

At any time during consideration of a motion a member can make a **Point of Order**. “If the member believes that the rules of procedure have not been followed” may appeal if any two members by motion and second wish to have a procedural question made by the chair submitted to the entire body; suspend the rules to permit the accomplishment of a specific purpose (for example to extend the meeting); move for a Division of the Question; a motion for parliamentary inquiry or request for information, directed to the chair or through the chair another member.

H. Previous Question:

A motion calling for an immediate vote on the question before the body cannot be made while another has the floor, must be seconded, is not debatable, is not amendable and requires a two-thirds vote. Also referred to as a motion to **Call for the Question**.

I. Unanimous consent:

In cases where there seems to be no opposition in routine business or on question of little importance, time can often be saved by a procedure of unanimous consent. For example, if there is not objection . . .”). This procedure should not be used for any action wherein it is required that the body act by ordinance or resolution or as specifically required to act by statute.

IV. The Open Public Meeting Act.

The Open Public Meetings Act (the “OPMA”) is set forth in chapter 42.30 RCW. It provides that “[a]ll meetings of the governing body of a public agency shall be open and public and persons shall be permitted to attend any meeting of the governing body of a public agency . . .” RCW 42.30.030.

“Meeting” is defined as “meetings at which action is taken.” RCW 42.30.020(4).

“Public agency” is defined as “. . . (b) [a]ny county, city, school district, special purpose district or other municipal corporation or political subdivision of the state of Washington . . . (c) [a]ny subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissioners, library or park boards, commission, and agencies . . .” RCW 42.30.020(1)

“Action” means “the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations and final actions . . .” RCW 42.30.020(3).

“Governing Body” is defined as “the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.” RCW 42.30.020(2).

Whether the Commission is a public agency or governing body for purposes of the OPMA depends on the nature of how the Commission was created and its function within the City. A mayor and ad hoc committees established by the mayor have not been found to be “governing bodies” subject to the OPMA.⁷ However, a task force formed by the City of Lakewood’s Planning Advisory Board was determined to be “governing body of a public agency” because it was created as a committee of the Planning Board, and took testimony and public comments, conducted hearings and acted on behalf of the Planning Board and city council. *Clark v. City of Lakewood*, 259 F.3d 996, 1013-1014 (9th Cir. 2001).

⁷ See *Washington Public Trust Advocates v. City of Spokane*, 120 Wn. App. 892, 903 (2004); see also *Salmon for All v. Dept. of Fisheries*, 118 Wn.2d 270, 277 (1992).

A. The following actions were found to not violate the OPMA or were not subject to the OPMA:

1. Where quorum is gathered, no violation if no “action” takes place; no action when there is no official business of the agency transacted. *In re Recall of Estey*, 104 Wn.2d 597 (1985); *see also In re Recall of Roberts*, 115 Wn.2d 551 (1990).
2. State agency governed by single individual director does not have “governing body.” *Salmon for All v. Dept. of Fisheries*, 118 Wn.2d 270, 277 (1992). County auditor’s office governed by single elected auditor did not have “governing body.” *Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now*, 119 Wn. App. 665, 703 (2004).
3. Interstate “compact” consisting of representatives from the Washington Department of Fisheries and Oregon government was not a “governing body” subject to the OPMA. *Salmon*, 118 Wn.2d at 277-78.
4. Negotiations of employees of a state agency involved with other jurisdictions do not constitute a “governing body,” although a governing body may ratify or accept such negotiations later (which would be subject to OPMA). *Salmon*, 118 Wn.2d at 278.
5. Telephone lobbying between commissioners would violate the OPMA; however in this case superior court found no telephone lobbying occurred and regardless of whether it occurred, such action would not invalidate subsequent final vote taken in proper public meeting. *Organization to Preserve Agricultural Lands v. Adams County*, 128 Wn.2d 869 (1996).
6. Candid discussion between city council, legal counsel and city manager as to manager’s decision to join litigation regarding state initiative in executive session was proper; no vote was taken when councilmembers did not block city manager’s decision to join lawsuit, and manager had authority but wanted to discuss advantages and disadvantages with council members and legal counsel. *In re Recall of Lakewood City Council Members*, 144 Wn.2d 583, 587 (2001).
7. Meetings or gatherings between legislative members-elect that occur prior to being sworn in. *Wood v. Battleground School District*, 107 Wn. App. 550, 561 (2001).
8. No “meeting” occurs where less than a majority of the governing body meets. *Wood*, 107 Wn. App. at 564.
9. “Mere use” or “passive receipt” of email is not violation, nor are email communications unrelated to the governing body’s business. *Wood*, 107 Wn. App. at 564-65.
10. Meetings between the mayor and special counsel regarding litigation conferences are not within definition of “public agency” or “governing body.” *Washington Public Trust Advocates v. City of Spokane*, 120 Wn. App. 892, 903 (2004).

11. Although county canvassing board was a public agency with a governing body, there is no violation where no evidence that a majority of the board's members ever met in contravention of the OPMA exists. *Loeffelholz*, 119 Wn. App. at 703.
12. Seasonal election workers working on canvassing of ballots were not organized by statute or any other provision of law into either a "public agency" or "governing body". *Loeffelholz*, 119 Wn. App. at 703.

B. The following actions were found to violate the OPMA or be subject to the OPMA:

1. Closed meetings by faculty of the University of Washington Law School (which was determined to be "governing body" of sub-agency of the board of regents of the University). *Cathcart v. Andersen*, 85 Wn.2d 102 (1975).
2. Public meeting held without 24-hours' notice to approve legal action was improper special meeting because teacher strike did not constitute "emergency" exception to notice requirements. *Mead School Dist. No. 354 v. Mead Education Ass'n*, 85 Wn.2d 140 (1975).
3. Balloting to arrive at consensus candidate during executive session constituted "final action" prohibited during executive session; final action could occur without formal motion. *Miller v. City of Tacoma*, 138 Wn.2d 318 (1999).
4. Non-public meetings held by Adult Entertainment Task Force; task force was created as committee of Planning Advisory Board and took testimony and public comments, conducted hearings and acted on behalf of the Planning Advisory Board and the City Council (both the Board and Council were determined to be "governing bodies" of a "public agency"). *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001).
5. Email messages that include a quorum of the legislative body in which discussions or information is communicated that is intended to transact the governing body's official business. *Wood*, 107 Wn. App. at 565(A meeting does not require the contemporaneous physical presence of the members).
6. City council approval of settlement in executive session by "collective positive decision." *Feature Realty, Inc. v. City of Spokane*, 331 F.3d 1082 (9th Cir. 2003).
7. Washington Association of County Officials (a professional entity with statutory recognition and duties) which receives public dollars is subject to the OPMA. *West v. Washington Ass'n of County Officials*, 162 Wn. App. 120 (2011).

C. Committees:

A committee such as finance or a budget committee that contains a quorum of a body and takes "action" and "acts on behalf of the legislative body" is subject to the OPMA. Legislative history and an Attorney General Opinion ("AGO") suggest that a committee meeting containing less than a quorum of a body, where the members simply receive or discuss matters with staff and make recommendation to the legislative body, is not subject to the OPMA.

This issue is subject to the following analysis:

A meeting is defined by statute as “meetings at which action is taken.” RCW 42.30.020(4).

“Action” means “the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations and final actions . . .” RCW 42.30.020(3).

“Governing body” means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.” RCW 42.30.020(2).

The Act further applies to subagencies, in that the definition of a “public agency” includes:

“Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies.” RCW 42.30.020(1)(c).

See AGO 1986 No. 16 which discussing the law as originally enacted, stated in pertinent part as follows:

Thus, as enacted in 1971, the Act did not apply to committees, subcommittees, and other groups that were not created by or pursuant to statute, ordinance, or other legislative act.

In 1983 the legislature amended RCW 40.32.020(2), the definition of governing body, adding the language “or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.”

Wash. AGO 1986 No. 16, at 3, opines that:

It appears to us that the purpose of this amendment was to extend the coverage of the Act to committees, subcommittees, and other groups that are not created by or pursuant to statute, ordinance, or other legislative act . . . In our opinion the term “committee thereof” includes all committees created by a governing body pursuant to its executive authority as opposed to a specific statute, ordinance, or other legislative act. Thus, “committee thereof” includes committees composed solely of a minority of the members of the governing body. It also includes committees composed of nonmembers of the governing body.

Wash. AGO 1986 No. 16, at 4, continues:

The second reason for our conclusion is the plain meaning of the words “committee thereof.” Neither of these words is defined in the statute. Thus, we must resort to their usual and ordinary meaning. The term “committee” is defined as “2a: a body of persons delegated to consider, investigate, or take action upon and usu. to report concerning some matter of business; . . .” Webster’s Third New International Dictionary 458 (1971).

The term “thereof” is defined as: “1: of that: of it . . . 2: from that clause, from that particular: Therefrom . . .” Webster’s Third New International Dictionary 2372 (1971). There are two definitions of the word “thereof.” The first definition would seem to limit the composition of committees to members of the governing body. However the second definition includes any committee the governing body brings into being.

Wash. AGO 1986 No. 16, at 4, continues:

We find nothing in the language of the Act or its legislative history to indicate that the Legislature intended the more restrictive first definition. Also the policy of the Act and the legislative declaration that the statute be liberally construed support our application to the broader definition of the word “thereof.”

Wash. AGO 1986 No. 16, at 7, further considered a colloquy between legislators which is recorded as follows:

Mr. Isaacson: “Would the bill apply to the meeting of a budget committee consisting of less than a majority of the governing body, discussing the budget with a department head?”

Ms. Hine: “No, Representative Isaacson.”

Based upon the above, Wash. AGO 1986 No. 16, at 7 concludes:

In our judgment, this legislative history establishes that the Legislature intended the narrower definition of the phrases “acts on behalf of.” Based on this narrow definition, we conclude that a committee acts of behalf of the governing body when it exercises actual or de facto decision making authority for the governing body. This is in contrast to the situation where the committee simply provides advice or information to the governing body. In our opinion such advisory committees do not act on behalf of the governing body and are therefore not subject to the Act.

Prior case law interpreting this issue is mixed. See *Cathcart v. Anderson*, 85 Wn.2d 102 (1975) where the court found that the faculty of the University of Washington Law School was subject to the Act because it was a “policy or rulemaking body.” See also *Refai v. Central Washington University*, 49 Wn. App. 1 (1987), where the court, reviewing the prior version of the statute, found that a Faculty Senate Executive Committee charged with formulating a layoff plan for review by University Board of Trustees was not a governing body subject to the Act. The authority of this committee in *Refai*, is described as follows:

Here, section 3.78A of the faculty code provided that once the president declares a state of financial exigency he will direct the vice president and the SEC to develop a layoff plan. After the vice president and the SEC evaluate the declaration of financial exigency and the cause or causes of the layoff, they are to develop a layoff plan, make it available for review and comment, and submit it with a recommendation to the president. The president shall then decide whether

to implement the plan as presented or to propose modifications to the vice president and the Senate Executive Committee.

Id. at 13. The court concluded saying, “We reject this reasoning because we are not persuaded the SEC’s formulation of a layoff plan is a “policy or rule making” function; the SEC merely makes recommendations subject to the president’s modifications.” *Id.* at 13.

See also *Clark v. City of Lakewood*, 259 F.3d 996, 1013-1014, (2001). *Clark* concluded that a Planning Advisory Board’s Adult Entertainment Task Force was subject to the Act. The court concluded as follows:

The Task Force was created as a committee of the Planning Advisory Board (a “governing body”) and it took testimony and public comments, conducted hearings and acted on behalf of the board and the City Council (both “public agencies”). This places it squarely within the ambit of RCW 42.30.020(2).

Clark also distinguished *Refai*, *supra*, stating:

The *Refai* court, however, applied an older, narrower definition of governing bodies which limited governing bodies to those groups that make policies or rules. . . . *Refai* itself states that the faculty senate executive committee would probably have been considered a governing body under the then recently enacted new definition of governing bodies.

In *Clark* the Task Force conducted at least 10 meetings, the majority closed to the public.

See also *Eugster v. City of Spokane*, 128 Wn. App. 1 (2005). In this case the court found that three council members discussing city business does not violate the Act. The court stated: “No meeting takes place, and the Act does not apply, if the public agency lacks a quorum.”

The *Eugster* court relied upon *Wood v. Battleground Sch. Dist.* 107 Wn. App. 550, 558 (2001) where the legislative body met by e-mail, and *Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now*, 119 Wn. App. 665, 701, *review denied* 152 Wn.2d 1023 (2004), which stands only for the proposition that individuals working for the elected auditor while reviewing and counting ballots are not subject to the Act.

A more recent AGO opinion, Wash. AGO 2010 No. 9, provides some additional guidance:

We concluded in 2006 that a quorum of city or county council members could attend a public meeting called by a third party without violating the Act, as long as the council members did not take action. AGO 2006 No. 6. We emphasized that whether members take action depends on whether the particular circumstances fall within the “transaction of the official business” of the governing body. AGO 2006 No. 6, at 2. For example, council members are taking action where they deliberate or discuss a decision that they might eventually make. AGO 2006 No. 6, at 2 (citing *In re Recall of Beasley*, 128 Wn.2d 419, 908 P.2d 878 (1996)).

Additionally, action occurs where a governing body receives public testimony. Wash. AGO 2006 No. 6, at 2.

See also Wash. AGO 1971 No. 33 for an overview of the application of the Act.

See also the most recent publication from the Municipal Research and Services Center, “The Open Public Meetings Act” June 2016. With respect to whether or not a committee is a subagency subject to the act, it states as follows:

According to the attorney general’s office, a board or a commission or other body [created by the legislature] is not a subagency governed by the Act . . . unless it possesses some aspect of policy or rulemaking authority. In other words, its “advice” while not binding upon the agency with which it relates . . ., must nevertheless be legally a necessary antecedent to that agencies claim.

The same publication with respect to a committee of a governing body, states as follows:

In some circumstances, the Act applies to a committee of a governing body. As a practical matter, city or county legislative bodies are usually the only governing bodies with committees to which the Act may apply. A committee of a city or county legislative body will be subject to the Act in the following circumstances:

- When it acts on behalf of the legislative body;
- When it conducts hearings; or
- When it takes testimony or public comment.

When a committee is not doing any of the above, it is not subject to the Act.

The most recent decision touching on this issue is found at *Citizens Alliance v. San Juan County*, 184 Wn.2d 428, 444 (2015), which established the following test when determining whether the OPMA applied:

(1) a majority of the governing body members participated in a committee meeting with the collective intent of transacting the governing bodies business, or (2) the committee was created by the governing body, and (3) that it exercised decision-making authority on behalf of the governing body.:

In *Citizens Alliance*, the court found that an informal group of county officials and employees, formed to discuss the state-mandated update of the County’s critical area ordinance, did not meet this criteria.

D. Confidentiality:

RCW 42.23.070 provides general ethics and conflicts rules:

1. No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

2. No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.
3. No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his office position to disclose confidential information acquired by reason of his or her official position.
4. No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

It should be noted that if a contract is made in violation of chapter 42.23 RCW, it is deemed:

. . . void and the performance thereof, in full or in part, by a contracting party shall not be the basis of any claim against the municipality. RCW 42.23.050.

An officer violating the provisions of chapter 42.23 RCW is also subject to a penalty in the amount of \$500 in addition to other liability or penalty that may be imposed by law and such violation may be grounds for forfeiture of office. See RCW 42.23.050.

Criminal offenses that may arise from actions contrary to chapter 42.23 RCW include RCW 9A.68.030 "Receiving or granting unlawful compensation," RCW 9A.68.040 "Trading in public office," and RCW 9A.68.050 "Trading in special influence." Public officials should also be mindful of RCW 9.92.120, which mandates forfeiture of public office as well as disqualification "ever afterward" from holding any public office upon the conviction of a public officer of any felony or malfeasance in office.

V. Public Records Act.

The Public Records Act (the "PRA") is set forth in chapter 42.56 RCW. The primary purpose of the PRA "is to foster governmental transparency and accountability by making public records available to Washington's citizens." *Doe ex rel. Roe v. Washington State Patrol*, 185 Wn.2d 363, 371 (2016). The PRA requires disclosure of any "public record." It was adopted in 1972 and courts are to liberally construe the PRA and to narrowly construe its exemptions in favor of disclosure. There are over 150 exemptions to the PRA, some of which "are contained within the PRA itself." *Doe ex rel. Roe*, 185 Wn.2d at 371; *see also* RCW 42.56.210 - .480.

A. What is a Public Record?

A public record is defined in RCW 42.56.010(3) as set forth below. Courts have broken the definition into three distinct requirements and each part must be satisfied in order for the writing to be a public record:

A public record includes: "(1) any writing (2) containing information relating to the conduct of government or the performance of any governmental or proprietary function (3) prepared, owned, used or retained by any state or local agency regardless of physical form or

characteristics.” *Tiberino v. Spokane County*, 103 Wn. App. 680 (2000) (quoting *Confederated Tribes v. Johnson*, 135 Wn.2d 734, 746 (1998) (breaking down three requirements); see RCW 42.56.010(3). Courts have gone so far as to construe a public record “as referring to nearly any conceivable government record related to the conduct of government.” *Cedar Grove Composting, Inc. v. City of Marysville*, 188 Wn. App. 695, 717 (2015).

The definition of an “agency” is broad, encompassing all state and local agencies. RCW 42.56.010(1). A “state agency” includes “every state office, department, division, bureau, board, commission, or other state agency.” *Id.* Further, a “local agency” includes “every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.” *Id.*

With regard to the third requirement, courts have explained that a document will be “used” by an agency when information in the document is “either: (1) employed for; (2) applied to; or (3) made instrumental to a governmental end or purpose.” *Concerned Ratepayers Ass’n v. Public Utility Dist. No. 1*, 138 Wn.2d 950, 960 (1999).

The court in *Concerned Ratepayers* continued by explaining that the critical inquiry is whether the requested information bears a nexus with the agency’s decision-making process. A nexus between the information at issue and an agency’s decision-making process exists where the information relates not only to the conduct or performance of the agency or its proprietary function, but is also a relevant factor in the agency’s action. *Id.*

Finally, the court stated “Thus, mere reference to a document that has no relevance to an agency’s conduct or performance may not constitute ‘use,’ but information that is reviewed, evaluated or referred to and has an impact on an agency’s decision-making process would be within the parameters of the [PRA].” *Id.*, at 961; see also *Olsen v. King County*, 106 Wn. App. 616 (2001). In *Concerned Ratepayers*, the court found that a technical report created by and owned by a private entity that was referred to throughout the government’s decision-making process, even though it was ultimately not relied upon, was a public record. Moreover, it has been noted that “[a] record that is prepared and held by a third party, without more, is not a public record.” *Nissen v. Pierce Cty.*, 183 Wn.2d 863, 882, 357 P.3d 45 (2015). However, when an agency “evaluat[es], review[s], or refer[s]” to a record in the course of its business, the agency “uses” the record within the meaning of the PRA.” *Id.* (underlining added).

Generally speaking, even when an exemption is applicable, “the Public Records Act does not allow withholding of records in their entirety. Instead, agencies must parse individual records and must withhold only those portions which come under a specific exemption.” *Progressive Animal Welfare Soc. v. Univ. of Washington*, 125 Wn.2d 243, 261 (1994).

At the same time, courts have recognized that the PRA “was not enacted to facilitate unbridled searches of an agency’s property.” *Hangartner v. City of Seattle*, 151 Wn.2d 439, 448 (2004). *Hangartner* held that “a proper request under the PDA [PRA] must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency’s documents.” *Id.* at 448. However, shortly after *Hangartner*, the legislature reacted by codifying the 2005 revision of RCW 42.56.080, which in pertinent part

states, “[a]gencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad.” (Underlining added).

Although the text of RCW 42.56.080 changed, the court has still interpreted the PRA as requiring “agencies to respond to request for only ‘identifiable public records.’” *Wright v. State*, 176 Wn. App. 585, 592 (2013). It has also been recognized that “[a] party seeking public records under the PRA must, ‘at a minimum, provide notice that the request is made pursuant to the [PRA] and identify the documents with reasonable clarity to allow the agency to locate them.’” *Id.* (citing *Hangartner*, 151 Wn.2d at 447 (underlining added)).

B. Email Records:

The fact that the Commission may be comprised of private individuals who may communicate through personal or non-City email systems does not categorically remove or exempt the emails from the PRA. Courts have found that personal emails, personal email addresses and information on personal hard drives can be public records subject to disclosure.

Below is a list of court cases that address email specifically:

1. Personal emails sent by employee while at work that gave rise to her dismissal were public records. See *Tiberino*;
2. Emails between city council-members sent and received from both city and private computers that contained any information regarding government conduct were public records. *Mechling v. City of Monroe*, 152 Wn. App. 830 (2009); and
3. Metadata from email was public record and City was given opportunity to search deputy mayor’s home computer hard drive for necessary information in order to provide record. *O’Neill v. City of Shoreline*, 170 Wn.2d 138 (2010).

C. Exemptions:

There are numerous exemptions under the PRA. Exemptions that may be pertinent with regard to the Commission include:

- 1. Documents where disclosure would invade a person’s right to privacy (RCW 42.56.050);**
 - Generally, a right to privacy applies ‘only to the intimate details of one’s personal and private life.’” *Martin v. Riverside Sch. Dist. No. 416*, 180 Wn. App. 28, 33 (2014).
 - A person’s privacy “is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.” RCW 42.56.050.
 - Even if the disclosure of the information would be offensive to the employee, it shall be disclosed if there is a legitimate or reasonable public interest in the

disclosure. *Tiberino v. Spokane County*, 103 Wash.App. 680, 689, 13 P.3d 1104 (2000).

2. Personal information (RCW 42.56.230);

- RCW 42.56.230 provides an extensive list of personal information that is exempt from public inspection for purposes of the PRA

- Of importance, RCW 42.56.230(3) exempts “[p]ersonal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.”

- Courts have analyzed this exemption, finding that “when a complaint regarding misconduct during the course of public employment is substantiated or results in some sort of discipline, an employee does not have a right to privacy in the complaint.” *Bellevue John Does 1-11 v. Bellevue Sch. Dist. #405*, 164 Wn.2d 199, 215 (2008). However, unsubstantiated complaints and allegations of public employees are construed differently, and have been found to be exempt from PRA disclosure. *See id.* at 216.

3. Certain investigative, law enforcement, and crime victims records (RCW 42.56.240);

- RCW 42.56.240(1) primarily exempts police investigative records from disclosure, the “nondisclosure of which is essential to effective law enforcement or for the protection of any person’s right to privacy.” This “investigative records” exemption under 42.56.240(1) contains two prongs known as “privacy” and “law enforcement.” *Does v. King Cty.*, 192 Wn. App. 10, 25-26 (2015).

- Satisfying either prong establishes a valid exemption. To satisfy the “privacy” prong, “[a] party asserting a privacy-based PRA exemption must prove that disclosure is both highly offensive to a reasonable person and not of legitimate concern to the public.” *Id.* at 26. On the other hand, the “law enforcement” prong will only be satisfied if it can be shown that “the effectiveness of law enforcement would be compromised by disclosure.” *Koenig v. Thurston Cty.*, 175 Wn.2d 837, 861 (2012). Moreover, a document cannot be found exempt under a justification of essential to law enforcement if “it does not enforce law.” *Predisik v. Spokane Sch. Dist. No. 81*, 182 Wn.2d 896, 909 (2015).

- Additionally, RCW 42.56.240(2) applies to victims and witnesses. This subsection exempts “information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies...if disclosure would endanger any person’s life, physical safety, or property.” Notably, only complaints made to “investigative, law enforcement or penology agencies” will be protected under the PRA. Courts have thus found that the PRA offers no protection to complaints made within the employment context when a legal charge or complaint is not also filed with an investigative, law enforcement, or penology agency. *See Brouillet v. Cowles Publishing Co.*, 114 Wn.2d 788, 795-96 (1990); *Predisik*, 182 Wn.2d at 909.

- Courts have found that generally, RCW 42.56.240 “requires the nondisclosure of information compiled by law enforcement and contained in an open and active police investigation file because it is essential for effective law enforcement. The language of the statute provides for a categorical exemption for all records and information in these files.” *Newman v. King County*, 133 Wn.2d 565, 574 (1997). However, the categorical exemption ends “where the suspect has been arrested and the matter referred to the prosecutor....” *Cowles Pub. Co. v. Spokane Police Dept.*, 139 Wn.2d 472, 479 (1999).

- Outside of the categorical exemption, information in investigative files may still be exempted, but must be determined on a case-by-case basis and such determination will rely heavily on facts demonstrating that nondisclosure is essential for effective law enforcement. *See id.*; *see also Cowles Pub. Co. v. State Patrol*, 109 Wn.2d 712, 729 (1988). In *State Patrol*, the records at issue were internal investigations that were conducted pursuant to established procedures. The agencies had already released the reports but had redacted names of officers, witnesses, and complaining parties. In finding that such redaction was proper, the court relied heavily on the factual demonstration that disclosing such information would limit complaints and officer participation due to the possibility of public ridicule and thus would make law enforcement ineffective for such internal investigations. *Id.* But *see Ames v. City of Fircrest*, 71 Wn. App. 284, 295-96 (1993) (where police chief had been placed on administrative leave pending investigation and name was already public, he failed to meet burden to show that release of the investigation or his name would make law enforcement ineffective).

4. Attorney-client privileged information (RCW 42.56.070; RCW 5.60.060(2));

- RCW 42.56.070(1) provides that an agency must disclose public records “unless the record falls within the specific exemptions of *subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records.”

- The court in *Hangartner v. City of Seattle*, 151 Wn.2d 439, 452 (2004) held that the attorney client privilege statute, RCW 5.60.060(2)(a), qualifies as an “other statute” under the PRA and as such, records and documents that fall under RCW 5.60.060(2)(a) are exempt. While some claim that *Hangartner* was effectively overruled by the recent narrow definition of “other statute” adopted in *Doe ex rel. Roe v. Washington State Patrol*, 185 Wn.2d 363 (2016), the court made it clear that such was not the case. In a footnote, the court noted that under the new rule, RCW 5.60.060(2)(a) still qualifies as an “other statute”, as “the attorney-client privilege statute used broad prohibitive language to prevent the disclosure of privileged documents in particular situations.” *Doe ex rel. Roe*, 185 Wn.2d at 385, n.5.

5. Attorney work-product (RCW 42.56.290); and

- RCW 42.56.290 exempts “records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter.”

- The Washington Supreme Court in *Limstrom v. Ladenburg*, 136 Wn.2d 595, 611, 963 P.2d 869 (1998) broadly defined work product as documents and other tangible things that:

- (1) Show legal research and opinions, mental impressions, theories, or conclusions of the attorney or of other representatives of a party;
- (2) Are an attorney's written notes or memoranda of factual statements or investigation; and
- (3) Are formal or written statements of fact, or other tangible facts, gathered by an attorney in preparation for or in anticipation of litigation.

6. Documents created as part of the deliberative process (RCW 42.56.280).

- Under RCW 42.56.280, preliminary drafts, notes, recommendations, and intra-agency memorandums in which explain opinions are expressed or policies formulated or recommended are exempt from disclosure under the PRA.
- Does not apply to specific records which are publicly cited by an agency in connection with agency action.



City Council Agenda Bill

Meeting Date: 1/14/2018

Agenda Item: 7b

Subject: 2019 Legislative Priorities

Staff Contact: Emily Schuh

Approved for Submittal to Council by	
X	Laurie Gere, Mayor
	Steve Hoglund, Finance Director
	Darcy Swetnam, City Attorney
X	Emily Schuh, Admin Services Dir.

Action Type	
	Ordinance No.
	Code Revision?
X	Resolution No. 2029
	Contract
	Public Hearing
	Staff Report

Summary Statement: In coordination with the Association of WA Cities, Mayor Gere and staff have compiled a list of legislative priorities for City Council's discussion. Council's adoption of legislative priorities guide staff on how best to represent the City's efforts to influence, affect, or guide the passage of legislation in the Washington State Legislature. Council feedback has been incorporated following discussion at the January 7, 2019 council meeting.

Background:

Budget Impact	
Amount Budgeted	
Budget Account (BARS)	
Proposed Expenditure	
Budget Amendment Required?	
Revenue Source	

Proposed Contract	
Contractor	
Amount	
Start Date	
End Date	

Previous Council/Committee Action:

City Council provided feedback and suggestions on the proposed 2019 legislative priorities at the [January 7, 2019](#) City Council meeting. City Council adopted [Resolution 1980](#) on [January 17, 2017](#) adopting legislative priorities for the 2017 legislative session.

Competing Viewpoints Considered:

Recommended Motion: I move to approve Resolution 2029 adopting the City's 2019 legislative priorities.

Alternative Actions:

Attachments (listed in order presented): Resolution 2029; 2019 Legislative Priorities; 2019 AWC Legislative Priorities

RESOLUTION NO. 2029

**A RESOLUTION OF THE CITY OF ANACORTES, WASHINGTON REGARDING THE
ADOPTION OF THE CITY'S 2019 WASHINGTON STATE LEGISLATIVE PRIORITIES**

WHEREAS, the 2019 state legislative session will begin a 105 day session on January 14, 2019; and

WHEREAS, efforts of representation on behalf of the City of Anacortes to influence, affect or guide the passage of legislation in the Washington State legislature are enhanced by a comprehensive package of priorities that have been officially adopted by the City Council pursuant to this resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ANACORTES that City Council adopts the attached City of Anacortes 2019 Washington State Legislative Priorities as the position of the City of Anacortes on the items stated therein.

ADOPTED by the City Council this ____ day of January 2019.

CITY OF ANACORTES:

By

Laurie M. Gere, Mayor

ATTEST:

Steven D. Hoglund, City Clerk

APPROVED AS TO FORM:

Darcy Swetnam, WSBA# 40530
City Attorney



CITY OF ANACORTES 2019 LEGISLATIVE PRIORITIES

Resolution 2029 adopted _____

Top Priorities for the City of Anacortes

Community Youth Recreation Center Anacortes youth emphatically asked for a place to call their own. A partnership between the City, the Anacortes School District, and the Anacortes Boys & Girls Club aims to provide them a safe place. A Community Youth Recreation Center will foster emotional and mental health wellbeing, encourage educational achievement, and support the youth of our community. Anacortes's goal is to create diverse, innovative, affordable, and age-appropriate opportunities; to offer a safe place to study and socialize; and to expose members to recreational, educational, and family support opportunities.

Municipal Broadband Anacortes has an aggressive plan for infrastructure and staff investment to provide fiber broadband services to residents and businesses throughout Anacortes in the next 4 years.

Trail Systems Anacortes continues to expand trail systems to connect our community, enhance access to waterfront areas, and provide non-motorized transportation options. The City seeks further state funding to complete these vital recreation and trail projects.

General Principles Anacortes supports legislation to:

- Revitalize and build infrastructure to support job creation, community health and safety, and improve quality of life
- Protect shared state revenue sources and provide other mechanisms to invest in infrastructure
- Enhance efforts to increase affordable housing and decrease homelessness
- Ensure that parents, children and youth, particularly the most vulnerable, have access to affordable infant and child care and early childhood education i.e. SHB 2367
- Improve availability and access to behavioral and mental health services

City of Anacortes & Association of WA Cities Legislative Priorities:

- Support economic development tools to encourage job creation and economic growth. Assist small and rural cities to maintain, expand, and modernize local infrastructure that spurs local private sector investment. Anacortes' municipal fiber initiative is a critical economic development tool for our island community.
- Keep the Public Works Trust Fund (PWTF) in working order. The PWTF is a vital resource for low cost loans to fund critical infrastructure. In 2019 Anacortes needs to complete several projects including a combined sewer overflow facility which will help to improve water quality in the Salish Sea and support salmon and orca recovery.
- Invest in affordable housing including the ongoing capital budget investment in the Housing Trust Fund, a \$20 million per year local government revenue sharing proposal, and \$1.5 million per year for reinvestment of the sales tax from the construction of multifamily development. In 2018, Anacortes exempted low income housing facilities from paying impact fees. The \$160,000 reduction in fees shifted to the City and we seek assistance in offsetting these impacts to allow us to further support workforce housing options.
- Increase funding and capacity for the Criminal Justice Training Commission to ensure that newly-hired law enforcement officers have timely access to basic training. New police officers wait several months to attend the police academy delaying their ability to serve our community as commissioned officers.
- Improve a failing behavioral and mental health system. Reform and expand the delivery of both crisis intervention and preventive wellness services.

Strong cities make a great state. Cities house 65 percent of the state's residents, drive its economy, and provide the most accessible government. The continued success of cities depends on adequate resources and community-based decision-making to best meet the needs of our residents. Preserving local decision-making continues to be one of our core principles.



Support economic development tools to encourage job creation and economic growth

Washington's cities need additional economic development tools that assist in maintaining, expanding, and modernizing local infrastructure to help spur local private sector investment. By supporting value capture financing, the Legislature can partner with cities and towns to advance our shared goals of building a robust and diverse economy for communities around the state.



Keep the Public Works Trust Fund in working order

Cities support ongoing investment in the various infrastructure funding programs sponsored by the state. In particular, the Public Works Trust Fund (PWTF) is a crucial funding partner in our efforts to provide the necessary infrastructure for our communities. We seek full funding for the Public Works Board's \$217 million budget, funded from the current stream of loan repayments and the 2 percent of REET dedicated to the account. Additionally, we look to strengthen the program by ending REET fund diversions from the account now instead of waiting until 2023.



Invest in affordable housing

Communities around the state are facing a housing affordability crisis. Cities support an ongoing \$200 million capital budget investment in the Housing Trust Fund, a \$20 million per year local government revenue sharing proposal, and \$1.5 million per year for reinvestment of the sales tax from the construction of multifamily development. In addition, cities support proposals that remove barriers to affordable housing, including voluntary density and infill development solutions, opportunities for creating shared housing, and addressing condominium liability to expand housing choices.



Fund a systems approach to correct fish-blocking culverts

AWC and state agency partners are focused on developing and funding a comprehensive statewide approach to fix salmon-blocking culverts. In order to achieve meaningful salmon and orca recovery, cities need ongoing and significant funding to upgrade city culverts. This critical investment will support fish passage by maximizing collaboration with the state's legal obligation to upgrade its culverts, while also addressing other critical needs like stormwater and water quality. Cities support creating a permanent framework to fund systemwide corrections that begins with fully funding the Fish Barrier Removal Board this biennium, including capacity for a grant program in the second half of the biennium. An effective framework also includes a commitment to future investment.



Provide responsive funding for the Criminal Justice Training Commission (CJTC)

Cities need a responsive funding model for the CJTC to ensure that newly-hired law enforcement officers and corrections officers have timely access to basic training. Cities seek funding for at least 19 Basic Law Enforcement Academy (BLEA) classes per year and at least seven Corrections Officer Academy classes per year in order to meet our public safety needs.



Address a failing behavioral health system

Cities are experiencing the ramifications of an overwhelmed mental health and drug abuse response system. The state needs to make investments sufficient to improve access to these systems and their success across the state. Cities will work with the state to pursue enhancements and reforms to the behavioral health delivery systems including engaging with mental health transformation proposals, the *Trueblood* settlement, making permanent the mental health co-responder program, and supporting comprehensive opioid response legislation.

Contact:

Candice Bock

Director of Government Relations
candiceb@awcnet.org • 360.753.4137

January 14, 2019

Possible additions to our legislative priorities:

The City of Anacortes supports the Governor's Orca Recovery Initiative

The City supports efforts to expand the use of renewable energy and to reduce Washington's carbon footprint, eg SB 5116

The City supports continuing to protect our navigable waterways by investing in spill response prevention and mitigation.



Anacortes City Council

Proposed Agenda Items for the Next Eight Weeks Beginning January 22, 2019

Subjects listed below have been tentatively suggested for consideration by the Anacortes City Council on the dates indicated. Items may be added to, removed from or rearranged on this list. Routine business such as approval of minutes and vouchers are not included. The complete Preliminary Agenda for each meeting is published at 3:00 on the Wednesday prior to the meeting. Published Agendas are subject to change and may be updated following the posting period. For additional information on agenda topics, please contact the City Clerk's office at 360-299-1960 to be directed to the sponsoring staff member.

January 22, 2019

January 28, 2019

- Ordinance ____: Municipal Code Chapter 1.30, Contracting (Discussion/Possible Action)
- Purchasing Policy Update (Discussion/Possible Action)

February 4, 2019

- Ordinance 3035: Safety Suggestion Incentive Program for Employees (Discussion/Possible Action)

February 11, 2019

- Planning Commission Recommendation: Development Regulations and Zoning Map Amendments
- Ordinance 3030: Fire Impact Fees (Discussion/Possible Action)

February 19, 2019

- Planning Commission Recommendation: Development Regulations and Zoning Map Amendments (Discussion)

February 25, 2019

- Planning Commission Recommendation: Development Regulations and Zoning Map Amendments (Discussion)

March 4, 2019

Upcoming City Council Committee Meetings

The public is welcome to attend City Council Committee Meetings.

- Planning, Monday, Jan 14, 2019, 5:00 PM, Main Conference Room, City Hall
- Public Works, Tuesday, Jan 22, 2019, 5:00 PM, Main Conference Room, City Hall
- Finance, Wednesday, Jan 23, 2019, 5:00 PM, Main Conference Room, City Hall
- Planning, Monday, Jan 28, 2019, 5:00 PM, Main Conference Room, City Hall
- Public Works, Monday, Feb 4, 2019, 5:00 PM, Main Conference Room, City Hall
- Public Safety, Tuesday, Feb 5, 2019, 10:00 AM, Mayor's Office, City Hall
