

# Municipal Research News

LOCAL GOVERNMENT  
SUCCESS



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## About MRSC

Municipal Research and Services Center (MRSC) is a nonprofit organization dedicated to proactively supporting the success of local governments through one-on-one consultation, research tools, online and in-person training, and timely, unbiased information on issues impacting all aspects of local governments.

For more than 80 years, local governments in Washington State have turned to MRSC for assistance. Our trusted staff attorneys, policy consultants, and finance experts have decades of experience and provide personalized guidance through Ask MRSC and our extensive online resources. Every year we help thousands of staff and elected officials research policies, comply with state and federal laws, and improve day-to-day operations through best practices.

Municipal Research News is published quarterly to inform, engage, and educate readers about ongoing and emerging issues. In print and online at the MRSC Insight blog, we cover such major topics as the Growth Management Act and the ever-evolving complexities of the Public Records Act, to name a few. When the legal landscape changes, we are here to clarify the issues and help local government leaders access the information they need to better serve their communities.



## Washington Trivia Question

Which city has been voting for a town grouch since 1985?

Answer on page 10

Your ideas and comments are appreciated. If you have news you would like to share or if you would like to write a short feature article, please contact the editor, Leah LaCivita, at [llacivita@mrsc.org](mailto:llacivita@mrsc.org)

# Municipal Research News

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# MRSC HIGHLIGHTS

## MRSC Rosters Electronic Bidding Service Can Help Agencies Save Money, Reach More Contractors



Beginning January 2023, MRSC Rosters will be offering a new electronic bidding (e-bidding) service to its agency members. E-bidding can significantly reduce the administrative effort involved in public bidding, increase bidder participation and satisfaction, and provide valuable reporting capabilities.

MRSC spent the better part of 2022 piloting the e-bidding service with Bonfire, its software partner, and with a small group of Washington local governments, including counties and special purpose districts. This pilot allowed us to work out the kinks and develop a product that can serve the needs of cities, counties, and special purpose districts, no matter the size or complexity of their agency or their location.



### THE BENEFITS OF E-BIDDING

MRSC Rosters is offering a unique and exclusive program for agencies looking to move their contracting online, which can both lower costs and reduce administrative burden for local government staff.

As part of the e-bidding program, participating agencies can invite vendors to bid on a wide array of project types. The online platform allows agencies to reach more potential contractors and eliminates any fees required for a bidder to access and respond to a solicitation. Bidders can submit sealed bidding responses

from anywhere, and agencies can more easily manage vendor communication and bid submission.

Agencies can also manage the bid award process with greater ease, as the software eliminates the manual data entry and tabulation required when reviewing pricing from print/paper bids, swiftly evaluating proposals and identifying the lowest bid to find the award winner. Since the e-bidding software captures the entire bidding process, an agency can easily pull audit trail reports of all purchasing decisions, vastly simplifying reporting capabilities.

### HOW IT WILL WORK

MRSC Rosters is an efficient and affordable way for Washington local governments to procure services using a roster contracting process. For a nominal annual membership fee, MRSC provides full maintenance of an agency's small public works, consultant, and vendor rosters, and agency members get access to diverse rosters —80% of which are small businesses. MRSC Rosters began in 2007, and, today, serves 642 Washington cities, counties, and special purpose districts.

The e-bidding program will be an additional service available to cities, counties, and special purpose districts that are members of MRSC Rosters. Beginning in 2023, MRSC Rosters members can decide to opt into e-bidding or retain their current level of service. Like the rosters program, e-bidding services will be based on a tiered pricing structure based on agency's annual budget. MRSC Rosters offers tiered pricing so that all agencies, no matter their level of resources, can access these important services.

### FOR MORE INFORMATION

Existing MRSC Rosters members have been or will be contacted about the new e-bidding service. Any city, county, or special purpose district that is not currently an MRSC Rosters member but is interested in learning more can visit [mrscrosters.org](http://mrscrosters.org) or contact us at [mrscrosters@mrsc.org](mailto:mrscrosters@mrsc.org).



# Using Levy Lid Lifts to Finance Public Salaries and Services

BY ERIC LOWELL, MRSC FINANCE CONSULTANT



With the COVID-19 pandemic and the Great Resignation, many local governments have found it challenging to attract and retain employees, and several local governments have recently offered hiring and retention bonuses to staff. With inflation surpassing 8%, some unions have negotiated cost of living increases (COLA) as high as 5-8%.

In thinking over the long term about how to fund increased salary and benefit costs, some local governments are wondering if a levy lid lift might be a solution. If a local government is thinking about a levy lid lift, this article covers several issues to consider, such as type, duration, future fiscal need, and capacity.

## WHAT IS A LEVY LID LIFT?

Washington's property tax system is extremely complicated, with multiple overlapping and intersecting limitations affecting local governments. Taxing districts have a regular property tax levy (dollar amount), which can increase a limited amount each year, subject to limitations on the maximum levy rate per \$1,000 assessed valuation (AV). Additionally, the combined rate of most local taxing districts cannot exceed \$5.90 per \$1,000 AV, and total levy rate for all taxing districts cannot exceed \$10.00 per \$1,000 AV, with certain exceptions.

The maximum levy rate varies depending on the kind of taxing district. For instance, cities *not annexed* to a fire or library district generally have a maximum levy rate of \$3.375 per \$1,000 AV, while the rate can be significantly lower than that for cities

that *are* annexed to fire or library districts. Counties have a general fund levy with a maximum levy rate of \$1.80 per \$1,000 AV and a road levy fund with a maximum rate of \$2.25 per \$1,000 AV, although those rates can be altered through a road levy shift if decided by the board of county commissioners. Fire protection districts and regional fire authorities typically have a maximum levy rate of either \$1.00 or \$1.50 per \$1,000 AV, and so on.

The total levy *amount* collected for a taxing district is also subject to a 101% levy limit, meaning the total dollar amount collected each year may not increase more than 1% (excluding new construction and certain add-ons) from the previous year. The 101% restriction is known as the "levy lid."

A levy lid lift ballot measure is a mechanism for voters to approve an increase in a taxing district's total levy by more than the 101% limit (RCW 84.55.050). Although a levy lid lift allows the total levy dollar amount to increase more than 1% over the previous year, it does not allow the levy rate per \$1,000 AV to increase above the maximum statutory or constitutional rates. A levy lid lift only requires a simple majority (50% plus one) for approval, and there are no minimum turnout or "validation" requirements.

**A levy lid lift ballot measure is a mechanism for voters to approve an increase in taxing district's total levy by more than the 101% limit.**

## SINGLE-YEAR VERSUS MULTI-YEAR LEVY LID LIFTS

Local governments can propose either a single-year or a multi-year levy lid lift.

A single-year levy lid lift raises the levy lid above 101% for one year only and can be used for any lawful government purpose. After this first year, the increased levy dollar amount is used to calculate the 101% levy limit in future years until the levy lid lift expires (unless it is made permanent, as described below). A single-year levy is not required to state a purpose on the ballot measure, but if it does, funds may only be used for that purpose.

A multi-year levy lid lift raises the levy lid every year for up to six consecutive years, can increase by various rates (the "limit factor") throughout the duration of the levy lid lift, and is required to state a limited purpose in the ballot measure. Most jurisdictions use the full six-year timeframe. The levy dollar amount in the sixth year is then used to calculate the 101% levy limit in future years until the levy lid lift expires (unless it is made permanent, as described below).

Some jurisdictions might set a static limit factor of, say, a 4% or 6% increase each year. Other jurisdictions tie the annual limit factor to an inflation index, such as the Consumer Price Index (CPI), although a jurisdiction should be clear exactly which index, region, and timeframe will be used for the calculation. You should also consider what will happen if the CPI drops below 1% in any given year — and for this reason, some jurisdictions will set an annual limit factor of the CPI percent change or 1%, whichever is greater. Additionally, taxing districts in King County cannot supplant existing funds with a multi-year levy lid lift.

## TEMPORARY VERSUS PERMANENT LID LIFTS

A temporary levy lid lift bumps the levy up for the number of years specified in the ballot measure, then reverts back to what the levy would have been had the levy lid lift never happened and the jurisdiction only increased it by the 101% limit each year.

In comparison, a permanent levy lid lift never expires. The levy bumps up more than 1% for a specified number of years, but after that it does not revert back. The maximum levy at the end of the levy lid lift period is used to calculate all future 101% levy limitations.

## MAJOR CONSIDERATIONS FOR CHOOSING THE BEST CONFIGURATION

A jurisdiction must carefully consider its future financial needs, capacity, and external factors when weighing a levy lid lift.

### What are your jurisdiction's future financial needs?

A taxing district should determine what it wants to fund with the levy lid lift and how much is needed, and then compare that to its revenue forecast. After determining the amount needed,

will the taxing district reach that amount with a single-year or multi-year levy lid lift? Will the levy lid lift need to be temporary or permanent?

### Does your jurisdiction have enough levy capacity?

A taxing district needs to look at its own levy rate as well as the combined local levy rate and total levy rate to help determine how much levy capacity it has. With this information, it can determine how much funding could be raised via a levy lid lift. If a taxing district is already close to its maximum levy rate, it might not be able to raise the funding needed. For example, if a city not annexed to a library or fire district was already at \$3.325 per \$1,000 AV, would an additional \$0.05 per \$1,000 AV bring in enough revenue? A taxing district could also have a good amount of capacity for its own levy, but when looking at the aggregate maximum levy rates (\$5.90 or \$10.00 per \$1,000 AV), there might not be enough capacity to increase its levy to the amount needed.

### What are the external factors (e.g., other taxing districts)?

Because levy lid lifts require voter approval, a taxing district should consider factors that might make it difficult to pass a levy lid lift ballot measure. For example, will your jurisdiction be competing with other taxing districts on the same ballot? Have local taxing districts recently passed levy lid lifts, excess levies, or other taxes (which might cause voters to vote down another tax increase)? Are there current economic factors that might impact the decision of voters (i.e., high inflation)? MRSC's Local Ballot Measure Database can help you research how levy lid lifts across the state have been structured and/or fared at the polls.

### How will the issue be framed for voters?

Taxing districts should carefully consider how a levy lid lift ballot measure is presented to the voters. All language should be reviewed by legal counsel and is subject to the wording requirements of RCW 29A.36.071 and RCW 84.55.050. Using broad language may provide for more flexibility in how funds can be spent, but a vague description of how the taxing district will spend the funds may make voters less likely to vote in favor of a levy lid lift, especially if it is competing against other jurisdictions.



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# ASK MRSC

## Questions Related to Levy Lid Lifts

MRSC's Levy Lid Lifts webpage discusses the types of levy lid lifts, election dates, and ballot measure requirements, and offers various samples. Our Local Ballot Measure Database tracks how local government ballot measures (including levy lid lifts) have fared in Washington State since November 2011.

**We are planning to put a levy lid lift on the ballot for the primary election. What are the rules and regulations regarding informing the public about the proposed levy lid-lift? Are we permitted to use public funds to print informative posters, flyers, and mailers? Are there rules and regulations regarding holding an open house?**

MRSC's webpage, Use of Public Facilities in Election Campaigns, covers rules governing what local governments can and cannot do in regard to ballot measures. This webpage states:

The general prohibition against use of public facilities is very broad and comprehensive. The term "public facilities" is defined to include use of stationery, postage, equipment, use of employees during working hours, vehicles, office space, publications of the office, or lists of persons served by the local government.

For allowable activities, the webpage defines three broad areas:

1. Legislative body motions/resolutions: A local government legislative body, such as a city council or board of commissioners, may vote on a motion or resolution to express support or opposition to a ballot proposition, provided that the legislative body follows the required procedural steps (see the examples section below for details).
2. Statements by elected officials: An elected official may make a statement in support or opposition to a ballot proposition at an open press conference or in response to a specific inquiry.
3. Normal and regular conduct: The third exception is somewhat broader and allows activities which are part of the normal and regular conduct of the local government. Under this exception, a local government could prepare an objective and neutral presentation of facts concerning a ballot measure. For example, details could be provided to citizens concerning the financial impact of an initiative on the local government, such as how revenues would be affected by its passage. Care must be taken that this information be presented in a fair, objective manner.

Many local governments also allow use of their meeting room facilities on a nondiscriminatory, equal access basis to the public, usually for a rental fee. If this is the case, then it would be allowable to hold a public forum for citizens with pro and con representatives discussing an initiative in a public meeting hall.

**If a port levy lift is passed must the increased tax amount be spent only on the stated purpose, or can the increase be added to the general fund?**

Our Levy Lid Lifts webpage states that "levy lid lifts may generate revenue for any purpose." A municipality is not required to state the purpose for a *single-year* levy lid lift in the ballot title, but it is *required* to state the purpose of a *multi-year* levy lid lift in the title.

MRSC takes the position that if a purpose is stated in the ballot measure, then the funds attributable to the levy lid lift should be restricted to that purpose. If the municipality has appropriate accounting measures in place, it can better ensure the restricted funds were used for their intended purpose.

**In 2020, voters in our city approved our levy lid lift to hire two police officers and one police sergeant. We are experiencing staffing challenges, just like everyone else. The question is: Can the city lower the lid lift to support just the two officers and remove the financing for the police sergeant or do we need to remove the entire lift?**

Taxing districts can levy less than the 1% increase allowed by law, can even choose not to increase their levy, or can bank capacity, which mean they can increase their levy less than 1% and then use that banked capacity in future years to go above the 1% limit until their banked capacity has been used up. Since the single-year levy lid lift occurred in 2020, going forward, your city is back to the limit of a 1% increase in its levy. It can choose to levy less when it goes through the levy process this fall (as well as in subsequent years) or it can choose to bank capacity to use in future years.

**If my fire district pursues a levy lid lift to build a new station, can the district later decide not to collect the full amount if it determines it does not need the funds?**

A fire district can raise resources through a levy lid lift or by proposing a voter-approved bond initiative for capital projects (a new station, etc.). If a portion of the funds end up not being needed, the commissioners can adjust the levy amount each year (within some limitations about the ability to readjust it back up later) depending on the circumstances. These decisions — within the parameters of what the voters approved and state law — are annual decisions to be made by the commissioners when they set the subsequent year's property tax levy.

**The city is looking to pass a levy lid lift. If the levy lid lift passes, does the city need to have a public hearing for revenues and to set the levy?**

If the city's levy lid lift is approved by voters, the city does not need to hold a public hearing on revenues and to set the levy for the next year. The only hearings the city would be required to have during the budget process are the preliminary budget hearing and the final budget hearing. If the city's levy lid lift is not approved by voter, then the city would be required to hold a hearing on revenues for the budget and to set the levy rate.

**Have a Question? Ask MRSC.** Call us at (206) 625-1300 or (800) 933-6772 or submit your question online at [mrsc.org](http://mrsc.org)

Ask MRSC





# NEW NINTH CIRCUIT RULING ADDRESSES ANTI-CAMPING ORDINANCES

BY OSKAR REY, MRSC LEGAL CONSULTANT

Last month, the federal Ninth Circuit Court of Appeals issued a decision that provides clarification and guidance on anti-camping ordinances to municipalities in the Ninth Circuit (which includes Washington). The case, *Johnson v. City of Grants Pass*, is a follow-up to the *Martin v. City of Boise* case, which was originally decided in 2018. The court in *Martin* ruled that enforcement of anti-camping ordinances against individuals experiencing homelessness violates the Eighth Amendment of the U.S. Constitution if no alternatives to sleeping in public are available.

## FACTUAL BACKGROUND

The underlying facts of *Johnson* are quite similar to *Martin*. The Oregon city of Grants Pass had a series of ordinances that prohibited sleeping and camping in public. Taken as a whole, those ordinances prohibited sleeping and camping in public places throughout the city. Initial violations of the ordinances resulted in a civil citation and monetary fine. However, two or more violations of the anti-camping ordinances could give rise to a “park exclusion order,” which, if violated, would serve as a basis for a criminal trespass citation.

In 2013, the Grants Pass City Council convened a community roundtable to “identify solutions to the current vagrancy problem.” One of the planned actions from the roundtable was increased enforcement of the anti-camping ordinances. Between 2014 and 2018, the city issued a total of 574 tickets under its anti-camping and anti-sleeping ordinances. The parties disagreed on how many involuntary homeless individuals lived in the city, but point-in-time counts for 2018 and 2019 indicated there were at least 600. And there was no dispute that Grants Pass had far more homeless individuals than available shelter beds.

After the 2018 initial decision in *Martin*, homeless individuals in Grants Pass filed a class action complaint against the city seeking a declaration that enforcement of anti-camping ordinances against them was unconstitutional and sought an injunction to prevent the city from continuing to enforce the laws. Thereafter, Grants Pass amended its anti-camping ordinance to

exclude “sleeping” from the definition of camping. The city’s position was that by removing involuntary conduct (sleeping) from the definition of camping (which included use of bedding and tents), the ordinance complied with the court’s holding in *Martin*. The *Johnson* court disagreed.

## KEY TAKEAWAYS

The *Johnson* court noted that the core issues involving enforcement of anti-camping ordinances is governed in large part by *Martin*. Still, several aspects of the case are noteworthy and worth reviewing in more detail.

The *Johnson* court noted that the core issues involving enforcement of anti-camping ordinances is governed in large part by *Martin*.

**Class actions are an option for plaintiffs seeking to challenge laws that disproportionately impact homeless individuals.**

*Martin* involved civil rights act claims asserted by individual plaintiffs — it was not a class action. In *Johnson*, the City of Grants Pass argued that the trial court erred in certifying a class defined as:

All involuntarily homeless individuals living in Grants Pass, Oregon, including homeless individuals who sometimes sleep outside city limits to avoid harassment and punishment by [the City] as addressed in this lawsuit.

Class certification is a complex topic, often used to compile many small claims into a single case for financial efficiencies, and there are several requirements that must be met to successfully certify a class. Analysis of class certification is beyond the scope of this article but suffice it to say that the Court of Appeals in *Johnson* upheld its use in the challenge to the enforcement practices of the City of Grants Pass.

**The ruling in *Martin v. City of Boise* is not limited to criminal citations.**

The *Martin* case involved the issuance of criminal citations for violating the City of Boise’s anti-camping ordinances. The City of Grants Pass argued that its enforcement practices did not violate the Eighth Amendment because the issuance of civil citations is not “punishment.” The *Johnson* court disagreed, since the civil citations could eventually lead to criminal punishment:

The anti-camping ordinances prohibit Plaintiffs from engaging in activity they cannot avoid. The civil citations issued for behavior Plaintiffs cannot avoid are then followed by a civil park exclusion order and, eventually, prosecutions for criminal trespass. Imposing a few extra steps before criminalizing the very acts *Martin* explicitly says cannot be criminalized does not cure the anti-camping ordinances’ Eighth Amendment infirmity.

The court clarified that “our decision does not address a regime of purely civil infractions, nor does it prohibit the City from attempting other solutions to the homelessness issue.”

**Ordinances must allow homeless individuals to take “the most rudimentary precautions” against the elements.**

The *Johnson* court was not impressed with the city’s argument that amending the anti-camping ordinances to allow individuals experiencing homelessness to sleep in parks complied with the *Martin* case. Although sleeping was technically allowed, the amended ordinance continued to prohibit the use of “bedding, sleeping bag[s], or other material used for bedding purposes.” Noting that “Grants Pass is cold in the winter,” the court ruled that, “the City cannot enforce its anti-camping ordinances to the extent they prohibit ‘the most rudimentary precautions’ a homeless person might take against the elements.”

The court was careful to note that its ruling did not necessarily extend beyond the most rudimentary precautions:

Our holding that the City’s interpretation of the anti-camping ordinances is counter to *Martin* is not to be interpreted to hold that the anti-camping ordinances were properly enjoined in their entirety. Beyond prohibiting bedding, the ordinances also prohibit the use of stoves or fires, as well as the erection of any structures. The record has not established the fire, stove, and structure prohibitions deprive homeless persons of sleep or “the most rudimentary precautions” against the elements. Moreover, the record does not explain the City’s interest in these prohibitions. Consistent with *Martin*, these prohibitions may or may not be permissible.

## CONCLUSION

The *Johnson* court noted that its decision, like *Martin*, is “narrow.” The Grants Pass ordinances were similar to the Boise ordinances in that they prohibited sleeping and camping in public places on a citywide basis. Neither *Johnson* or *Martin* prevent a jurisdiction from prohibiting lying or sleeping outside at particular times or in particular locations, obstructing the right-of-way, or erecting certain structures. *Johnson* is likely the first in a series of post-*Martin* Ninth Circuit cases in which the constitutionality of enforcement of anti-camping ordinances is tested. It will take time to define the scope of municipal regulatory authority in this developing area of law.



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# Annexing Non-Contiguous Territory Outside City or Town Limits

BY MRSC INSIGHT

There are a number of methods that can be used to annex territory to a city or town if the area to be annexed is contiguous to the entity's current boundaries. What happens, though, when the area is not contiguous, such as property owned by the city and held for a municipal purpose outside of its boundaries? This article will look at the Municipal Purpose Method of annexation — the sole annexation method available for annexing non-contiguous area to a city or town.

## AN OVERVIEW

There may be instances when a city or town owns property outside its boundaries. For example, a city might own a park, cemetery, public works facility, or airport, and though this property is owned by the local government, the location does not lie under its jurisdiction.

Why might this be a problem? The city would likely want its zoning and other regulatory standards to apply to its property and not the zoning or regulatory standards of another jurisdiction. Also, if the property is outside the city's boundaries, it cannot enforce its laws (e.g., trespass or theft) for a violation that may occur on the property. The county sheriff, of course, can enforce state laws on the property and any charge that is filed can

be prosecuted by the county prosecutor, but this may not always happen. To gain assurance that any violations of the law will be prosecuted (should these occur), the city or town must have jurisdiction over the area, and jurisdiction can only be obtained if that area becomes part of the city or town.

The first question to ask is whether the non-contiguous area is within the city's urban growth area.

## WHEN ANNEXATION IS NOT POSSIBLE

While it may be a good policy to annex the non-contiguous area that a city owns outside of its jurisdiction, when is this even a possibility? The first question to ask is whether the non-contiguous area is within the city's urban growth area (UGA). If a city is subject to the Growth

Management Act, chapter 36.70A RCW, it is prohibited from annexing any territory outside its UGA. RCW 35.13.005 provides:

No city or town located in a county in which urban growth areas have been designated under RCW 36.70A.110 may annex territory beyond an urban growth area.

A similar limitation applies to code cities (see RCW 35A.14.005).

So, if a city or town is covered by growth management, it may not annex territory outside its UGA — regardless of whether it is land owned by the city or town. On the other hand, if growth management does not apply, annexation would be possible if the annexation is for a proposed municipal purpose.

## WHEN ANNEXATION IS POSSIBLE

If the growth management hurdle can be cleared, what process can the city or town use to annex the area? Again, the only method available to annex non-contiguous territory is the Municipal Purpose Method. This method of annexation is a streamlined process that requires adoption of an ordinance by a majority of the jurisdiction's governing body, and it does not require a petition or public hearing on the annexation.

RCW 35.13.180 provides:

City and town councils of second-class cities and towns may by a majority vote annex new unincorporated territory

outside the city or town limits, whether contiguous or non-contiguous for park, cemetery, or other municipal purposes when such territory is owned by the city or town or all of the owners of the real property in the territory give their written consent to the annexation.

The statute for code cities, RCW 35A.14.300, states:

Legislative bodies of code cities may by a majority vote annex territory outside the limits of such city whether contiguous or noncontiguous for any municipal purpose when such territory is owned by the city.

Thus, for code cities, the city must actually *own* the area to be annexed. In contrast, for first- and second-class cities and towns, the property to be annexed need not be owned by the city but, if owned by others, the *owners must consent* to the annexation in writing.

## WHEN ANNEXATION IS SUBJECT TO REVIEW

Boundary review board (BRB) review may be invoked for annexation of areas non-contiguous to the city or town. A notice of intention must be filed with a BRB and review follows once a triggering event occurs, such as those outlined in RCW 36.93.100. However, if the area is both owned by and contiguous to the city or town, the annexation is exempt from BRB review (see RCW 36.93.090(1)). Note that not all counties have BRBs.

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## Washington Trivia Answer

Kettle Falls' annual Town "Grouch" is selected as the results of a fund-raising competition. Photo: D. Gordon E. Robertson, CC BY-SA 3.0, via Wikimedia Commons

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