

CITY COUNCIL STUDY SESSION

State Legislative Update

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DIRECTION NEEDED FROM COUNCIL**INFORMATION
ONLY**

No action is required; this is an informational briefing. The State Legislature addresses a range of policy issues of interest to the City. Council may wish to provide direction to staff regarding legislative proposals.

RECOMMENDATION

N/A

BACKGROUND & ANALYSIS

Work continues during the interim between the 2018 state legislative session and the 2019 session which begins January 14. Legislators are developing policy language and writing draft legislation they will introduce in January. As part of this, multiple legislative committees are holding work sessions on upcoming legislative issues.

The November 6 General Election results will determine the makeup of the 2019 Legislature as all the members of the State House of Representatives and half the members of the State Senate must stand for election. The stakes are high as the upcoming election will determine which party will control each chamber and by what margin.

Once the results of the General Election are known, legislators will meet in Olympia for Committee Assembly Days where they will establish leadership roles, make committee assignments within each caucus and hold work sessions on emerging legislative issues.

Governor's Budget Proposals Under Development

Governor Jay Inslee will release his proposed 2019-2021 operating, capital, and transportation budgets in mid-December prior to the beginning of the 2019 legislative session. State agencies have submitted budget requests to the Office of Financial Management and the Governor's Office. The Governor's Office is reviewing the agency requests and will determine priorities to balance the competing demands for state funding. The Governor's budget is considered the starting point for the budget discussions in the 2019 session, however, each chamber writes its own proposed budgets which are reconciled over the course of the session.

Washington State Supreme Court Strikes Down Death Penalty as Unconstitutional

In recent state legislative sessions, the Legislature has considered multiple proposals to eliminate the death penalty. However, none of the proposals was passed into law. Earlier this month, the Washington

State Supreme Court ruled in *Washington State versus Gregory* that the death penalty is “invalid because it is imposed in an arbitrary and racially biased manner.”

In 2014, Governor Jay Inslee declared a moratorium on the death penalty in Washington state saying that at the time it was clear to him that the imposition of capital punishment is inconsistent and unequal. Following the release of the Supreme Court’s decision, Governor Jay Inslee issued the following statement: “This is a full and final decision by the State Supreme Court, and absent any legislative action, there will be no more capital punishment in the state of Washington.” He added that he would veto any legislation reinstituting the death penalty.

New Prevailing Wage Rates—A New Unfunded Mandate

Senate Bill 5493 was passed during the 2018 legislative session and changed how prevailing wage rates are determined. The application/interpretation of the statute by the state Department of Labor and Industries has resulted in a significant cost increase for cities throughout the state, including Bellevue.

The bill requires the Department of Labor and Industries to establish the prevailing wage rate based on collective bargaining agreements rather than wage and hour surveys. If a collective bargaining agreement does not exist for that trade or occupation, then wage and hour surveys can continue to be used to establish the prevailing wage for that category. This new application by the Department of Labor and Industries resulted in a significant increase in the prevailing wage rate for landscape laborers.

Cities, including Bellevue, have sent letters to the Department of Labor and Industries requesting a review of the rate-setting decision. Specifically, the collective bargaining agreement that was used to establish the rate does not match the description of landscape construction provided for in the Washington Administration Code. The Association of Washington Cities (AWC) will provide information and testimony on the impact of these cost increases on cities because of this rate change during Legislative Committee Assembly Days (later this year). If the current application of the statute is not reversed, Bellevue will see significant impacts in the coming year when most of the City’s longer-term system maintenance contracts come up for renewal.

Joint Legislative Task Force on Public Records

The 2019 Legislature established the Joint Legislative Task Force on Public Records (Task Force) after the Governor vetoed Senate Bill 6617 that exempted state legislators from the state Public Records Act. The purpose of the Task Force is to examine the standards for disclosing public records within the legislative branch. The Task Force is comprised of legislators, media representatives, an open government advocate and members of the public.

The Task Force has completed two of four meetings. During the first two meetings the Task Force heard presentations on the value of open government and the legislative branch of government. The remaining meetings are scheduled for November and December and will culminate in a report outlining the Task Force’s activities and any finding on which there is consensus by all members of the Task Force.

Small Cell Network Facility Deployment

On September 26, the Federal Communications Commission (FCC) approved new rules preempting local control over the deployment of small cell network facilities. Under the new rule, local governments will be required to approve or deny an application to deploy a small cell network facility within 60 days if it is being *added* onto an existing facility, or within 90 days if a *new* facility. If the local government does not provide an answer within those timelines, the applicant may seek injunctive relief through the courts. The new rule also excludes small cell network facilities from being reviewed for environmental or community impacts and limits the amount that a city can charge for application fees to a “reasonable approximation” of local government’s costs.

In the last several years, the State Legislature has considered legislation that would have preempted local control over small cell network facility deployment but did not pass any of the proposals into law. It is unclear how this new FCC ruling will impact state legislation during the 2019 legislative session. Cities throughout the nation have indicated that they intend to challenge the FCC ruling.

Affordable Housing Funding Tools

Representative Nicole Macri (D-Seattle) has indicated a strong desire to reintroduce legislation similar to House Bill 2437, which was considered in the 2018 legislative session but failed to pass. She has met with stakeholders to develop a final bill draft.

In the latest draft of House Bill 2437, counties would be authorized to impose a local sales and use tax credit of up to .03 percent against the state share of the sales tax, to fund affordable and supportive housing. This use would not increase the sales and use tax for consumers and would not change the overall retail sales or use tax rate. Instead, the amount of sales tax retained by the state would be reduced and redirected to the county. Once imposed, the sales tax credit would be in place for 20 years. In King County, if the County Council does not impose the sales tax credit by July 1, 2020, cities within King County would have the opportunity to use the credit against the sales tax.

The bill would also require any jurisdiction imposing the tax to provide a local match. If the full .03 sales tax credit were imposed, the local match would be 35 percent of the total sales tax credit revenue collected in a calendar year within that jurisdiction.

The revenue could be used for three purposes (1) acquiring, rehabilitating, or constructing affordable housing, including new units within an existing structure; (2) operating and maintenance costs of new units of affordable or supportive housing; or (3) rental assistance to tenants. Jurisdictions would be authorized to enter into interlocal agreements to expend the funds.

Representative Macri continues to meet with stakeholders to clarify the draft language. Some of the areas of continued discussion include:

- Whether cities or counties should have the authority to impose the credit against the state sales tax.

- If a city uses the sales tax authority, can a county impose the tax countywide (and thereby tax the city residents/businesses twice)?
- What level of coordinated planning between cities and counties is required in administering the funds?
- What level of local match is required.

Condominium Liability Act Reform

Representative Tana Senn (D-Mercer Island), Senator Guy Palumbo (D-Maltby), and Representative Mike Chapman (D-Port Angeles) are discussing legislation for potential reforms to the Washington State Condominium Liability Act with a variety of stakeholders. Senator Jamie Pederson (D-Seattle) and Representative Tana Senn are the likely sponsors of legislation in their respective chambers in 2019. Representative Senn committed to sharing a bill draft prior to the beginning of the session.

Highlights from a recent discussion with stakeholders that could *potentially* be integrated into a legislative proposal for the upcoming session include the following:

- Any legislation would be prospective and apply only to condominiums constructed after the effective date of the new law. The new law could apply to apartment-to-condominium conversions if the legislation provided a clear definition of when a conversion is considered final.
- All stakeholders who attended the meeting agreed that any legislation should add greater specificity to the definition of damage/defect. Lack of clarity in current law has resulted in settlement amounts based on insurance limits, rather than the actual cost to cure the damage/defect. Additionally, there is no certainty that settlement funds fully cover or are allocated toward curing the defect.
- Building industry representatives would like to clarify that a variance from a building code design is not a defect. Current law allows a condominium owner to sue based on potential damage, rather than actual damage. There was discussion about distinguishing between variances in the building that have health and safety implications versus variances that have aesthetic impacts. For example, it would be appropriate to sue for potential damage for a balcony that does not comply with the building code because the potential harm is significant. There was concern by multiple stakeholders about allowing for too much variance from building code regulations.
- The legislation could clarify that condominium/homeowner owner association board members are not personally liable for actions made as board members. Under current law, board members fear personal liability from condominium owners if they do not take legal action immediately. Attorneys in the stakeholder meeting disagreed as to whether that liability exists within current law or is an unfounded fear.
- The insurance industry no longer offers insurance to condominium developers in Washington State. Instead, developers must get customized insurance which can result in higher premiums and can create cash flow issues. The insurance industry has declined to participate in stakeholder meetings. There was some discussion regarding getting the state Insurance Commissioner's Office involved or adopting a program like one in Canada where the state runs a risk-pool for developers funded by building fees.

- There was some discussion of including a mandatory arbitration clause to avoid lawsuits.

It is worth noting that the issues listed above are under discussion but have not been included in a draft bill. Staff will continue to monitor these discussions as condominium liability reform is one of the actions supported in the City's Affordable Housing Strategy.

Task Force on Local Business and Occupations (B&O) Tax Apportionment

During the 2017 session, the Washington State Legislature passed House Bill 2005, sponsored by Representative Kristine Lytton (D-Anacortes). The legislation directed the Department of Revenue to convene a Local B&O Tax Apportionment Task Force (Task Force) to recommend changes to simplify the two-factor municipal B&O tax apportionment formula. The Task Force includes three representatives selected by the Association of Washington Cities (AWC) and three representatives selected by the Association of Washington Business (AWB).

The Task Force has been meeting since 2017 and is required to present its recommendations to the Legislature by October 31. The Task Force has completed its meetings, and the Department of Revenue (DOR) is finalizing a report to the Legislature. The report will include the following recommendations to simplify the two-factor apportionment model:

- The current service-income factor utilizes a customer location component that is determined based on where a business has physical contacts with its customer. The Task Force recommends applying a market-based model to the service-income factor by redefining "customer location" in the following manner:
 - For services where the customer is required to be physically present at the time the service is provided, customer location is where the service is provided.
 - For services provided to an individual and the person is not required to be physically present at the time the service is provided, customer location is the individual's residence or, if unknown, the billing/mailling address of the individual.
 - For services provided in a business-to-business transaction, if the business receiving the service is not required to be physically present at the time the service is provided, customer location is defined as one of the following:
 - a) The location where the services are ordered from, or
 - b) If (a) is unknown, the billing/mailling address of the business receiving the service, or
 - c) If (a) and (b) are both unknown, the corporate domicile of the business receiving the service.

For example, if the business providing the service is located in Seattle, and the business receiving the service is located in Bellevue, the local B&O tax would be paid by the business in Seattle to the City of Bellevue.

- The Task Force recommends no change to the current payroll factor.
- The Task Force recommends allowing a city or a business to request an alternative apportionment method if they can demonstrate that the prescribed formula is unfair or distortive.

These recommendations have been agreed to by all members of the Task Force and will be presented to the Legislature during Committee Assembly Days. The Task Force report will include draft legislation implementing these recommendations for consideration in the 2019 legislative session.

Bellevue's 2018 local B&O tax revenue is estimated to be \$45 million. The impacts to Bellevue from the changes in the service-income factor are unknown for certain. Using a sample of service-based businesses with headquarters or large office space in Bellevue, staff has estimated a range from \$0 to \$500,000 in revenue loss from the proposed changes.

Association of Washington Cities Legislative Priorities

The AWC Board of Directors approved the Association's [Legislative Priorities](#) recently. Below is a brief description of each priority:

Support economic development tools to encourage job creation and economic growth. The Association is developing legislation that would provide cities with a new economic development tool like Local Revitalization Finance, which was last funded by the state in the early 2000s.

Keep the Public Works Trust Fund in working order. The Association will support the Public Works Board's request for \$217 million, funded from the current stream of loan repayments and the 2 percent of Real Estate Excise Tax (REET) dedicated to the account. Additionally, during the recession, the Legislature redirected revenue out of the Public Works Trust Fund into the Education Legacy Fund through 2023. The Association will support ending these revenue redirections earlier, instead of waiting until 2023.

Invest in affordable housing. The Association will support a robust ongoing capital budget investment in the Housing Trust Fund and additional local funding tools for affordable housing. In addition, the Association supports 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. The Association supports the development and funding of a comprehensive statewide approach to fix salmon-blocking culverts. To achieve meaningful salmon and orca recovery, cities need ongoing and significant funding to upgrade city culverts.

Provide responsive funding for the Criminal Justice Training Commission (CJTC). The Association supports funding for at least 19 Basic Law Enforcement Academy (BLEA) classes per year and at least seven Corrections Officer Academy classes per year to meet city public safety needs.

Address a failing behavioral health system. The Association will work with the state to pursue enhancements and reforms to the behavioral health delivery system including engaging with mental health transportation proposals, the *Trueblood* settlement, making permanent the mental health co-responder program, and supporting comprehensive opioid response legislation.

POLICY & FISCAL IMPACTS

The State Legislature addresses a range of policy issues of interest to the City.

OPTIONS

N/A

ATTACHMENTS & AVAILABLE DOCUMENTS

N/A

AVAILABLE IN COUNCIL LIBRARY

N/A