CITY COUNCIL MEETING AGENDA
Council Chambers, 1000 Laurel Street

April 9, 2018
Monday

Study Session
7:00 p.m.

1. **Call to Order**
2. **Roll Call of Council Members**
3. **Presentations**
   - **A. Pierce County READS Proclamation**
   - **B. City Council Do's and Don'ts**
4. **Study Items**
   - **A. Budget Update**
5. **Adjournment**

Note: Public comment is generally not taken at Study Sessions. However, on some occasions, public comments may be allowed at the discretion of the Mayor. The public may also submit written communications, via letters or emails to info@cityofmilton.net. Any item received by noon on the day of the meeting will be distributed to Council.

If you need ADA accommodations, please contact City Hall at (253) 517-2705 at least 24 hours prior to the meeting. Thank you.

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Agenda Item # 3A

To: Mayor Styron Sherrell and City Council Members

From: City Clerk/HR Generalist Ellie Hooman

Date: April 9, 2018

Re: Pierce County READS Presentation & Proclamation

ATTACHMENTS: 1. Proclamation

TYPE OF ACTION:

[x] Information Only [ ] Discussion [ ] Action [ ] Public Hearing

Recommendation/Action:

Fiscal Impact/Source of Funds: There is no financial impact to this agenda item.

Discussion: Pierce County Library Community Brach Manager Linda Case will be providing a brief presentation on the decade-long program, Pierce County READS. The Mayor will issue a Proclamation immediately following the presentation.

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CITY OF MILTON, WASHINGTON
PROCLAMATION

WHEREAS, in recognition of Pierce County Library System's Pierce County READS program, presented by The News Tribune and with sponsorship provided by KeyBank Foundation and Pierce County Library Foundation; and

WHEREAS, Pierce County READS seeks to engage, involve, and connect people throughout Pierce County; and

WHEREAS, Pierce County READS is the largest community reading event in the state, when people read an award-winning author's work, participate in free events, join in group discussion, and attend a free event to meet the nationally known, best-selling author on May 11, 2018, at 7 p.m.; and

WHEREAS, Pierce County Library is offering this community-wide program in collaboration with numerous community partners.

NOW THEREFORE, I, Mayor Shanna Styron Sherrell, encourage our citizens to come together to participate in this decade-long program focused on books that challenge our perceptions and further our understanding of the world. I do hereby proclaim March 11, 2018 – May 11, 2018 as:

Pierce County READS

PROCLAIMED this 9th day of April, 2018.

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Shanna Styron Sherrell, Mayor

PIERCE COUNTY READS 2018

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Agenda Item # 3B

To: Mayor Styron Sherrell and City Council Members

From: City Clerk/HR Generalist Ellie Hooman

Date: April 9, 2018

Re: Council Do's and Don'ts Presentation

ATTACHMENTS: 1. WCIA Presentation Handout

TYPE OF ACTION:

[x] Information Only [ ] Discussion [ ] Action [ ] Public Hearing

Recommendation/Action:

Fiscal Impact/Source of Funds: There is no financial impact to this agenda item.

Discussion: WCIA Risk Services Manager Robin Aronson will be presenting basic risk management training for the benefit of the Council. This training session is provided by the Washington Cities Insurance Authority at no charge to the City.

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WA cities
Insurance Authority

City of Milton
Council Do's and Don'ts

April 9, 2018

Presented by:

Robin Aronson
WCIA Risk Services Manager

City Council Do's and Don'ts

Presented by
Ann Bennett
Executive Director
Washington Cities Insurance Authority

Washington Cities Insurance Authority

- A municipal organization of Washington public entities joined to share risk
  - Created in 1981
  - Over 160 members
- Over $170 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
  - $25,000,000 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

WA cities Insurance Authority

Common Council Liability Exposures

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

WA cities Insurance Authority

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

WA cities Insurance Authority

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*

WA cities Insurance Authority

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
  - Woodsview 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

WA cities Insurance Authority

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

WA cities Insurance Authority

Avoiding Liability

Personnel

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

WA cities Insurance Authority

Avoiding Liability

Negligent Misrepresentation

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

WA cities Insurance Authority

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

WA cities Insurance Authority

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

WA cities Insurance Authority

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

WA cities Insurance Authority

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

WA cities Insurance Authority

WA cities
Insurance Authority

www.wciapool.org

Washington Cities Insurance Authority
P.O. Box 88030
Tukwila, WA 98138
Phone: 206.575.6046
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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 our 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).

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[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:

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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.

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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 is 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 mush 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).

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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 play 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, <u>or other statute which exempts or prohibits disclosure of specific information or records</u>."

- 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.

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Agenda Item # 4A

To: Mayor Styron Sherrell and City Council Members

From: Tara Dunford, CPA, Interim Finance Director

Date: April 9, 2018

Re: **Budget Update – February 2018**

ATTACHMENTS: February 2018 year-to-date budget position report

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TYPE OF ACTION:

[X] Information Only [X] Discussion [ ] Action [ ] Expenditure Required

Recommendation/Action: None

Fiscal Impact/Source of Funds: There is no budget impact for this item.

Discussion:

- Review highlights of year-to-date budget position report.

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2018 BUDGET POSITION

City Of Milton — Time: 11:38:05 Date: 04/02/2018
MCAG #: 0590 — Page: 1

001 General Fund — Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
310 Taxes	3,211,769.46	379,178.29	2,832,591.17	11.8%
320 Licenses & Permits	126,251.25	35,006.30	91,244.95	27.7%
330 State Generated Revenues	94,450.00	0.00	94,450.00	0.0%
340 Charges For Services	132,250.00	16,104.48	116,145.52	12.2%
350 Fines & Forfeitures	110,800.00	13,738.02	97,061.98	12.4%
360 Misc Revenues	81,500.00	24,404.22	57,095.78	29.9%
380 Non Revenues	172,300.00	20,220.15	152,079.85	11.7%
390 Other Revenues	0.00	0.00	0.00	0.0%
397 Interfund Transfers	0.00	0.00	0.00	0.0%
Fund Revenues:	**3,929,320.71**	**488,651.46**	**3,440,669.25**	**12.4%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
511 City Council	23,338.66	2,995.57	20,343.09	12.8%
512 Judicial	288,000.00	17,576.03	270,423.97	6.1%
513 Mayor & Executive Offices	69,913.53	11,284.22	58,629.31	16.1%
514 Administration & Finance	95,242.13	40,915.21	54,326.92	43.0%
515 Legal Services	46,517.32	4,718.90	41,798.42	10.1%
517 Other Admin & Personnel	22,811.66	4,407.44	18,404.22	19.3%
001 Facilities	87,342.19	17,053.23	70,288.96	19.5%
002 Central Stores	52,993.64	42,545.51	10,448.13	80.3%
003 Engineering	0.00	0.00	0.00	0.0%
518 Central Services	140,335.83	59,598.74	80,737.09	42.5%
524 Protective Inspections	7,000.00	531.64	6,468.36	7.6%
553 Conservation	600.00	0.00	600.00	0.0%
554 Nuisance Control	0.00	0.00	0.00	0.0%
001 Building	201,242.78	38,275.44	162,967.34	19.0%
002 Planning	101,299.64	18,719.59	82,580.05	18.5%
558 Planning & Community Devel	302,542.42	56,995.03	245,547.39	18.8%
569 Senior Services	13,100.00	2,195.52	10,904.48	16.8%
575 Cultural & Recreational Fac	11,170.00	900.75	10,269.25	8.1%
576 Park Facilities	144,471.85	14,316.04	130,155.81	9.9%
580 Non Expeditures	149,300.00	15,898.78	133,401.22	10.6%
591 Debt Service	0.00	0.00	0.00	0.0%
594 Capital Expenditures	0.00	0.00	0.00	0.0%
597 Interfund Transfers	2,522,420.10	420,403.34	2,102,016.76	16.7%
Fund Expenditures:	**3,836,763.50**	**652,737.21**	**3,184,026.29**	**17.0%**
Fund Excess/(Deficit):	**92,557.21**	**(164,085.75)**		

2018 BUDGET POSITION

002 Fire/EMS Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
397 Interfund Transfers	0.00	0.00	0.00	0.0%
Fund Revenues:	**0.00**	**0.00**	**0.00**	**0.0%**
Fund Excess/(Deficit):	**0.00**	**0.00**		

2018 BUDGET POSITION

004 General Fund Asset Replacement Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
360 Misc Revenues	1,052.30	357.00	695.30	33.9%
380 Non Revenues	35,333.18	0.00	35,333.18	0.0%
397 Interfund Transfers	0.00	0.00	0.00	0.0%
Fund Revenues:	**36,385.48**	**357.00**	**36,028.48**	**1.0%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
580 Non Expeditures	65,000.00	0.00	65,000.00	0.0%
Fund Expenditures:	**65,000.00**	**0.00**	**65,000.00**	**0.0%**
Fund Excess/(Deficit):	**(28,614.52)**	**357.00**		

2018 BUDGET POSITION

006 Deposit & Clearing Account Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
360 Misc Revenues	50.00	0.00	50.00	0.0%
380 Non Revenues	70,000.00	0.00	70,000.00	0.0%
Fund Revenues:	**70,050.00**	**0.00**	**70,050.00**	**0.0%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
580 Non Expeditures	70,000.00	0.00	70,000.00	0.0%
Fund Expenditures:	**70,000.00**	**0.00**	**70,000.00**	**0.0%**
Fund Excess/(Deficit):	**50.00**	**0.00**		

2018 BUDGET POSITION

101 Street Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
320 Licenses & Permits	1,500.00	600.00	900.00	40.0%
330 State Generated Revenues	182,727.00	26,359.49	156,367.51	14.4%
340 Charges For Services	0.00	0.00	0.00	0.0%
360 Misc Revenues	0.00	0.00	0.00	0.0%
390 Other Revenues	0.00	0.00	0.00	0.0%
397 Interfund Transfers	172,000.00	28,666.66	143,333.34	16.7%
Fund Revenues:	**356,227.00**	**55,626.15**	**300,600.85**	**15.6%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
542 Streets - Maintenance	269,580.70	61,953.60	207,627.10	23.0%
580 Non Expeditures	0.00	0.00	0.00	0.0%
591 Debt Service	93,284.69	0.00	93,284.69	0.0%
597 Interfund Transfers	0.00	0.00	0.00	0.0%
Fund Expenditures:	**362,865.39**	**61,953.60**	**300,911.79**	**17.1%**
Fund Excess/(Deficit):	**(6,638.39)**	**(6,327.45)**		

2018 BUDGET POSITION

103 Strategic Reserve Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
360 Misc Revenues	3,000.00	1,486.66	1,513.34	49.6%
Fund Revenues:	**3,000.00**	**1,486.66**	**1,513.34**	**49.6%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
514 Administration & Finance	0.00	0.00	0.00	0.0%
597 Interfund Transfers	0.00	0.00	0.00	0.0%
Fund Expenditures:	**0.00**	**0.00**	**0.00**	**0.0%**
Fund Excess/(Deficit):	**3,000.00**	**1,486.66**		

2018 BUDGET POSITION

105 Drug Seizure Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
360 Misc Revenues	13,000.00	2,500.00	10,500.00	19.2%
Fund Revenues:	**13,000.00**	**2,500.00**	**10,500.00**	**19.2%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
521 Law Enforcement	22,000.00	0.00	22,000.00	0.0%
Fund Expenditures:	**22,000.00**	**0.00**	**22,000.00**	**0.0%**
Fund Excess/(Deficit):	**(9,000.00)**	**2,500.00**		

2018 BUDGET POSITION

107 Criminal Justice Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
310 Taxes	141,000.00	27,729.53	113,270.47	19.7%
320 Licenses & Permits	3,900.00	766.00	3,134.00	19.6%
330 State Generated Revenues	116,382.00	12,071.31	104,310.69	10.4%
340 Charges For Services	7,300.00	801.16	6,498.84	11.0%
360 Misc Revenues	0.00	0.00	0.00	0.0%
380 Non Revenues	40,000.00	0.00	40,000.00	0.0%
390 Other Revenues	8,000.00	34,278.13	(26,278.13)	428.5%
397 Interfund Transfers	2,350,420.10	391,736.68	1,958,683.42	16.7%
Fund Revenues:	**2,667,002.10**	**467,382.81**	**2,199,619.29**	**17.5%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
521 Law Enforcement	2,161,798.86	476,666.69	1,685,132.17	22.0%
523 Jail Costs	210,200.00	37,616.30	172,583.70	17.9%
525 Emergency Services	5,700.00	5,699.25	0.75	100.0%
528 Comm/Alarms/Dispatch	214,090.00	50,863.50	163,226.50	23.8%
554 Nuisance Control	38,000.00	11,657.84	26,342.16	30.7%
580 Non Expeditures	35,333.18	508.38	34,824.80	1.4%
591 Debt Service	252.30	0.00	252.30	0.0%
597 Interfund Transfers	0.00	0.00	0.00	0.0%
Fund Expenditures:	**2,665,374.34**	**583,011.96**	**2,082,362.38**	**21.9%**
Fund Excess/(Deficit):	**1,627.76**	**(115,629.15)**		

2018 BUDGET POSITION

116 Community Events Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
340 Charges For Services	8,000.00	0.00	8,000.00	0.0%
360 Misc Revenues	11,100.00	0.00	11,100.00	0.0%
397 Interfund Transfers	0.00	0.00	0.00	0.0%
Fund Revenues:	**19,100.00**	**0.00**	**19,100.00**	**0.0%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
573 Spectator & Community Events	22,075.00	102.56	21,972.44	0.5%
580 Non Expeditures	0.00	0.00	0.00	0.0%
Fund Expenditures:	**22,075.00**	**102.56**	**21,972.44**	**0.5%**
Fund Excess/(Deficit):	**(2,975.00)**	**(102.56)**		

2018 BUDGET POSITION

118 Reserve Officer Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
360 Misc Revenues	0.00	0.00	0.00	0.0%
Fund Revenues:	**0.00**	**0.00**	**0.00**	**0.0%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
521 Law Enforcement	1,000.00	0.00	1,000.00	0.0%
Fund Expenditures:	**1,000.00**	**0.00**	**1,000.00**	**0.0%**
Fund Excess/(Deficit):	**(1,000.00)**	**0.00**		

2018 BUDGET POSITION

130 Municipal Improvement Fund (REET 1) Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
310 Taxes	135,000.00	19,912.04	115,087.96	14.7%
360 Misc Revenues	600.00	359.16	240.84	59.9%
Fund Revenues:	**135,600.00**	**20,271.20**	**115,328.80**	**14.9%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
597 Interfund Transfers	383,000.00	63,833.34	319,166.66	16.7%
Fund Expenditures:	**383,000.00**	**63,833.34**	**319,166.66**	**16.7%**
Fund Excess/(Deficit):	**(247,400.00)**	**(43,562.14)**		

2018 BUDGET POSITION

131 Municipal Project Fund (REET 2) Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
310 Taxes	135,000.00	20,056.03	114,943.97	14.9%
360 Misc Revenues	500.00	358.46	141.54	71.7%
Fund Revenues:	**135,500.00**	**20,414.49**	**115,085.51**	**15.1%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
597 Interfund Transfers	290,200.00	48,366.66	241,833.34	16.7%
Fund Expenditures:	**290,200.00**	**48,366.66**	**241,833.34**	**16.7%**
Fund Excess/(Deficit):	**(154,700.00)**	**(27,952.17)**		

2018 BUDGET POSITION

140 Traffic Impact Fee Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
340 Charges For Services	30,000.00	12,192.00	17,808.00	40.6%
360 Misc Revenues	100.00	0.87	99.13	0.9%
Fund Revenues:	**30,100.00**	**12,192.87**	**17,907.13**	**40.5%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
597 Interfund Transfers	0.00	0.00	0.00	0.0%
Fund Expenditures:	**0.00**	**0.00**	**0.00**	**0.0%**
Fund Excess/(Deficit):	**30,100.00**	**12,192.87**		

2018 BUDGET POSITION

150 Park Impact Fee Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
340 Charges For Services	5,000.00	4,650.00	350.00	93.0%
360 Misc Revenues	25.00	0.00	25.00	0.0%
Fund Revenues:	**5,025.00**	**4,650.00**	**375.00**	**92.5%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
597 Interfund Transfers	0.00	0.00	0.00	0.0%
Fund Expenditures:	**0.00**	**0.00**	**0.00**	**0.0%**
Fund Excess/(Deficit):	**5,025.00**	**4,650.00**		

2018 BUDGET POSITION

310 Capital Improvement Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
330 State Generated Revenues	837,303.00	0.00	837,303.00	0.0%
360 Misc Revenues	0.00	0.00	0.00	0.0%
397 Interfund Transfers	373,200.00	62,200.00	311,000.00	16.7%
Fund Revenues:	**1,210,503.00**	**62,200.00**	**1,148,303.00**	**5.1%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
594 Capital Expenditures	1,303,536.00	62,722.50	1,240,813.50	4.8%
597 Interfund Transfers	0.00	0.00	0.00	0.0%
Fund Expenditures:	**1,303,536.00**	**62,722.50**	**1,240,813.50**	**4.8%**
Fund Excess/(Deficit):	**(93,033.00)**	**(522.50)**		

2018 BUDGET POSITION

314 Capital Improvement Reserve Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
360 Misc Revenues	2,000.00	594.66	1,405.34	29.7%
397 Interfund Transfers	0.00	0.00	0.00	0.0%
Fund Revenues:	**2,000.00**	**594.66**	**1,405.34**	**29.7%**
Fund Excess/(Deficit):	**2,000.00**	**594.66**		

2018 BUDGET POSITION

401 Electric Utility Operations Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
320 Licenses & Permits	1,000.00	102.00	898.00	10.2%
330 State Generated Revenues	0.00	0.00	0.00	0.0%
340 Charges For Services	4,695,369.71	863,045.85	3,832,323.86	18.4%
350 Fines & Forfeitures	35,000.00	6,766.08	28,233.92	19.3%
360 Misc Revenues	200,000.00	8,982.97	191,017.03	4.5%
380 Non Revenues	0.00	0.00	0.00	0.0%
390 Other Revenues	0.00	0.00	0.00	0.0%
Fund Revenues:	**4,931,369.71**	**878,896.90**	**4,052,472.81**	**17.8%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
001 Administration	822,452.34	200,950.77	621,501.57	24.4%
002 Operations	4,200,219.04	624,958.15	3,575,260.89	14.9%
533 Electric Utility	5,022,671.38	825,908.92	4,196,762.46	16.4%
580 Non Expeditures	0.00	0.00	0.00	0.0%
594 Capital Expenditures	0.00	0.00	0.00	0.0%
597 Interfund Transfers	466,236.98	86,991.40	379,245.58	18.7%
Fund Expenditures:	**5,488,908.36**	**912,900.32**	**4,576,008.04**	**16.6%**
Fund Excess/(Deficit):	**(557,538.65)**	**(34,003.42)**		

2018 BUDGET POSITION

402 Electric Capital Improvement Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
360 Misc Revenues	13,000.00	3,517.72	9,482.28	27.1%
397 Interfund Transfers	326,365.88	60,893.98	265,471.90	18.7%
Fund Revenues:	**339,365.88**	**64,411.70**	**274,954.18**	**19.0%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
594 Capital Expenditures	1,780,000.00	11,360.90	1,768,639.10	0.6%
Fund Expenditures:	**1,780,000.00**	**11,360.90**	**1,768,639.10**	**0.6%**
Fund Excess/(Deficit):	**(1,440,634.12)**	**53,050.80**		

2018 BUDGET POSITION

403 Water Utility Operations Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
320 Licenses & Permits	4,000.00	102.00	3,898.00	2.6%
340 Charges For Services	2,185,577.73	345,653.27	1,839,924.46	15.8%
350 Fines & Forfeitures	30,000.00	2,506.00	27,494.00	8.4%
360 Misc Revenues	13,000.00	4,054.44	8,945.56	31.2%
380 Non Revenues	0.00	0.00	0.00	0.0%
390 Other Revenues	0.00	0.00	0.00	0.0%
Fund Revenues:	**2,232,577.73**	**352,315.71**	**1,880,262.02**	**15.8%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
001 Administration	640,745.33	178,805.00	461,940.33	27.9%
002 Operations	1,244,185.81	171,140.51	1,073,045.30	13.8%
003 Water Quality	189,600.00	18,370.28	171,229.72	9.7%
534 Water Utility	2,074,531.14	368,315.79	1,706,215.35	17.8%
580 Non Expeditures	0.00	0.00	0.00	0.0%
591 Debt Service	197,310.00	0.00	197,310.00	0.0%
594 Capital Expenditures	0.00	0.00	0.00	0.0%
597 Interfund Transfers	213,047.79	34,826.13	178,221.66	16.3%
Fund Expenditures:	**2,484,888.93**	**403,141.92**	**2,081,747.01**	**16.2%**
Fund Excess/(Deficit):	**(252,311.20)**	**(50,826.21)**		

2018 BUDGET POSITION

404 Water Capital Improvement Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
360 Misc Revenues	18,500.00	1,665.04	16,834.96	9.0%
370 Capital Contributions	20,000.00	4,403.00	15,597.00	22.0%
397 Interfund Transfers	149,133.45	24,378.29	124,755.16	16.3%
Fund Revenues:	**187,633.45**	**30,446.33**	**157,187.12**	**16.2%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
594 Capital Expenditures	1,498,000.00	122,192.09	1,375,807.91	8.2%
Fund Expenditures:	**1,498,000.00**	**122,192.09**	**1,375,807.91**	**8.2%**
Fund Excess/(Deficit):	**(1,310,366.55)**	**(91,745.76)**		

2018 BUDGET POSITION

405 Water Utility Asset Replacement Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
360 Misc Revenues	1,500.00	475.73	1,024.27	31.7%
397 Interfund Transfers	63,914.34	10,447.84	53,466.50	16.3%
Fund Revenues:	**65,414.34**	**10,923.57**	**54,490.77**	**16.7%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
594 Capital Expenditures	200,000.00	0.00	200,000.00	0.0%
Fund Expenditures:	**200,000.00**	**0.00**	**200,000.00**	**0.0%**
Fund Excess/(Deficit):	**(134,585.66)**	**10,923.57**		

2018 BUDGET POSITION

406 Stormwater Operations Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
320 Licenses & Permits	1,000.00	0.00	1,000.00	0.0%
340 Charges For Services	988,749.87	158,326.74	830,423.13	16.0%
350 Fines & Forfeitures	0.00	1,247.90	(1,247.90)	0.0%
360 Misc Revenues	12,000.00	3,119.70	8,880.30	26.0%
Fund Revenues:	**1,001,749.87**	**162,694.34**	**839,055.53**	**16.2%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
001 Administration	365,402.12	91,116.89	274,285.23	24.9%
002 Operations	796,280.81	89,572.56	706,708.25	11.2%
531 Stormwater Utility	1,161,682.93	180,689.45	980,993.48	15.6%
554 Nuisance Control	6,000.00	0.00	6,000.00	0.0%
580 Non Expeditures	0.00	0.00	0.00	0.0%
591 Debt Service	0.00	0.00	0.00	0.0%
594 Capital Expenditures	0.00	0.00	0.00	0.0%
597 Interfund Transfers	195,828.92	29,859.74	165,969.18	15.2%
Fund Expenditures:	**1,363,511.85**	**210,549.19**	**1,152,962.66**	**15.4%**
Fund Excess/(Deficit):	**(361,761.98)**	**(47,854.85)**		

2018 BUDGET POSITION

407 Stormwater Capital Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
330 State Generated Revenues	711,500.00	12,449.26	699,050.74	1.7%
360 Misc Revenues	2,000.00	60.69	1,939.31	3.0%
397 Interfund Transfers	466,181.42	75,072.50	391,108.92	16.1%
Fund Revenues:	**1,179,681.42**	**87,582.45**	**1,092,098.97**	**7.4%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
594 Capital Expenditures	1,450,000.00	9,538.54	1,440,461.46	0.7%
Fund Expenditures:	**1,450,000.00**	**9,538.54**	**1,440,461.46**	**0.7%**
Fund Excess/(Deficit):	**(270,318.58)**	**78,043.91**		

2018 BUDGET POSITION

408 Stormwater Utility Asset Replacement Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
360 Misc Revenues	500.00	142.71	357.29	28.5%
397 Interfund Transfers	29,647.50	4,787.24	24,860.26	16.1%
Fund Revenues:	**30,147.50**	**4,929.95**	**25,217.55**	**16.4%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
594 Capital Expenditures	100,000.00	0.00	100,000.00	0.0%
Fund Expenditures:	**100,000.00**	**0.00**	**100,000.00**	**0.0%**
Fund Excess/(Deficit):	**(69,852.50)**	**4,929.95**		

2018 BUDGET POSITION

409 Electric Utility Asset Replacement Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
360 Misc Revenues	0.00	381.21	(381.21)	0.0%
397 Interfund Transfers	139,871.10	26,097.42	113,773.68	18.7%
Fund Revenues:	**139,871.10**	**26,478.63**	**113,392.47**	**18.9%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
594 Capital Expenditures	360,000.00	0.00	360,000.00	0.0%
Fund Expenditures:	**360,000.00**	**0.00**	**360,000.00**	**0.0%**
Fund Excess/(Deficit):	**(220,128.90)**	**26,478.63**		

2018 BUDGET POSITION

501 Vehicle Repair & Maintenance Fund Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
340 Charges For Services	268,300.00	12,364.86	255,935.14	4.6%
397 Interfund Transfers	0.00	0.00	0.00	0.0%
Fund Revenues:	**268,300.00**	**12,364.86**	**255,935.14**	**4.6%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
548 Municipal Vehicles/Equipment	266,224.63	24,279.51	241,945.12	9.1%
580 Non Expeditures	0.00	0.00	0.00	0.0%
Fund Expenditures:	**266,224.63**	**24,279.51**	**241,945.12**	**9.1%**
Fund Excess/(Deficit):	**2,075.37**	**(11,914.65)**		

2018 BUDGET POSITION

503 Information Technology Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
340 Charges For Services	260,938.47	37,039.74	223,898.73	14.2%
397 Interfund Transfers	0.00	0.00	0.00	0.0%
Fund Revenues:	**260,938.47**	**37,039.74**	**223,898.73**	**14.2%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
518 Central Services	265,541.40	85,084.00	180,457.40	32.0%
580 Non Expeditures	0.00	0.00	0.00	0.0%
Fund Expenditures:	**265,541.40**	**85,084.00**	**180,457.40**	**32.0%**
Fund Excess/(Deficit):	**(4,602.93)**	**(48,044.26)**		

2018 BUDGET POSITION

631 Trust / Suspense Funds Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
360 Misc Revenues	0.00	16.66	(16.66)	0.0%
380 Non Revenues	0.00	1,801.28	(1,801.28)	0.0%
Fund Revenues:	**0.00**	**1,817.94**	**(1,817.94)**	**0.0%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
580 Non Expeditures	0.00	1,028.10	(1,028.10)	0.0%
Fund Expenditures:	**0.00**	**1,028.10**	**(1,028.10)**	**0.0%**
Fund Excess/(Deficit):	**0.00**	**789.84**		

2018 BUDGET POSITION

632 Muni Court Months: 01 To: 02

Revenues	Amt Budgeted	Revenues	Remaining	
380 Non Revenues	500,000.00	48,190.43	451,809.57	9.6%
Fund Revenues:	**500,000.00**	**48,190.43**	**451,809.57**	**9.6%**

Expenditures	Amt Budgeted	Expenditures	Remaining	
580 Non Expeditures	500,000.00	47,906.04	452,093.96	9.6%
Fund Expenditures:	**500,000.00**	**47,906.04**	**452,093.96**	**9.6%**
Fund Excess/(Deficit):	**0.00**	**284.39**		

2018 BUDGET POSITION TOTALS

Fund	Revenue Budgeted	Received		Expense Budgeted	Spent	
001 General Fund	3,929,320.71	488,651.46	12.4%	3,836,763.50	652,737.21	17%
002 Fire/EMS	0.00	0.00	0.0%	0.00	0.00	0%
004 General Fund Asset Replacement	36,385.48	357.00	1.0%	65,000.00	0.00	0%
006 Deposit & Clearing Account Fun	70,050.00	0.00	0.0%	70,000.00	0.00	0%
101 Street Fund	356,227.00	55,626.15	15.6%	362,865.39	61,953.60	17%
103 Strategic Reserve Fund	3,000.00	1,486.66	49.6%	0.00	0.00	0%
105 Drug Seizure Fund	13,000.00	2,500.00	19.2%	22,000.00	0.00	0%
107 Criminal Justice Fund	2,667,002.10	467,382.81	17.5%	2,665,374.34	583,011.96	22%
116 Community Events Fund	19,100.00	0.00	0.0%	22,075.00	102.56	0%
118 Reserve Officer Fund	0.00	0.00	0.0%	1,000.00	0.00	0%
130 Municipal Improvement Fund (R	135,600.00	20,271.20	14.9%	383,000.00	63,833.34	17%
131 Municipal Project Fund (REET 2	135,500.00	20,414.49	15.1%	290,200.00	48,366.66	17%
140 Traffic Impact Fee Fund	30,100.00	12,192.87	40.5%	0.00	0.00	0%
150 Park Impact Fee Fund	5,025.00	4,650.00	92.5%	0.00	0.00	0%
310 Capital Improvement Fund	1,210,503.00	62,200.00	5.1%	1,303,536.00	62,722.50	5%
314 Capital Improvement Reserve Fu	2,000.00	594.66	29.7%	0.00	0.00	0%
401 Electric Utility Operations Fund	4,931,369.71	878,896.90	17.8%	5,488,908.36	912,900.32	17%
402 Electric Capital Improvement Fu	339,365.88	64,411.70	19.0%	1,780,000.00	11,360.90	1%
403 Water Utility Operations Fund	2,232,577.73	352,315.71	15.8%	2,484,888.93	403,141.92	16%
404 Water Capital Improvement Func	187,633.45	30,446.33	16.2%	1,498,000.00	122,192.09	8%
405 Water Utility Asset Replacement	65,414.34	10,923.57	16.7%	200,000.00	0.00	0%
406 Stormwater Operations Fund	1,001,749.87	162,694.34	16.2%	1,363,511.85	210,549.19	15%
407 Stormwater Capital Fund	1,179,681.42	87,582.45	7.4%	1,450,000.00	9,538.54	1%
408 Stormwater Utility Asset Replace	30,147.50	4,929.95	16.4%	100,000.00	0.00	0%
409 Electric Utility Asset Replacemer	139,871.10	26,478.63	18.9%	360,000.00	0.00	0%
501 Vehicle Repair & Maintenance F	268,300.00	12,364.86	4.6%	266,224.63	24,279.51	9%
503 Information Technology	260,938.47	37,039.74	14.2%	265,541.40	85,084.00	32%
631 Trust / Suspense Funds	0.00	1,817.94	0.0%	0.00	1,028.10	0%
632 Muni Court	500,000.00	48,190.43	9.6%	500,000.00	47,906.04	10%
	19,749,862.76	2,854,419.85	14.5%	24,778,889.40	3,300,708.44	13.3%