No. 96781-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SEATTLE,

Petitioner,

v.

AMERICAN HOTEL & LODGING ASSOCIATION, SEATTLE HOTEL ASSOCIATION, and WASHINGTON HOSPITALITY ASSOCIATION,

and

UNITE HERE! LOCAL 8; SEATTLE PROTECTS WOMEN,

Respondents.

BRIEF OF AMICUS SUBMITTED ON BEHALF OF THE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS IN SUPPORT OF CITY OF SEATTLE'S PETITION FOR REVIEW

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I. INTRODUCTION

The Washington State Association of Municipal Attorneys (WSAMA) urges this Court to accept review of the Court of Appeals' decision in *American Hotel & Lodging Ass'n v. City of Seattle.*[1] Of Washington's 281 cities and towns, 197 are organized under Title 35A RCW, the Optional Municipal Code—a law of limited applicability for those "municipalities electing to be [so] governed."[2] The lower court erred in holding Appellant City of Seattle, a first class charter city not governed by Title 35A RCW, is constitutionally-bound to comply with that Title's provisions. Respondents agree this holding is "problematic."[3] This decision is in direct contravention to existing laws and will substantially impact municipalities. Absent a course correction by this Court, the lower court's holding will be used to impose the burdens of Title 35A RCW on non-code cities, contrary to the legislature's directive.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

WSAMA's members are legal counsel to the cities and towns in this state, who advise municipalities on all facets of formation and governance.

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[1] -- Wn.2d --, 432 P.3d 434 (2018).

[2] RCW 35A.01.010.

[3] Appellants American Hotel & Lodging Association, Seattle Hotel Association, And Washington Hospitality Association's Combined Response To City Of Seattle's And Intervenors' Petitions For Review at 4.

WSAMA has an interest in this case because the Court of Appeals' decision undermines the legislature's statutory framework of laws that govern municipalities. WSAMA urges this Court to accept review and reverse to foster clarity and consistency for cities.

III. SPECIFIC ISSUE ADDRESSED

WSAMA echoes the arguments in support of review articulated by Seattle in its Petition for Review. This amicus brief focuses exclusively on one issue: whether the Court of Appeals erred in concluding Title 35A RCW applies to non-code cities in Washington.

IV. STATEMENT OF THE CASE

WSAMA adopts the facts provided by Petitioner City of Seattle in its Petition for Review.

V. ARGUMENT

A. The Court of Appeals Erred by Imposing the Optional Municipal Code on the City of Seattle.

This case involves legislation adopted by Seattle, one of Washington's ten first class charter cities.[4] The Court of Appeals erred in holding "I-124 violates the single subject rule set out in RCW

[4] *See* RCW 35.01.010; Charter of the City of Seattle (ratified March 12, 1946) (available at https://www.seattle.gov/Documents/Departments/CityArchive/SeattleCityCharter1946.pdf)

35A.12.130…[and is] thus, unconstitutional under Article XI, section 11 of the Washington Constitution and invalid in its entirety" because RCW 35A.12.130 does not bind non-code cities such as Seattle. Review must be granted to right this legal error and redress the substantial public impact.

1. Title 35A RCW Affords Home Rule to Washington's Cities that are not Constitutionally-Authorized to Adopt a Charter.

Since 1889, article XI, section 10 of the Washington Constitution has facilitated self-governance for citizens of large cities. This constitutional provision endorses a local charter for these cities to ensure home rule: "an approach to structuring government meant to push as much power down to the local level as is practicable, reducing interference by the legislature or other agencies of state government."[5]

Thus, for over a century large cities have had the ability to "frame their own charters and thereby determine their own powers with respect to local or municipal affairs."[6] Washington's courts reinforced the legislature's directive that "the residents of first class cities should be free

[5] Hugh Spitzer, "Home Rule" vs. "Dillon's Rule" for Washington Cities, 38 SEATTLE U. L. REV. 809, 810 (2015) (*citing* Terrance Sandalow, The Limits of Municipal Power Under Home Rule: A Role for the Courts, 48 MINN. L. REV. 643, 644 (1964)).

[6] *Id*. (*citing* Philip A. Trautman, Legislative Control of Municipal Corporations in Washington, 38 WASH. L. REV. 743, 765 (1963) (internal quotation omitted).

to structure their governance in any way they see fit."[7] In contrast, "the form of government in other classes of cities and towns must be prescribed by statute[,]"[8] and smaller cities historically faced "a more restrictive judicial approach to noncharter city powers."[9] This led the legislature to commission a 1957 report "which criticized the state supreme court's cautious approach to local government powers."[10] A *Municipal Code Committee* was formed and "charged with developing legislation providing 'a form of statutory home rule' for cities… too small to qualify for a charter under the constitution."[11] In 1967 the legislature adopted some of the committee's recommendations as Title 35A RCW.[12]

Under Title 35A RCW, existing cities or new cities can opt to become "code cities" governed by Title 35A RCW.[13] This option has

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[7] *Id*. at 829 (citing *Hilzinger v. Gillman*, 56 Wash. 228, 105 P. 471 (1909); *Hartig v. City of Seattl*e, 53 Wash. 432, 102 P. 408 (1909); and *Bussell v. Gill*, 58 Wash. 468, 108 P. 1080 (1910)).

[8] *Id*. at 856 (citing Const. art. XI, § 10).

[9] *Id*. at 836 (citing *Lauterbach v. City of Centralia*, 49 Wn.2d 550, 304 P.2d 656 (1956).

[10] *See* 1957 Wash. Sess. Laws 36 (creating Subcommittee on Cities, Towns, and Counties of the Washington State Legislative Council); Subcomm. of Cities, Towns, & Cntys. of the Wash. State Legislative Council, Municipal Home Rule in Washington: Preliminary Report (1957).

[11] *See* 38 SEATTLE U. L. REV. at 839 (citing 1965 Wash. Sess. Laws 2060).

[12] 1967 Wash. Sess. Laws ch. 200 (codified at Title 35A RCW).

[13] 1967 Wash. Sess. Laws 1950 (codified at RCW chs. 35A.02 and 35A.03). Non-charter code cities are also permitted to elect to retain a prior plan of government and operate under the statutes in Title 35 RCW. Only the city of Hoquiam has elected this option. *See* City

proven popular, as each new city incorporating after Title 35A RCW's effective date incorporated as a non-charter code city.[14] Larger cities were invited to become "charter code cities" by reorganizing under Title 35A RCW while retaining their old city charter.[15] Only the City of Kelso invoked this option.[16] Statutory procedures to opt in as a code city governed by Title 35A RCW all require a vote of the cities' residents.[17] Seattle remains a first class charter city and has not taken action to become a code city under Title 35A RCW.

2. The Court of Appeals' Decision Conflicts with Statutes and Case Law.

Review is warranted because the underlying holding is in direct contravention of unambiguous statutes that the courts have repeatedly affirmed, which draw a distinction between code cities (governed by Title 35A) and non-code cities.[18] Title 35A RCW expressly binds non-charter

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of Hoquiam Municipal Code, available at https://cityofhoquiam.com/code/Hoquiamnt.html.

[14] *See* Steve Lundin, *The Closest Governments to the People: A Complete Reference Guide to Local Government in Washington State* (2d ed. 2015), excerpt attached as Appendix A.

[15] 1967 Wash. Sess. Laws 1950 (codified at Wash. Rev. Code § 35A.08 (2012)).

[16] *See* City of Kelso Charter and Municipal Code, available at https://www.kelso.gov/forms-and-documents/kelso-municipal-code-and-charter. Legal scholars question the utility of this option, as "the benefits of a charter for a code city are quite limited." *See supra* fn. 20.

[17] *See* RCW 35A.02.020, 35A.02.025, 35A.02.030 35A.02.035, 35A.02.060, and 35A.02.070.

[18] *See* RAP 13.4(b)(1) and (2).

code cities and charter code cities who adopt and organize under it. RCW 35A.02.010 states "[a]ny incorporated city or town may become a noncharter code city in accordance with, and be governed by, the provisions of this title." RCW 35A.07.010 similarly states: "[a]ny city …governed under a charter may become a charter code city by a procedure prescribed in this chapter and be governed under this title." Here, the lower court applied Title 35A RCW to limit the powers of a non-code city where the legislature has expressly excluded these cities from the burdens of Title 35A RCW, and "[a] statute will not be construed as taking away the power of a municipality to legislate unless this intent is clearly and expressly stated."[19]

Moreover, the distinctions between cities set out in statute are consistently sustained by Washington's courts.[20] In *Shaw Disposal, Inc. v. City of Auburn*, to determine the bidding rules for garbage contracts for the City of Auburn, a non-charter code city, the court of appeals aptly endorsed RCW 35A.40.200 and not RCW 35.23.352, which the court noted "was enacted to establish bidding procedures for second, third and fourth class

[19] *State ex rel. Schillberg v. Everett District Justice Court*, 92 Wn.2d 106, 108, 594 P.2d 448 (1979).

[20] See *Des Moines Marina Ass'n v. City of Des Moines*, 124 Wn. App. 282, 292, 100 P.3d 310, 316 (2004) ("[t]he City of Des Moines is a noncharter, Optional Municipal Code city governed by Title 35A, Revised Code of Washington."); *Heinsman v. City of Vancouver*, 144 Wn.2d 556, 560, 29 P.3d 709, 711 (2001) ("Under article XI, section 10 of the state constitution, first class cities, like Vancouver, may adopt city charters, which allow cities to exercise broad legislative powers.").

cities."[21] Review is warranted because the Court of Appeals' holding is in direct contravention of unambiguous statutory provisions that the courts have repeatedly affirmed draw a distinction between code cities (governed by Title 35A) and non-code cities.

3. The Lower Court Held Constitutional Conflict between I-124 and a State Law inapplicable to Seattle.

The underlying decision presents a significant question of law under the state Constitution that warrants review. *See* RAP 13.4(b)(3). A constitutional conflict is evident in the lower court's assertion that "[i]f 1-124 violates the single subject mandate of RCW 35A.12.130, it would violate article XI, section 11 because it would constitute an exercise of power that the statute does not permit."

Article XI, sec. 11 states "[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." "[N]umerous Washington cases have established the standard for interpreting whether a local ordinance is in conflict with general state law,"[22] and the underlying decision is a marked departure from the jurisprudence on this issue.

Conflict arises if a city attempts to authorize by ordinance "what the

[21] 15 Wn. App. 65, 66, 546 P.2d 1236 (1976).

[22] *City of Seattle v. Williams*, 128 Wash. 2d 341, 361, 908 P.2d 359, 369 (1995)

Legislature has forbidden" or "forbid what the Legislature has expressly licensed, authorized, or required."[23] As a threshold matter, the state law at issue must actually apply to the county, city town or township.[24] Prior to this decision, no court in Washington held that the Title 35A RCW is a general law that binds those cities that did not opt to organize under its authority. In holding 1-124 violates the single subject mandate of RCW 35A.12.130 and therefore violates article XI, section 11 because it "constitute[s] an exercise of power that the statute does not permit," the Court of Appeals found conflict between Seattle's legislative action and a statute that does not bind Seattle. The ramifications of this are substantial, and this Court should grant review to rectify this error.

4. Residents of Washington's Cities and Towns Have a Substantial Public Interest in Stable Self-Governance.

Review is warranted under RAP 13.4(b)(4), as the decision below calls into question the legislature's long-standing directive on the formation

[23] *City of Bellingham v. Schampera*, 57 Wn.2d 106, 111, 356 P.2d 292, 295 (1960).

[24] See *Shaw Disposal, Inc.* 15 Wn. App. at 67-68 (refusing to apply RCW 35.23.352 to a non-charter code city, holding "by their terms, RCW 35.23.352 and .353 do not apply to first class cities, only second, third and fourth class cities; hence, they are not "general law."); see also *Schampera*, 57 Wn.2d at 111 (examining ordinance imposing penalties in excess of those statutorily allowed for imposition by first class cities under former RCW 35.22.470); *Winkenwerder v. City of Yakima*, 52 W.2d 617, 623, 328 P.2d 873 (1958) ("If the state could constitutionally exercise the powers which the city is here attempting to exercise, then the ordinance and agreement are valid, unless they contravene some provision of the city's charter.").

and governance of Washington's cities. First, the decision undermines the home rule authority of first class cities, who are constitutionally vested with control over their operation of government. While Seattle's charter has a provision somewhat analogous to a section of Title 35A RCW, that is decidedly not always the case.[25] Second, almost one hundred cities in Washington have not opted-in to governance under Title 35A RCW. "RCW 35A.11.020 grants code cities broad, though specific, powers."[26] As a result of the decision below, cities are now left wondering whether they are burdened by Title 35A's specific obligations. At a minimum, this decision will form the basis for litigation against non-code cities who are allegedly out of compliance with Title 35A RCW. The Court of Appeals' decision dramatically undermines that autonomy of non-code cities, and must be reviewed and reversed.

5. Division One's Erroneous Holding is not Dicta.

Respondents concede that Court of Appeals' holding "that by violating RCW 35A.12.130, I-124 would also violate art. XI, sec. 11 of the

[25] *Compare* RCW 35A.11.100 (requiring 15 percent of the total registered voters for an initiative or referendum) *with* City of Seattle Charter Article IV, § 1(B) (requiring at least 10 percent "of the total number of votes cast for the office of Mayor at the last preceding municipal election" for an initiative).

[26] *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 14 n.7, 239 P.3d 589 (2010) (emphasis added).

state constitution" is a "problematic statement," but attempts to minimize this problem by claiming the statement is dicta. This claim is legally infirm. Even though the court used two different approaches to declare I-124 unconstitutional, neither approach is dicta because "[w]hen a court unquestionably issues a holding based on multiple grounds, none of the grounds are dicta."[27] The "problematic" application of RCW 35A.12.130 to Seattle is unequivocally stated as one of the two grounds to support its holding that I-124 is unconstitutional. It cannot be ignored as dicta, and will be relied upon to justify the application of Title 35A to non-code cities who have intentionally not taken the required steps to organize or re-organize under its umbrella.

VI. CONCLUSION

For all the reasons set forth above, WSAMA respectfully requests that this Court grant the Petition for Discretionary Review and ultimately reverse the Court of Appeals decision.

[27] *Swanson Hay Company v. State Employment Security*, 1 Wn. App. 2d 174, 208-09, 404 P.3d 517 (2017) (citing *In re Pers. Restraint of Heidari*, 174 Wn.2d 288, 293, 274 P.3d 366 (2012) and *Western Ports Transpo., Inc. v. Employment Security Depart.*, 110 Wn. App. 440, 454, 41 P.3d 510 (2002)).

Respectfully submitted this 22nd day of March, 2019.

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CERTIFICATE OF SERVICE

I, Leslie M. Addis,he reby declare and state:

1. I am a citizen of the State of Washington, over the age of eighteen years, not a party to this action, and competent to be a witness herein.

2. On the 22nd day of March, 2019, I set for service a true copy of the foregoing *Brief of Amicus in Support of Petition for Review* on the following using the method of service indicated below:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 22nd day of March, 2019, at Bellevue, Washington.

Leslie M. Addis

BRIEF OF AMICUS SUBMITTED ON BEHALF OF THE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS IN SUPPORT OF CITY OF SEATTLE'S PETITION FOR REVIEW

Appendix A

Excerpts from Steve Lundin, *The Closest Governments to the People: A Complete Reference Guide to Local Government in Washington State* (2d ed. 2015)

THE CLOSEST GOVERNMENTS TO THE PEOPLE

A Complete Reference Guide
to Local Government in
Washington State

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Part III-C—Subdivisions of Local Governments

Chapter 6

Varied City Structures of Government

Cities possess broad flexibility to vary their structures of government and arrays of local officials.[a] Most other types of local governments are not given the flexibility to vary their structure of government.

This flexibility for cities arises from the statutory authorization of different classes of cities and different plans of government that each type of city may adopt. Appendix D provides details about each of the 281 cities in the State, including their class, year of incorporation, and plan of government.

Classification

Cities in Washington State are now divided into the following three broad classes or groups:

- Classified cities. Classified cities are the various types of cities authorized by the first State Legislature in 1890. This classification now includes first class cities, second class cities, and towns. These cities operate under the provisions of Title 35 RCW.
- Code cities. Code cities were first authorized by legislation enacted in 1967. They operate under the Optional Municipal Code of Title 35A RCW.
- Unclassified cities. Unclassified cities are cities created by special acts of the Legislative Assembly of Washington Territory that still operate under their

a Unless the context clearly implies otherwise, the term "cities" includes both cities and towns and the term "classified cities" includes first class cities, second class cities, and towns.

Territorial charters. The few statutes providing for unclassified cities are codified in Chapter 35.30 RCW.

Current law provides flexibility for cities to change their classifications. An unclassified city may reorganize as a code city, without regard to its population. A classified city may reorganize as a code city, without regard to its population. Any code city may reorganize as a classified city, based upon its population. Voters of any city with a population of 10,000 or more may approve a charter providing for the government of that city.

A. Classified Cities

Article XI, Section 10 is the basic constitutional provision relating to cities. The first State Legislature enacted laws in 1890 implementing this provision. This legislation:

- Established four classes of cities (first class, second class, third class, and towns). Each city's class was determined by its population when it organized or reorganized; and
- Allowed any city operating under a territorial charter to reorganize under these laws as a classified city.

Separate laws were enacted providing for each of these four classes of cities.[1] Some details were provided about first class cities. A first class city was a more populous city, with a population of at least 20,000, operating under a charter approved by city voters. This minimum population is now 10,000. The laws for second class cities and third class cities were quite similar, but differed in detail. The laws providing for towns somewhat resembled statutes providing for second class cities and third class cities, but granted towns less flexibility. Each of these four separate sets of laws provided for a mayor/council plan of government and other elected officials, as well as long lists of powers the city could exercise. As discussed below, legislation was enacted in 1911 and 1943 providing flexibility for cities to change their plans of government.

1. First class cities

A first class city is now defined in statute as a city with a population of 10,000 or more at the time the city adopted a charter for its own government under the provisions of Article XI, Section 10.[b] Ten first class cities existed in 2015, including Seattle, Tacoma, and Spokane.[2]

a. Procedure to adopt a charter

The process for a city to adopt a charter is detailed in both Article XI, Section 10 and various statutes.

Article XI, Section 10 now provides that the governing body of a city with a population of 10,000 or more initiates the process to adopt a city charter by causing an election to be held to elect a fifteen-member board of freeholders to draft a proposed city charter.[c] Each member of a board of freeholders must have been a resident of the city for at least two years at any time preceding his or her election to that position.[d]

A board of freeholders is a temporary body of voters empowered to draft a proposed charter that is submitted to city voters for their approval or rejection. It is not a government or a governing body. A board of freeholders dissolves after completing its duties of drafting a proposed city charter. Freeholders do not receive compensation. No time limits exist for a board of freeholders to develop a proposed charter. A proposed charter prepared by a board of freeholders becomes the organic law of the city if a ballot

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b Article XI, Section 10 currently allows any city with a population of 10,000 or more to adopt a charter "for its own government" but does not classify these cities as first class cities. The first State Legislature enacted legislation naming these cities as first class cities. RCW 35.01.010 now defines these cities as first class cities. The original provisions of Article XI, Section 10 allowed any city with a population of 20,000 or more to adopt a charter, but Amendment 40 was approved by state voters in 1964 reducing the minimum population to 10,000.

c Although the term "freeholder" literally means a property owner, the Supreme Court has held that members of the board need only be registered voters residing in the city rather than property owners. (*Sorenson v. Bellingham*, 80 Wn.2d 547, 553-555 (1972).)

d Article XI, Section 10 merely provides that members of the board must have been residents of the city "for a period of at least two years preceding their election and qualification." The State Court of Appeals held that the residential requirement for a county freeholder, that was worded using the same language but was for five years, established a requirement that the person have lived in the county at any time for a total of five years prior to being elected as a freeholder. (See, *Fishnaller v. Thurston County*, 21 Wn. App. 280, 289 (1978).)

proposition submitting the charter to city voters is approved by a simple majority of voters voting on the proposition.

An old state statute provides that whenever the population of a city is 10,000 or more, the city legislative authority shall provide for the election of a board of freeholders to frame a proposed charter for the city.[3] This statute has not been followed for decades. As of 2015, at least 68 cities in Washington have populations of 10,000 or more that have not held such an election, along with ten cities that adopted charters under this provision.[e]

Some flexibility exists for submitting a proposed charter to voters for their approval or rejection. A proposed charter may be submitted with, or without, alternative articles or provisions. Multiple questions are asked of city voters if the proposal includes alternative articles or provisions. The basic question is whether or not the charter should be approved. One or more secondary questions are then asked about alternative articles or provisions within the charter. Approval of the charter is determined by the vote on the basic question. However, some details within the charter may be determined by the secondary vote or votes on the alternative articles or provisions. Obviously, secondary votes have no effect if a majority of city voters voting on the basic proposition do not approve the charter.

Requirements are established for publishing the proposed charter prior to the election at which it is submitted to voters. The election of a board of freeholders and the submission of a proposed charter to voters may be held at either regular or special elections.

b. Procedures to amend a charter

Article XI, Section 10 provides that the city legislative authority initiates amendments to a city charter by submitting the amendments to city voters for their approval or rejection. An amendment is adopted if the ballot proposition asking if voters approve the proposed amendment is approved by a simple majority vote of voters voting on the proposition. As with the submission of the original charter, an amendment may include alternative articles or provisions.

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e The Legislature should consider amending or repealing this statute.

An alternative procedure to amend a city charter is provided in state statute.[4] City voters initiate this alternative procedure by filing a petition containing a proposed amendment that has been signed by city voters equal in number to at least 25 percent of the number of city voters who voted in the last preceding city election. As with the submission of the original charter, an amendment may include alternative articles or provisions. This alternative procedure to amend a city charter includes some very interesting language allowing the amendment to address "any matter within the realm of local affairs, or municipal business." As discussed below, the Supreme Court construed this phrase in an old case as granting city voters authority to initiate charter amendments relating to subject matters that may not be included in charter amendments initiated by action of the city governing body or presumably included in the original city charter. It is not clear whether this distinction between amendments initiated by city voters or the city governing body still has any validity as the Court has never again cited this provision as a source of fundamental power for first class or charter cities.

2. Second class cities

The first State Legislature enacted legislation providing for four classes of cities -- first class cities, second class cities, third class cities, and towns. Legislation was enacted in 1994, eliminating third class cities. This was accomplished by reclassifying then third class cities as second class cities.[5] No second class cities existed at that time, as all of the prior second class cities had reorganized as code cities.

A second class city is now defined as a city with a population of at least 1,500 at the time of its organization or reorganization that does not operate under either a charter adopted under Article XI, Section 10 or under the Optional Municipal Code in Title 35A RCW.[6] There were nine second class cities in 2015, including Colfax, Port Orchard, and Wapato.[7]

3. Towns

The first State Legislature enacted legislation providing for towns. As perhaps implicit from this term, towns have been granted

somewhat lesser powers than any class of cities, although they still possess very broad powers. Some old statutes used to refer to towns as fourth class municipal corporations.

A town is defined as a municipal corporation with a population of less than 1,500 when it organized or reorganized and does not operate under the Optional Municipal Code in Title 35A RCW.[8] There were 69 towns in 2015, including Coupeville, Krupp, Metaline, Steilacoom, and Winthrop.[9] As discussed in Chapter 7, an unincorporated area may no longer incorporate as a town.

B. Unclassified Cities

Article XI, Section 10 recognizes all cities that existed in Washington Territory at statehood. These cities were allowed to continue operating under their territorial charters or reorganize as classified cities. Legislation was enacted in 1899 referring to cities that retained their prior status and continued to operate under their territorial charters as "unclassified" cities.[10]

Statutes no longer provide for a procedure for an unclassified city to reorganize as a classified city. However, an unclassified city may reorganize as a code city following the procedures provided in Chapter 35A.02 RCW.

Waitsburg is the only remaining unclassified city operating under its territorial charter.[11] Union Gap recently reorganized from an unclassified city into a code city.

Legislation enacted in 2003 allowed an unclassified city (Waitsburg) to exercise any of the powers of a code city, and to change its election procedures and elect a mayor and council members to four-year terms of office at elections held in odd-numbered years.[12] Two major consequences arose from the enactment of this legislation. First, the legislation effectively eliminated the significance of operating under a territorial charter but retained the charter as an interesting historical document with little meaning. Second, the legislation was quite revolutionary in that it granted the one remaining unclassified city (Waitsburg) broader powers than are possessed by second class cities and towns.[f]

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f This second consequence is quite profound. Prior to the enactment of this legislation each

C. Code Cities

Legislation was enacted in 1967 allowing an unincorporated area to incorporate as a code city operating under the Optional Municipal Code and for any existing city to reorganize as a code city operating under the Optional Municipal Code.[13] This legislation provided for a new class of cities with strong home rule powers.

The effort to reform local government, by providing optional plans of government for cities and more clearly extend home rule powers to cities and counties, began in 1957 with a report by the Subcommittee on Cities, Towns and Counties of the Legislative Council entitled "Municipal Home Rule in Washington: Preliminary Report."[g] This report criticized the Supreme Court's analysis of city powers and recommended the State Constitution be amended to provide greater flexibility for noncharter cities to adopt different plans of government and expressly grant charter cities all the powers that have been conferred upon other municipal corporations.

Two subsequent legislative committees were created in the 1960's to study city government and make recommendations for statutory changes. Recommendations by these two committees were in partial conflict.

The Citizens Advisory Committee to the Joint Committee on Urban Government, of the State Legislature, issued a number of recommendations in June of 1962.[h] These recommendations

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conversion of an unclassified city to a classified city was accomplished by voter approval. However, in this instance Waitsburg essentially was converted to a code city without local voter approval. It is the author's impression that, traditionally, legislators have been unwilling to consider legislation converting classified cities to code cities with very broad home rule authorities. It is not clear if legislators were aware of the profound significance of this legislation essentially converting an unclassified city to a code city without local voter approval.

g The State Legislative Council was established in 1947 to study issues and make recommendations to the Legislature. (Chapter 36, Laws of 1947.) Members of both the Senate and House of Representatives served on the Legislature Council, which basically only met during interim periods between legislative sessions to study issues and make recommendations to the full Legislature. The Legislative Council was abolished in June of 1973 when the House of Representatives created the Office of Program Research, and the Senate created Senate Committee Services, to provide professional, non-partisan committee services for each house of the Legislature. The author worked as an intern for the old Legislative Council in the first half of 1973 before the Office of Program Research was created.

h The Joint Committee on Urban Area Government was a ten-member committee composed of five state senators and five state representatives that was created by Chapter 308, Laws of 1961. A

included a proposal that a fundamental distinction be made between the powers of cities with populations of 10,000 or more and cities with populations of less than 10,000. It was proposed that these more populous cities should be granted the power to conduct their affairs in any manner not inconsistent with state law, while the less populous cities should continue exercising only those powers expressly granted to them by state law.[14] These recommendations were not enacted into law.

The Legislature created the Municipal Code Committee in 1965, directing the committee to prepare legislation granting "a form of statutory home rule" to cities that could take the form of amending existing laws or providing an alternative code of laws that any city could adopt.[15] Legislation implementing the recommendations of the Municipal Code Committee was enacted in 1967 providing for the Optional Municipal Code which is codified in Title 35 RCW.[16] Every city operating under the Optional Municipal Code, without regard to its population, is granted very broad home rule powers, including an omnibus grant of powers similar to that of first class cities.[17] Any existing city or town could reorganize as a code city without regard to its population and any area with sufficient population could incorporate as a code city.[18]

The code city classification has proven to be very popular, as 192 cities (68 percent of all cities in the State) operated as code cities in 2015.[19] Each new city incorporating after the effective date of this legislation incorporated as a code city. Many cities have reorganized as code cities. Perhaps the greatest achievement of code city laws has been the creation of a sense of self confidence for city officials to overcome decades of cities being construed to have limited powers.

Two types of code cities are authorized to be formed – charter code

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large citizens advisory committee was created to advise the Joint Committee, with members from the Seattle metropolitan area, Tacoma metropolitan area, and Spokane metropolitan area. Many leading citizens of the metropolitan areas were members of the advisory committee, including James R. Ellis, Reverend Samuel McKinney, George Mack, Richard Haley, and Donald Neraas. The Joint Committee was directed to study the "laws, facts, trends of urban development and other maters relating to the welfare and government of urban area of the state" and to make recommendations to the Governor and Legislature concerning any changes in laws that it finds necessary. ("City and Suburban Community or Chaos," Report of the Citizens Advisory Committee to the Joint Committee on Urban Area Government to the Legislature of the State of Washington, June, 1962.)

cities and non-charter code cities.

1. Non-charter code cities

Any city (or town), without regard to its population, may become a non-charter code city. Every code city other than Kelso is a non-charter code city. Bellevue is the most populous non-charter code city with an estimated population of 134,000 in 2014.

Any city reorganizing as a non-charter code city may operate with one of three different plans of government. A new code city may:

- Retain its prior plan of government and operate under the statutes in Title 35 RCW controlling that plan of government;[i]
- Adopt the mayor/council plan of government under code city statutes and operate under Chapter 35A.12 RCW; or
- Adopt the council manager plan of government under code city statutes and operate under Chapter 35A.13 RCW.[20]

Retaining its prior plan of government means that the new code city operates with a mayor/council, council manager, or commission plan of government as specified in the statutes of Title 35 RCW under which the city operated prior to becoming a non-charter code city. Retaining its prior plan of government could also mean an unclassified city reorganizing as a code city and retaining the plan of government specified in special territorial legislation that created the city prior to statehood.

Legislation enacted in 2001 appears to permit any non-charter code city to adopt a plan of government other than the three prior options described above.[21] However, this other plan of government is not described and no procedure is specified for a code city to adopt this alternative plan of government.

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i The old second class city laws, before the elimination of third class cities and reclassification of these cities as second class cities, provided for an elected mayor, clerk, treasurer, and twelve council members. One city (Hoquiam) retained this array of elected officials when it reorganized as a code city. RCW 35.23.800-35.23.850 recognizes this fact and retains these old second class city statutes for such a code city.

A classified or unclassified city (or town) may reorganize as a non-charter code city, and operate under any of these plans of government, following any of the four following procedures:

- A direct petition procedure may be used where a petition proposing the reorganization is filed with the city.[22] The petition must be signed by city voters equal in number to at least 50 percent of the number of "votes cast" at the last general municipal election. The city governing body must provide for the reorganization. However, a ballot proposition asking if voters want this reorganization is submitted to voters for their approval or rejection if a timely petition opposing the reorganization is filed. This second petition need only be signed by city voters equal in number to at least 10 percent of the "votes cast" at the last general municipal election.
- A direct resolution procedure may be used where the city governing body adopts a resolution providing for the reorganization.[23] However, a ballot proposition asking if voters want this reorganization is submitted to voters for their approval or rejection if a timely referendum petition against the reorganization is filed. The referendum petition must be signed by city voters equal in number to at least 10 percent of the "votes cast" at the last general municipal election.
- A petition for election procedure may be used where a ballot proposition asking if voters support the reorganization is submitted directly to city voters for their approval or rejection.[24] The petition calling for an election on the reorganization must be signed by city voters equal in number to at least 10 percent of the "votes cast" at the last general municipal election.
- A resolution for election procedure may be used where the city governing body places a ballot proposition directly on the ballot asking if voters want this reorganization.[25]

Although the signature requirements in these statutes are based upon a percentage of the number of "votes cast" in the city at the last preceding general municipal election, it is presumed that this requirement would be interpreted to be a percentage of the number of voters who voted at that election.

2. Charter code cities

A charter code city is a code city with a population of at least 10,000 that adopts a charter under Title 35A RCW. Any first class city with a population of 10,000 or more operating under a charter adopted under Article XI, Section 10 may reorganize as a code city and retain its old city charter.[j] Any non-charter code city with a population of 10,000 or more may elect a 15-member charter commission to frame a proposed city charter "to provide for its own government" that is submitted to city voters for their approval or rejection.[26]

Kelso is the only charter code city in the State. That city operated as a non-charter code city prior to reorganizing as a charter code city.

The benefits of a charter for a code city are quite limited. Although the purpose of the charter is for the city to "provide for its own government," a charter that provides for either a mayor/council plan of government or a council manager plan of government is restricted to providing for an odd-number of council members not exceeding eleven.[k] Presumably, a code city charter could provide for any other plan of government, such as a commission plan of government, along with the election of an array of administrative officials. However, the primary purpose for voters of a non-code city with a population of 10,000 or more to adopt a charter may be to end the terms of office of city officials under the prior plan of

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j Chapter 35A.07 RCW allows any city with a population of 10,000 or more that is governed by a charter (i.e., the city is a first class city or operates under a Territorial charter) to become a charter code city. This chapter of law may have no utility. It is not clear why a first class city would take this step, or even if this step would be constitutional since first class city charters are authorized and controlled by Article XI, Section 10. No unclassified city had a population of 10,000 or more when this legislation was enacted. Further legislation enacted in 2003 allows any unclassified city (i.e., Waitsburg) to exercise any of the powers of a code city. (RCW 35.30.070.)

k RCW 35A.08.010 provides for a non-charter code city adopting a charter for its own government, but RCW 35A.12.010 and 35A.13.010 limit the number of council members to an odd-number not exceeding eleven if either a mayor/council or council manager plan of government is adopted.

government and require the election of a new array of officials, even where the charter provides for the same plan of government with the same number of council members.[l]

Presumably, a charter code city could also grant city voters initiative and referendum powers on city matters differing from the provisions that non-charter code cities may use.

Plans of Government

Cities have been authorized to choose different plans of government.[m] This flexibility is somewhat restricted based upon the class and population of the city. With a few exceptions, this flexibility to select a plan of government is unique among local governments in Washington.

The most common plan of government for cities is the mayor/council plan. The next most common plan of government for cities is the council manager plan. Only one city (Shelton) presently operates with a commission plan. Any city with a population of 10,000 or more has additional flexibility to adopt a charter providing for its own plan of government.

An unclassified city operating under a territorial charter has the plan of government specified in its charter. Waitsburg is the only unclassified city and its territorial charter provides for a mayor/council plan of government. However, as mentioned above, legislation was enacted in 2003 altering the nature of an unclassified city. An unclassified city now possesses the powers of a code city and may elect its officials following general municipal election laws where the mayor and council members are elected to four-year terms of office at elections held in odd-numbered years, notwithstanding the provisions of its Territorial charter to the contrary.

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l C. LeRoy Borders, longtime city attorney for Kelso, indicated in a conversation on April 25, 2002, that this statement described the effect of Kelso adopting a charter and becoming the only charter code city in the State. The new charter terminated the terms of office of all prior city elected officials, and provided for new elections of city officials, but retained the council manager plan of government for the city.

m Classified city statutes use the term “plan of government” referring to the structure of the city governing body and its array of elected officials, while code city statutes use the term “forms of government” referring to the structure of the city government and its array of elected officials.

All city elected offices are non-partisan offices, without regard to the plan of government of the city and officials are elected at general municipal elections held in odd-numbered years.[27] However, at least in theory, a first class city charter could provide for partisan offices and provide for officials to be elected at elections held at other times. The county auditor now conducts all primaries and elections for cities, including primaries and elections involving the election of city officials and the submission of ballot propositions to city voters.[n 28]

A. Mayor/council

The mayor/council plan of government separates city government into a legislative branch and an executive branch. The mayor is not a member of the city council, but is a separately elected official, exercising executive and administrative powers for the city, with the power to make appointments and to veto ordinances adopted by the council. The council is the legislative branch of government with authority to adopt ordinances and take other legislative actions.

The mayor/council plan of government is by far the most popular plan of government, with 227 out of 281 cities in the State (over 80 percent of all the cities) operating under this plan of government.[29]

The first State Legislature provided for first class cities, second class cities, third class cities, and towns to operate with mayor/council plans of government. No alternative was allowed. Legislation was subsequently enacted providing for alternative plans of government.

Most city councils consist of either five or seven members. The number of council members in a city is as follows:

- The council is composed of five members in a town,

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n Some statutes still use the term "nominate" to describe the result of primary election rather than the more accurate term "select." State voters approved Initiative Measure No. 872 in 2004 instituting what is known as the "top two" primary in Washington State. As described in Chapter 67, for several years voters and political parties were at odds over the nature of primary elections. Unfortunately, the Initiative altered the nature of primary elections but did not revise most statutes that still use the term "nominate" rather than select the top two candidates whose names will appear on the general election ballot.

without regard to its population, and in a code city with a population of less than 2,500 that operates under the code city plan of government statutes.[30]

- The council is composed of seven members in a second class city, without regard to its population, and in a code city with a population of 2,500 or more that operates under the code city plan of government statutes.[31]
- The council of a non-charter code city, retaining its prior plan of government when it reorganized as a code city, is composed of the number of council members specified under the prior statutes that controlled the city government.[32] With one exception, every non-charter code city with a mayor/council plan of government has either five or seven council members. Hoquiam retained its plan of government under the old second class city statutes that existed before third class cities were converted to second class cities and retains a mayor and a council with 12 members.[o] [33]
- The charter of a charter code city may provide for a mayor/council plan of government with a mayor and a council composed of an odd number of members not exceeding eleven.[34]
- A first class city operating with a mayor/council plan of government has a mayor and a council composed of any number of members as specified in the city charter.[35]

It is ironic that a few months after the State Constitution was approved by voters creating Washington State, the first State Legislature enacted legislation severely limiting the flexibility of a city adopting a charter under Article XI, Section 10. Cities operating under such a charter were classified as first class cities. The restriction on the authority of a first class city to provide for "its own government" took the form of requiring a first class city to have

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o Ironically, this unique provision affords a non-charter city (Hoquiam) authority to adopt a plan of government that a charter code city may not adopt since the maximum number of council members in a charter code city is eleven.

a mayor/council plan of government with the charter specifying the number of council members.[36] That statute remains as part of the State's statutes, but may have been muted by subsequent legislation:

- Legislation was enacted in 1903 allowing the voters of any first class city to initiate a charter amendment on "any matter within the realm of local affairs, or municipal business ...."[37] The Supreme Court interpreted this statute as granting city voters the authority to initiate charter amendments concerning much broader subjects than may be included in an amendment initiated by the city council.[38] This additional authority included the power to initiate amendments providing for a plan of government other than the mayor/council plan.
- Legislation was enacted in 1911 providing that "the form of the organization and the manner and mode in which cities of the first class shall exercise" their powers shall be as provided in their charters.[39] Presumably this statute, by inference, negates the prior statute requiring first class cities to have a mayor/council plan of government and allows a city charter to provide for any plan of government.

The omnibus grant of powers grants all first class cities any power authorized to any other class of cities.[40] It follows that a first class city could adopt a charter specifying a plan of government any other class of city may adopt. This now includes a council manager plan of government under Chapter 35.18 RCW and a commission plan of government under Chapter 35.17 RCW.

Cities operating under a mayor/council plan of government may also elect various administrative officers. Voters of a second class city elect a city attorney, clerk, and treasurer, unless the city council adopts a resolution providing for the appointment of these officers.[41] Voters of a town elect a treasurer, unless the council adopts an ordinance combining the office of treasurer into the appointed office of clerk.[42] The charter of a first class city may provide for any administrative officers to be elected.[43] Presumably a charter of a charter code city could provide for any administrative

officers to be elected.

Allowing additional administrative officers to be elected in cities continued a tradition from Washington Territory of electing a myriad of administrative officers along with an executive and members of the legislative branch of city government. Most territorial charters provided for a number of elected administrative officials, such as a police chief or marshal, clerk, treasurer, and attorney.[p]

B. Commission

Legislation was enacted in 1911 allowing any city with a population of from 2,000 to less than 30,000 to adopt a commission plan of government.[q] A city operating with a commission plan of government may reorganize as a code city and retain its old commission plan of government.[44] Shelton is the only city in the State operating with a commission plan of government by retaining this plan of government when it reorganized as a code city.

A commission plan of government consists of three commissioners and somewhat resembles a parliamentary form of government. The commissioners jointly constitute the legislative branch of government and each commissioner exercises part of the executive powers of government.[45] One commissioner is referred to as the mayor, who is the president of the commission and is designated as the superintendent of the public safety department. A second commissioner is referred to as the commissioner of finance and accounting, who is the vice president of the commission and is designated as the superintendent of department of finance and accounting. The third commissioner is referred to as the commissioner of streets and public improvement and is designated as the superintendent of the department of streets and public improvement. The assignment of duties to each of these departments is made by city ordinance, although presumably some

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p For example, the first territorial charter creating the City of Steilacoom provided for an elected recorder, treasurer, marshal, and assessor. (Statutes of the Territory of Washington, Local Laws, 1854, 1st Session, Pages 455-458).

q Statutes providing for a commission plan of government are found in Chapter 35.17 RCW. RCW 35.17.370 provides that only a city with a population of from 2,000 to less than 30,000 may reorganize under a commission plan of government. Presumably, a city that legally organized as a commission city could retain that plan of government if it lost population below 2,000 or increased its population to 30,000 or more.

degree of responsibility inures in these commission positions based upon the name of each superintendency.[46] For example, presumably, the mayor or commissioner of public safety would appoint and supervise a police chief while the superintendent of streets and public improvements would direct streets and other public improvements.

Obviously, veto powers do not exist in a city operating under a commission plan of government.

The commission plan of government was part of the Progressive Era reforms that were promoted to reduce or eliminate corruption and mismanagement of city government.[47] These statutes included a number of unique Progressive Era features.

First, no staggering of terms of office was provided under the original provisions and all three of the commissioners were elected to four-year terms of office at the same municipal election. This was unique. Almost all other local government elected officials of multi-member governing bodies are elected to staggered terms of office. Apparently, it was felt that having all three of the commissioners elected at the same election allowed voters to make a "clean sweep" of commissioners in a single election rather than waiting for two or more election sequences. However, legislation was enacted in 1994 providing for a staggering of these terms of office commencing at the 1995 and 1997 municipal elections.[48]

Second, city commissioners were elected as nonpartisan officials. As discussed in Chapter 67, the 1911 legislation allowing certain cities to operate under a commission plan of government provided for the election of these officials without mentioning partisanship. This was unique. At that time all other city officials were elected as partisan officials. This Progressive Era feature now applies to all city elected officials in any plan of government.

Third, voters in a city with a commission plan of government were granted the powers of initiative and referendum on city matters by state statute.[r] [49] This is unique. Voters of other cities do not automatically possess the powers of initiative and referendum on

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r A more detailed discussion of local initiative and referendum powers is found in Chapter 68.

city matters. Voters in first class cities only possess the powers of initiative and referendum on city matters if authorized in the city charter.[50] Voters in code cities only possess the powers of initiative and referendum on city matters if the city council grants them these powers or city voters petition for these powers and approve a ballot proposition granting themselves these powers.[51] Automatic provision of the powers of initiative and referendum on city matters to city voters is an example of the progressive nature of the commission plan of government.

Fourth, elected or appointed officers of a city operating with a commission plan of government were prohibited from accepting free tickets or services, or service more favorable than that offered to the general public, from any enterprise operating under a public franchise.[52]

C. Council Manager

Legislation was enacted in 1943 allowing cities to adopt a council manager plan of government.[53] The council manager plan of government is one of the expressly authorized options that any code city could select when incorporating or reorganizing.[54]

As mentioned above, the charter of a first class city may provide for any plan of government, which would include a council manager plan of government with any number of council members.

Fifty-three cities operated with a council manager plan of government in 2015, but no town operated with a council-manager plan of government.[55]

A council in a city operating under a council manager plan of government is the legislative branch of city government, and appoints a manager who is the chief executive officer of the city.[56] The manager has general supervision over the administrative affairs of the city, appoints all department heads, attends council meetings, sees that ordinances are executed, recommends ordinances to the council, and prepares a proposed budget for the council to consider.[57] This basic feature of the council manager plan of government deviates from the progressive features of the commission plan of government where elected officials exercise both legislative and executive or administrative powers. The goal

of the council manager plan of government is to provide a city with an appointed, professional manager who would run the day by day operations of the city.

A city manager is granted a degree of protection from the council. Neither the council nor individual council members may interfere with the manager by requesting or directing any appointments be made or give orders or deal with administrative personnel except through the manager.[58] Further protection provided to a manager is found in statutes detailing how a manager may be removed by the council.[59] This process is commenced by the council providing notice to the manager, provision for a reply by the manager, and the holding of a public hearing on the removal that becomes effective 30 or more days after the notice is provided. However, the council may suspend the manager with pay until the removal is final. It is very rare that any hired or appointed governmental position is afforded this protection.

Voters of a city operating under a council manager plan of government do not elect a mayor with executive and administrative powers. However, a member of the council is designated as the "mayor" with the authority to chair council meetings and engage in ceremonial duties. The council in a classified city operating with a council manager plan of government elects a member of the council biennially to serve as the "mayor".[60] More flexibility exists for non-charter code cities operating under the council manager provisions of code city law. Either the council selects a council member biennially to serve as the "mayor", or the voters may approve a ballot proposition authorizing the person elected to council position number one also serves as the "mayor" of the city.[61] The "mayor" does not exercise executive or administrative duties and may not veto ordinances adopted by the council.[62]

A classified city operating with a council manager plan of government under Chapter 35.18 RCW has a five-member council if it has a population of 2,000 or less or a seven-member council if it has a population of more than 2,000.[63] A code city operating with a council manager plan of government under Chapter 35A.13 RCW with a population of less than 2,500 has a five-member council or with a population of 2,500 or more has a seven-member council.[64] A charter code city that adopted its charter under Title 35A RCW

providing for a council manager plan of government may have a council composed of any odd number of members not exceeding eleven. A first class city adopting a council manager plan of government could have any number of members. Four first class cities (Richland, Tacoma, Vancouver, and Yakima) have charters providing for a council manager plan of government.

Compensation of Elected City Officials

Compensation for city officials has been set by different authorities over the history of Washington. Mayors and members of city governing bodies served without compensation during early territorial years. However, gradually the governing bodies of different classes of cities were authorized to set their own salaries.

Special legislation incorporating cities during territorial years included many varied provisions. The mayor and council members of Steilacoom, which was the first city incorporated by the Legislative Assembly of Washington Territory, were not authorized to receive any compensation, but the council was authorized to provide compensation when the city reached a population of 3,000.[65] A similar provision was provided for Vancouver when it was incorporated as the second city in 1857, but the city only needed to grow to a population of 2,500 before the council could provide for compensation.[66] Special legislation incorporating Olympia in 1859 and Port Townsend in 1860 did not provide any compensation for members of the board of trustees and the boards of trustees were not authorized to provide for compensation when the municipality reached a particular population.[67]

Legislation enacted by the first State Legislature created four classes of cities and began the process of granting authority to city governing bodies to provide compensation for the mayor and council members. First class city councils and second class city councils were authorized to establish compensation for their elected officials, but no compensation was allowed for mayors and council members of third class cities or towns.[68] Compensation was first paid to the mayors and council members of third class cities and towns in 1941.[69] Mayors and council members of third class cities would be paid compensation at a rate of $5 per meeting while mayors and council members of towns would be paid

compensation at a rate of $3 per meeting. This statute was amended in 1961, allowing the council of a third class city to provide for compensation for council members and the mayor.[70] The legislation providing for code cities that was enacted in 1967 allowed the council of a code city operating under the plan of government statutes provided in Title 35A RCW to provide for compensation for its elected officials.[71] Legislation was enacted in 1973 allowing town councils to set compensation levels for officials.[72]

Another option to set levels of compensation was established by legislation enacted in 2001.[73] This legislation authorizes any city to create an independent salary commission to set salaries for the officials of that city. Any increase or decrease in salaries made by the salary commission is subject to referendum action by city voters "governed by the provisions of the State Constitution, or city charter, or laws generally applicable to referendum measures".[s]

The State Constitution precludes the compensation of local officials who set their own levels of compensation from being increased during their current terms of office.[t]

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s This language is vague. The voters of most cities do not possess the powers of initiative and referendum over local matters, although procedures exist by which they may obtain these powers. This could involve reclassifying as a code city and following procedures in Title 35A RCW to grant code city voters the powers of initiative and referendum on local matters. If these powers have not already been acquired, this language presumably means that the requirements in the State Constitution for state referenda would apply. Presumably, this means that a 90-day period would exist to obtain signatures on a referendum petition and the number of signatures would be equal to 4 percent of the number of votes cast for Governor by the voters of the city at the last election when that office was on the ballot.

t This restriction arises from the interplay of several constitutional provisions. Article XI, Section 8 provides that the salaries of local officers shall not be increased (or decreased) during their current terms of office, except as provided in Article XXX, Section 1. Article XXX, Section 1 provides that the compensation of local officials who do not fix their own compensation may be increased during their current terms of office in accordance with the law in effect when the services were rendered.

NOTES:

1. First class city statutes are found in Pages 215-224, Laws of 1889-1890. Second class city statutes are found in Pages 143-178, Laws of 1889-1890. Third class city statutes are found in Pages 178-198, Laws of 1889-1890. Town statutes are found in Pages 198-215, Laws of 1889-1890.
2. Washington Cities by Classification and Form of Government, found at the Municipal Research and Services Center of Washington homepage, http://www.mrsc.org.
3. RCW 35.22.050.
4. RCW 35.22.120-35.22.160.
5 Chapter 81, Laws of 1994.
6. RCW 35.01.020.
7. Washington Cities by Classification and Form of Government, found at the Municipal Research and Services Center of Washington homepage, http://www.mrsc.org .
8. RCW 35.01.040.
9. Washington Cities by Classification and Form of Government, found at the Municipal Research and Services Center of Washington homepage, http://www.mrsc.org .
10. Chapter LXIX, Laws of 1899, codified in Chapter 35.30 RCW.
11. Washington Cities by Classification and Form of Government, found at the Municipal Research and Services Center of Washington homepage, http://www.mrsc.org .
12. Chapter 42, Laws of 2003, codified as RCW 35.30.070.
13. Chapter 119, Laws of 1965 ex sess.
14. "City and Suburb -- Community or Chaos," Report of the Citizens Advisory Committee to the Joint Committee on Urban Area Government, June, 1962, Recommendation 2, at page 16.
15. Chapter 115, Laws of 1965 ex sess. The direction to the committee was contained in Section 2 of that statute.
16. Chapter 119, Laws of 1967, ex sess.
17. RCW 35A.01.010, 35A.11.020, & 35A.11.050.
18. Chapter 35A.02 RCW details the procedures for any city to reorganize as a code city. RCW 35A.03.005 provides that a new code city incorporates under the same procedures as a regular city or town in Chapter 35.02 RCW.
19. Washington Cities by Classification and Form of Government, found at the

Municipal Research and Services Center of Washington homepage, http://www.mrsc.org .

20. RCW 35A.02.010, 35A.02.020, 35A.02.030, & 35A.02.130.
21. Section 3, Chapter 33, Laws of 2001, amending RCW 35A.06.030.
22. RCW 35A.02.020 & 35A.02.025.
23. RCW 35A.02.030 & 35A.02.035.
24. RCW 35A.02.060.
25. RCW 35A.02.070.
26. Chapter 35A.08 RCW provides a procedure for a code city with a population of 10,000 or more to adopt a charter.
27. RCW 29A.52.231 & 29A.04.330.
28. RCW 29A.04.216.
29. Washington Cities by Classification and Form of Government, found at the Municipal Research and Services Center of Washington homepage, http://www.mrsc.org .
30. The town council is established under RCW 35.27.070. The council of a non-charter code city operating under the code city plan of government statutes is established under RCW 35A.12.010.
31. The second class city council is established under RCW 35.23.021. The council of a non-charter code city operating under the code city plan of government statutes is established under RCW 35A.12.010.
32. RCW 35A.02.130.
33. RCW 35.23.800-35.23.850.
34. RCW 35A.12.010.
35. RCW 35.22.200.
36. Section 6, Page 223, Laws of 1889-1890, codified as RCW 35.22.200.
37. Section 1, Chapter 186, Laws of 1903, codified as RCW 35.22.120.
38. *Walker v. Spokane*, 62 Wash. 312 (1911).
39. Section 1, Chapter 17, laws of 1911, codified as RCW 35.22.020.
40. RCW 35.22.570.
41. RCW 35.23.021.
42. RCW 35.27.070, 35.27.180 & 35.27.190.
43. RCW 35.22.200.
44. RCW 35A.02.020 & 35A.02.030.
45. RCW 35.17.010.

46. RCW 35.17.090.
47. Broder, David S., Democracy Derailed, Initiative Campaigns and the Power of Money, Harcourt, Inc., (2000), at page 28, quoting Richard Hofstadter, Age of Reform, 1955.
48. Section 1, Chapter 119, Laws of 1994, codified as RCW 35.17.020.
49. RCW 35.17.220-35.17.360.
50. RCW 35.22.200.
51. RCW 35A.11.080-35A.11.100.
52. RCW 35.17.150.
53. Chapter 271, Laws of 1943, codified in Chapter 35.18 RCW.
54. Chapter 35A.13 RCW and RCW 35A.02.020, 35A.02.030, 35A.02.060, & 35A.02.070.
55. Washington Cities by Classification and Form of Government, found at the Municipal Research and Services Center of Washington homepage, http://www.mrsc.org .
56. RCW 35.18.010 & 35A.13.010.
57. RCW 35.18.060 & 35A.13.080.
58. RCW 35.18.110 & 35A.13.120.
59. RCW 35.18.120, 35.18.130, 35A.13.130, & 35A.13.140.
60. RCW 35.18.190.
61. RCW 35A.13.030 & 35A.13.033.
62. RCW 35.18.200 & 35A.13.030.
63. RCW 35.18.020.
64. RCW 35A.13.010.
65. Statutes of the Territory of Washington, Private and Local Laws, 1854, 1st Session, Article V, Section 1, Pages 455-458.
66. Statutes of the Territory of Washington, 1856-1857, 4th Session, Article V, Section 1, Pages 69-73.
67. For Olympia see, Statutes of the Territory of Washington, Local Laws, 1858-1859, 6th Session, Article 5th, Section 1, Pages 31-34. For Port Townsend see, Statutes of the Territory of Washington, Private Laws 1859-1860, 7th Session, Article Fifth, Section 1, Pages 433-436.
68. For first class cities see Section 6, Page 223, Laws of 1889-1890. For second class cities see Section 32, Page 146, Laws of 1889-1890. For third class cities see Section 109, Page 180, Laws of 1889-1890. For towns see Section 147, Page 200, Laws of 1889-1890. Council members in third class cities and towns could receive compensation when acting as a board of

equalization.

69. Sections 1 and 2, Chapter 115, Laws of 1941.
70. Section 1, Chapter 89, Laws of 1961.
71. Sections 35A.12.070 & 35A.13.040, Chapter 119, Laws of 1967 ex sess.
72. Section 2, Chapter 87, Laws of 1973 1st ex sess.
73. Section 4, Chapter 73, Laws of 2001, codified as RCW 35.21.015.

INSLEE, BEST, DOEZIE & RYDER, P.S.

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