



McCleary City Council

AGENDA

April 07, 2014

Special Meeting 7:00 City Council Meeting

Flag Salute
Roll Call
Public Hearings:
Public Comment:

Minutes:
Mayor's Report/Comments:

Staff Reports: Dan Glenn, City Attorney (Tab A)

Old Business:

New Business:

Ordinances:

Resolutions: Police Levy Resolution (Tab B)

Vouchers
Mayor/Council Comments
Public Comment
Executive Session
Adjournment

Americans with Disabilities Act (ADA)
Accommodation is Provided Upon Request

Please Turn Off Cell Phones – Thank You

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La ciudad de McCleary es un proveedor de igualdad de oportunidades y el empleador.

MEMORANDUM

TO: MAYOR AND CITY COUNCIL, City of McCleary
FROM: DANIEL O. GLENN, City Attorney
DATE: May 6, 2014
RE: LEGAL ACTIVITIES as of MAY 7, 2014

THIS DOCUMENT is prepared by the City Attorney for utilization by the City of McCleary and its elected officials and is subject to the attorney-client privileges to the extent not inconsistent with laws relating to public disclosure.

1. LAW ENFORCEMENT FUNDING BALLOT ISSUE: This special meeting was called in order to consider the adoption of a resolution which would ask the voters to approve levies to restore funding for the Police Department. For the reasons set out below, you will notice that two propositions would be submitted to the voters. I have sought to set out in the resolution the reasons for submission. However, if adopted the matter will benefit from less "law talk" and more "real talk".

A. Background: When I returned on Sunday from being out of the office for ten days, I was made aware that the Finance Committee had met with Ms. Collins and other City staff and concluded that submission of ballot propositions to request citizen approval of a two levies which would generate \$170,000.00, if both are approved. Since the intention is to have them placed upon the August primary ballot, the resolution would need to be submitted to the Auditor by this Friday.

I would note that it has become clear to me and likely to you as well that this is a very complicated area. One has to match consider the \$3.60 per \$1,000.00 max levy and then realize that the 1% annual increase limit results in \$3.60 being theoretical more often than not.

B. First, why two propositions?

The answer is that the approach of a "levy lift" pursuant to RCW 84.55.050 to allow authorization of the collection of the

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maximum amount allowed under the \$3.60 per \$1,000.00 limit set in RCW 84.55 would not generate the amount needed. Ms. Bednarik estimated that an approved levy lift to the \$3.60 level would generate approximately \$61,000.00. Thus, the need to use a second element, approval of an excess levy to collect the other approximately \$110,000.00.

C. The levies:

1. The Levy Lift: As you are aware, the City is with in the limits of the Timberland Library District. As a result, a portion of the "normal" maximum \$3.60 per \$1,000.00 ad valorem (real estate) tax goes to TRL. However, even if it did not, there is not enough "lift" space available to provide the \$170,000.00. Under the existing constraints, rather than \$3.60 per \$1,000.00, Ms. Bednarik from the Assessor's Office indicates that the City imposes approximately \$2.556 per \$1,000.00 upon the property within the City. TRL has a levy rate of approximately 41 cents per \$1,000.00. If the levy is "lifted" to the \$3.60 level, the amount assessed by the City will go from approximately \$2.56 per \$1,000.00 to approximately \$3.18 per \$1,000.00. This would mean that the sum of approximately \$61,000.00 would be received in the first year (2015) and then each subsequent year through 2020, subject to the adjustment set out. In 2020, the figure would be used as the new base for application in 2021 and thereafter but would not be adjusted using the 1% or CPI tool.

To be approved, this must be given an affirmative vote by over 50% of the voters voting in the election.

2. The "Excess Levy": To me, this is a misnomer as a result of the title ascribed to the particular statutory section. (RCW 84.52.052) By "excess", the Legislature meant a levy in addition to the \$3.60 maximum amount allowed under RCW 84.55. Unlike the "levy lift", it may be put in place for only one year. Ms. Bednarik provided me the information that in order to fund the last \$110,000.00 of the needed funds, the citizens would have to approve an additional levy in the amount of \$1.14 per \$1,000 of assessed valuation. As noted, the approval would allow its collection only in 2015 with the levy dropping off the tax roles for tax determination for 2016.

To be approved, this proposition requires approval by 60% of the voters.

D. Information: Back in December, 2013, I believe that Ms. Collins provided you copies of all or a portion of the Revenue Guide prepare by the Municipal Research & Services Center. Just in case I am incorrect or the document has been misplaced, I am attaching Pages 10 through 14 of that Guide which relate

specifically to these two areas, the levy lift and the excess levy. Ms. Cox, who wrote the material, has since retired and is not available to give us further guidance.

E. Current Status: As of the time of the preparation of this report, I have provided copies of Version "E" of the resolution to Ms. Bednarik, Mr. Baker, the DPA who gives legal guidance to both the Auditor's Office, which has to approve the language of the proposition, and the Assessor's Office, the Mayor, the Finance Committee, Ms. Collins and Chief Crumb for their respective review and guidance. I also have a call in to a representative of the State Department of Revenue who apparently provides guidance to County Assessors in this area and to Ms. Moore of the County Auditor's Office. Thus, depending upon their responses, you may find yourself with Version "?" by this evening.

In closing, I want to mention that Ms. Bednarik has been of tremendous help in providing the necessary figures and taking the time to also review the draft and make very good suggestions.

As always, this is not meant to be all inclusive. If you have any questions or comments, please direct them to me.

DG/le

How do we know this? Look at the same publication, "Resolution/Ordinance Procedures for Increasing Property Tax Revenue" dated 9/05. Go to the discussion in the first bullet on page 1. It says, in part:

In the case that the IPD is less than one percent, to raise the levy to one percent or to bank excess capacity, a second resolution/ordinance must be adopted.

The "second" resolution is one that makes a finding of "substantial need." So, if the IPD is less than one percent, the substantial need resolution is necessary to bank capacity.

And from that statement follows Rule 3.



6. **How Do We Use Capacity We Have Banked in the Past?** You have to find out what your maximum allowable levy is from the assessor. Let's assume that it was \$110,000 for the levy you made in 2008 for 2009 and your city only levied \$100,000 for 2009. When you go to make your levy for 2010, the assessor will raise your maximum allowable levy by one percent to \$111,100 ($\$110,000 \times 1.01$) exclusive of "add-ons," which include additional revenue from new construction, improvements to property, newly constructed wind turbines, any increase in the value of state-assessed property, annexations that have occurred, and refunds made. If you just increase your current levy by one percent, it will be \$101,000 ($\$100,000 \times 1.01$) plus "add-ons," so you have \$10,100 of banked capacity.

Let's say you want to use \$7,000 of that amount. When you write your resolution/ordinance to satisfy the requirement for RCW 84.55.120, you put \$7,000 in the blank that gives the dollar amount of the increase over the actual levy from the previous year – 2009 (excluding "add-ons") – and that is a percentage increase of 7 percent ($\$7,000/\$100,000$). When you write your levy ordinance, you put in \$107,000 plus the dollar amount of "add-ons," etc. as the amount you are requesting and you put that same number in the blank for regular property tax levy in the levy certification form.

► Excess Levies for General Government Purposes – If You Don't Have Banked Capacity, Maybe You Can Do a Levy Lid Lift

As discussed above, the passage of Initiative 747 in 2001 limited taxing jurisdictions with a population of less than 10,000 to an increase of one percent in their levy, plus taxes on new construction and increases in state-assessed utility valuation. Levy increases for municipalities with a population of 10,000 or more are limited to the lesser of one percent or the increase in the

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July implicit price deflator for personal consumption expenditures as published in the September issue of the *Survey of Current Business*.

One exception to the one percent rule is the levy lid lift. Taxing jurisdictions with a tax rate that is less than their statutory maximum rate may ask the voters to "lift" the levy lid by increasing the tax rate to some amount equal to or less than their statutory maximum rate.³² (If you do not know your statutory maximum rate, ask your county assessor.) A simple majority vote is required.

There are two different approaches to, or options for, a levy lid lift, with each having different provisions and advantages.

Option 1: "Original flavor" lid lift (or "single-year" lift or "one-year" lift or "basic" lift) – RCW 84.55.050(1)

In 2003, when the legislation³³ establishing the multi-year lid lift was passed, MRSC nicknamed the "old" version the "original flavor" lid lift. Others used the term "basic" lift. Recently, we have seen the terms "single-year" and "one-year" lift used. We have discovered, however, that some people think this means that the lift ends or goes away after one year. As we discuss below, the lift generally lasts for a number of years, perhaps permanently. A better way to describe it may be to call it the "one-bump" lid lift compared to the multi-year lift, which "bumps up" each for a period of up to six years. In our discussion, we will continue to refer to it as the "original flavor" lift.

1. **Purpose.** It may be done for any purpose, and the purpose may be included in the ballot title, but it need not be. You could say it would be for hiring more firefighters or for additional money for general government purposes, or you could say nothing at all. In the latter case, by default, it would be for general government purposes. Stating a particular purpose may improve your chances of getting the voters to approve it.
2. **Length of time of lid lift.** It can be for any amount of time, unless the proceeds will be used for debt service on bonds, in which case the maximum time period is nine years. Setting a specific time period may make the ballot measure more attractive to the voters. But, making it permanent means you can use the funds for ongoing operating expenditures without having to be concerned that you will have to go back to the voters for another lid lift. To make the lift permanent requires language in the ballot title expressly stating that future levies will increase as allowed by chapter 84.55 RCW.

If the lift is not made permanent, the base for future levies will, at the end of the time period specified in the ballot title, revert to what the dollar amount of the levy would have been if no lift had ever been done. Note that the assessor will assume that the governing body would have increased its levy by the maximum amount allowed each year if there had been no lid lift.

³²RCW 84.55.050.

³³Ch. 24, Laws of 2003, 1st spec. sess., amending RCW 84.55.050.

3. **Subsequent levies.** After the initial "lift" in the first year, the jurisdiction's levy in future years is subject to the 101 percent lid in chapter 84.55.RCW. This is the maximum amount it can increase without returning to the voters for another lid lift.
4. **Election date.** The election may take place on any election date listed in RCW 29A.04.321.³⁴

Option 2: Multiple/multi-year lid lift – RCW 84.55.050(2)

1. **Purpose.** It may be done for any limited purpose,³⁵ but the purpose(s) must be stated in the title of the ballot measure, and the new funds raised may not supplant existing funds used for that purpose for any levy approved by the voters before July 27, 2009. "Existing funds" mean the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the taxing district receiving the services, and major nonrecurring capital expenditures.

For all counties, other than King County, 2009 legislation removed the supplanting restrictions for all levies passed after July 26, 2009. Levies passed in King County are also no longer subject to the prohibition against supplanting after July 26, 2009. However, the restrictions will be reimposed on January 1, 2012.³⁶

2. **Length of time of lid lift.** The lid may be "bumped up" each year for up to six years. At the end of the specified period, the levy in the final period may be designated as the base amount for the calculation of all future levy increases (made permanent) if expressly stated in the ballot title. The levy in future years will then be subject to the 101 percent lid in chapter 84.55 RCW. If the lift is not made permanent, at the end of the time period specified in the ballot title, the base for future levies will revert to what the dollar amount of the levy would have been if no lift had ever been done. Note that the assessor will assume that the governing body would have increased its levy by the maximum amount allowed each year if there had been no lid lift.
3. **Subsequent levies.** The lift for the first year must state the new tax rate for that year. For the ensuing years, the lift may be a dollar amount, a percentage increase amount tied to

³⁴There are a number of considerations in choosing the election date. Your election date will determine (assuming the ballot measure is passed) when you will get your first tax receipts. Taxes levied in November are first due on April 30 of the following year. Therefore, to receive taxes next year from a levy you are discussing during the current year, your election can be no later than November. If a council first begins thinking of a levy lid lift in September or October, during budget discussions for the coming year, it will be too late to get any measure on the November ballot. Your county auditor must receive your ordinance or resolution 52 days before a special election and 84 days before the primary or general election. (RCW 29A.04.330.) It pays to plan ahead.

Also, councils should ask around to find out what other elections will be coming up during the year. You may not want to go head-to-head with a school levy election or a voted bond issue.

³⁵"General government purposes" is not a "limited purpose" because the entire general fund is spent for general government purposes.

³⁶RCW 84.55.050(2)(b)(II) and (III) as amended by ch. 551, Laws of 2009.

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an index such as the CPI,³⁷ or a percentage amount set by some other method. The amounts do not need to be the same for each year. However the ballot title may only have 75 words, so one does not have much space to get too fancy or creative.

(Note that one cannot specify that the lift be to a specific tax rate for each year. A tax rate **must** be specified for the first year, like "increase the rate to \$3.10." For ensuing years, however, the ballot measure **cannot** say something like "and raise the rate to \$3.10 in each of the next five years.")

If the amount of the increase for a particular year would require a tax rate that is above the maximum tax rate, the assessor will levy only the maximum amount allowed by law.

4. **Election date.** The election date must be the August primary or the November general election.

So, which is the better option?

As usual, of course, it depends. The requirement that a purpose must be stated in the ballot title for a multi-year lid lift makes it appear to be less flexible than the "original flavor" or single-year version. This may be true more in theory than practice, however, because we know of only one city that has successfully passed a ballot measure where they did not specify the use of the funds.

The requirement that there be no supplanting in expenditures in the multi-year lift is more restrictive. It certainly is attractive to have the opportunity to do a levy lid lift for a popular program, such as public safety, and then use part of the money that would have been spent on that program for, say, a new computer system. One presumes, however, that citizens believe there will be no supplanting even when the statutes do not prohibit it, and that they will require some accounting from government officials.

► Excess Levies for General Government Purposes – One Year Levy

Even cities that are currently levying their statutory maximum rate can ask the voters, at any special election date, to raise their rate for one year.³⁸ Many cities refer to this levy as an O and M (operations and maintenance) levy. There are two different scenarios for voter approval. If at least 60 percent of the voters vote "yes" with a voter turnout of more than 40 percent of the number of people voting in the last general election, the measure is passed. However, if the voter turnout is 40 percent or less of the number voting in the last general election, all is not lost. In that case, as long as the number of "yes" votes is equal to at least 60 percent times 40 percent of the number of people voting in the last general election, the measure will pass. If, for example, 1,000 people

³⁷See *Budget Suggestions for 2009*, MRSC Information Bulletin No. 531 (August 2008), at 44, for a discussion concerning using the correct index.

³⁸RCW 84.52.052.

voted in the last general election, as long as at least 240 (1,000 x .4 = 400; 400 x .6 = 240) people vote "yes" on the O and M levy, it will pass even if the number voting is less than 400 (40 percent of those voting in the last general election).³⁹

As with the levy lid lift, the purpose for which the money will be used does not need to be specified. However, it is not fiscally prudent to build an annual budget that assumes that the voters will renew the levy authority each year. A good use of these funds would be for a one-time expenditure.

► Receipt of Funds

Property taxes are due on April 30 and October 31.⁴⁰ This means that cities receive the bulk of their property tax revenue in May and June and in November and December. In some counties, the assessor transfers the city share of the revenue received on a daily basis. In other counties, the assessor makes the transfer on the 10th day of the month, paying interest on the balances it has held until that time.⁴¹

³⁹RCW 84.52.052 and art. 7, §2(a) of the state constitution. Note that an easy way to express this alternative for voter approval is to say that when voter turnout is less than 40 percent of the voter turnout at the last general election, the "yes" votes must be at least 24 percent (240/1000) of the voter turnout at the last general election in order for the measure to pass.

⁴⁰RCW 84.56.020.

⁴¹See RCW 84.56.230; RCW 36.29.110; *Seattle v. King County*, 52 Wn. App. 628 (1988), *rev. denied*, 112 Wn.2d 1002 (1989) (Cities entitled to interest accumulated on tax collection prior to distribution).

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RESOLUTION NO. _____

A RESOLUTION DIRECTING SUBMISSION TO THE VOTERS OF THE CITY OF McCLEARY OF PROPOSITIONS TO BE VOTED ON THE _____ DAY OF AUGUST, 2014, TO AUTHORIZE FUNDS FOR THE PURPOSE OF MORE ADEQUATELY FUNDING THE POLICE DEPARTMENT.

R E C I T A L S:

1. The City of McCleary maintains a police department for the protection of its citizens.

2. During the course of the 2014 budget, it became clear that the current level of funding capabilities would not allow the maintenance of the then existing level of staffing and operation of the Police Department. As a result, funding was reduced resulting in a decreased level of service. The Chief of the Department has reported that among the reductions, staffing levels have been cut.

3. The Finance Committee, Mayor, and City staff have reviewed possible alternatives to allow restoration of funding so as to return the Department's level of operations as close as is feasible to its prior levels. That review has included the impact of the City's inclusion in the Timberland Library District upon the level of property tax which would otherwise be available and possible voter authorized funding sources, including a levy lift under RCW 84.55, including RCW 84.55.050, and a levy authorized under RCW 84.52.052.

4. The Council has received a recommendation from the Mayor and Finance Committee that propositions be submitted

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to the voters requesting the authorization of a special levy, under RCW 84.52.052, and levy lift, under RCW 84.55.050, as laid out in the following recitals, with the sole purpose of generating an increase in revenue for the year 2015 in the approximate amount of \$170,000.00, such increase to be used solely to aid in the financing of the restoration of the operational level of the City's Police Department and approximately \$65,000.00 for the five years thereafter.

5. The City has been provided information by the Office of the Grays Harbor County Assessor as to the current levels of assessment and the levels which would be required to achieve that goal. Thus, to achieve the goal the Mayor and Council wish to submit to the voters propositions authorizing the following:

A. A special levy, as authorized by applicable law, including RCW 84.52.052, so as to generate \$110,000.00, such increase estimated to be \$1.14 per \$1,000.00 of assessed valuation, such actual rate necessary to collect that amount to be established by the Office of the County Assessor, for collection in 2015 only.

B. A levy lift, as authorized by applicable law including RCW 84.55.050, so as to generate \$61,000.00, raising the assessment amount to the level allowed by law, \$3.60 per \$1,000.00 of assessed valuation subject to deduction of the amount received by Timberland Regional Library due to its assessment, rather than the current rate of \$2.55 per \$1,000.00, with such increase to be continued to be adjusted annual thereafter for the following five years and the rate set in 2020 to applied for calculating subsequent levy amounts.

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NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY, THE MAYOR SIGNING IN AUTHENTICATION THEREOF:

SECTION I: There shall be submitted to the voters of the City of McCleary at that certain election to be held on the ___ day of August, 2014, the following propositions:

A. Proposition #1: A special levy, as authorized by applicable law, including RCW 84.52.052, so as to generate \$110,000.00, such levy estimated to be \$1.14 per \$1,000.00 of assessed valuation, the actual amount to be established by the Office of the County Assessor, for collection in 2015 only.

B. Proposition #2: A levy lift, as authorized by applicable law including RCW 84.55.050, so as to generate \$61,000.00, by modifying the assessment to \$3.60 per \$1,000.00 of assessed valuation, the level allowed by law which, after deduction of the amount received by Timberland Regional Library due to its assessment, would establish for the City an actual assessment level of \$3.18 per \$1,000.00 of assessed value from the current rate of \$2.55 per \$1,000.00 of assessed valuation, with such increase to be adjusted annually in the years 2016, 2017, 2018, 2019, and 2020 by the statutory limit factor of the greater of 1% or the June to June Seattle/Tacoma/Bremerton CPI-U, such factor to be applied annually, and use of the 2020 levy amount for calculating subsequent levy amounts.

SECTION II: In furtherance of the actions authorized by Section I, the Council does hereby approve and adopt the following ballot titles:

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Proposition #1: Levy to Partially Fund Police Services

If approved, this proposition shall aid in restoring adequate funding for the operations of the Police Department. Shall the City of McCleary be authorized to collect in 2015 only a total of \$110,000.00 in excess property taxes at \$1.14 per \$1,000 of assessed valuation for the purpose of more adequately funding the operations and maintenance of its Police Department?

Yes: _____

No: _____

Proposition #2: Levy Lift to Complete Restoration of Funding of Police Services

If approved, this proposition completes restoration of adequate funding for operations of the Police Department. The proposition authorizes the levy rate for tax moneys received by the City from real estate taxation to be increased to \$3.60, minus the amount received by Timberland Regional Library, from the current level of approximately \$2.55 per \$1,000.00, resulting in an estimated \$3.18 per \$1,000.00 of assessed valuation, with such amount to be adjusted annually for the years 2016, 2017, 2018, 2019, and 2020 by the statutory limit factor of the greater of 1% or the June to June "Seattle/Tacoma/Bremerton CPI-U, with use of the 2020 levy amount for calculating subsequent levy amounts.

Yes: _____

No: _____

SECTION III: The Mayor and Clerk-treasurer shall be authorized, to the extent allowed by law, to make such changes in the titles and contents of the propositions, including the per one thousand dollar amount, necessary to provide for the collection of \$110,000.00 as to Proposition #1 and \$61,000.00 as to Proposition #2, as may be necessary to meet the requirements of State Law, Office of the County Auditor or the Office of the Prosecuting Attorney. This authority shall include to certify a copy of this resolution to the Auditor and to perform such other duties as are

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necessary or required by law to the end that these propositions described herein should appear on the ballot at the primary election specified in Section I.

SECTION IV: For purposes of receiving notice of the exact language of the ballot propositions required by RCW 29.36.080, the Council designates Wendy Collins, Clerk-treasurer, as the individual to whom such notice should be provided.

PASSED THIS ____ DAY OF MAY, 2014, by the City Council of the City of McCleary, and signed in authentication thereof this ____ day of May, 2014.

CITY OF McCLEARY:

D. GARY DENT, Mayor

ATTEST:

WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

DANIEL O. GLENN, City Attorney

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