TOWN OF WOODWAY
COUNCIL MEETING AGENDA

MONDAY, AUGUST 16, 2021
6:00 P.M.

Hybrid meeting
In-person at Town Hall | 23920 113th Place W. | Woodway, WA 98020
Virtually via Teams

6:00 P.M.		Call to Order, Flag Salute, & Roll Call
6:00 P.M.	I	Ratify Previously Approved Payments – *August 2, 2021 Claims* Approval of Payments –*August 16, 2021 Claims, July 2021 Payroll*
6:05 P.M.		Public Comments*
6:10 P.M.	II	Council Reports
6:15 P.M.	III	Mayor's Report
6:20 P.M.	IV	Town Administrator's Report
6:25 P.M.	V	Geologic Hazard Code Update Contract
6:30 P.M.	VI	Amendments to the Urban Village Zone District WMC 14.40
6:35 P.M.	VII	Discussion: Guest Houses/Caretaker's Cottages
6:55 P.M.	VIII	Resolution 2021-428: Repeal of Resolution 13-370B Regarding Sewer Services
7:00 P.M.	IX	Ordinance 2021-629: Salary Schedule
7:10 P.M.	X	Vaccination Discussion
7:25 P.M.		General Council Discussion – Choice of Subjects
7:30 P.M.		Adjournment

* *Public comments: Those who wish to make a public comment for this meeting can do so via video or audio connection. Please keep yourself muted until the appropriate time. Phone callers can unmute themselves by dialing *6.*

Council agendas are subject to change before or during the council meetings upon motion. All times are approximate.

Anyone with a disability requiring special accommodations should contact the Town Clerk's Office at Town Hall or call (206)542-4443 before 1:00 p.m. the Thursday preceding the Council Meeting. For TDD relay service, call (206)587-5500, or outside the Seattle area #1-800-833-6388.

TOWN OF WOODWAY
CLAIMS APPROVAL

"I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered, or the labor performed as described herein and that the claim is a just, due, and unpaid obligation against the Town of Woodway, Snohomish County, Washington, and that I am authorized to authenticate and certify to said claims."

_____
Clerk Treasurer

The following transactions are approved for 2021 payment:

Claims checks #13492 through 13505 & EFT #1047.....$8,836.70

This 2nd day of August 2021.

_____ _____
Mayor Councilmember

_____
Councilmember

_____
Councilmember

*The three largest charges on the credit card bill are:

1. Readerboard supplies: $452.09
2. Postage: $275.00
3. PW & PD Fuel: $643.39

TOWN OF WOODWAY
CLAIMS APPROVAL

"I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered, or the labor performed as described herein and that the claim is a just, due, and unpaid obligation against the Town of Woodway, Snohomish County, Washington, and that I am authorized to authenticate and certify to said claims."

_____
Clerk Treasurer

The following transactions are approved for 2021 payment:

Claims checks #13506 through 13516.....$151,971.12

This 16th day of August 2021.

_____
Mayor

_____
Councilmember

_____
Councilmember

_____
Councilmember

TOWN OF WOODWAY
PAYROLL APPROVAL

"I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered, or the labor performed as described herein and that the claim is a just, due, and unpaid obligation against the Town of Woodway, Snohomish County, Washington, and that I am authorized to authenticate and certify to said claims."

_____
Clerk-Treasurer

The following July 2021 Payroll transactions, for 8.5 FTE, are approved for 2021 payment:

EFT Transactions #1014 through 1024, 1026, 1027, 1029 through 1034,
and Checks 13490 & 13491.....$63,790.97

This 30th day of July 2021

_____
Mayor

_____
Councilmember

_____
Councilmember

_____
Councilmember

_____
Councilmember

*There were was no comp time accrued in July 2021

FW: Today: Sound Transit Board Action on Capital Program Realignment

Mike Quinn <mquinn@townofwoodway.com>

Fri 8/6/2021 8:11 PM

To: Heidi K. S. Napolitino <Heidi@townofwoodway.com>; Eric Faison <eric@townofwoodway.com>

1 attachments (286 KB)

Realignment plan release 080521.pdf;

Fyi. Lets include this for next council meeting, reading only. No action. Just sharing with council.
Mike

From: Ashlie-Vinke, Erik <erik.ashlie-vinke@soundtransit.org>
Sent: Thursday, August 5, 2021 7:22 PM
To: Ashlie-Vinke, Erik <erik.ashlie-vinke@soundtransit.org>
Subject: Today: Sound Transit Board Action on Capital Program Realignment

Greetings Snohomish County partners,

This afternoon, the Sound Transit Board took action to realign the capital expansion program with a plan that allows the agency to manage the $6.5 billion affordability gap while working to deliver as much of the plan as soon as possible. Projects already in construction are not affected, but the rising real estate and construction costs have driven up cost estimates for future transit expansions. The Board's realignment plan will guide the delivery for that next generation of projects, which are currently in planning or planning has not begun.

The Board's realignment plan reflects estimated delivery timeframes for each project under current revenue and cost projections. However, for priority projects that face delays under the current affordability gap, the realignment plan also establishes more ambitious completion targets that are based on plans to intensively pursue additional financial capacity and cost reductions. Despite the $6.5 billion affordability gap, current financial projections are sufficient to deliver many projects with minimal delays. Through securing additional funding and reducing costs, the realignment plan reflects the Board's commitment to eliminate delays stemming from financial constraints.

Attached is the agency's press release on today's action. Further details of the realignment plan, including affordable and target schedules for each project, are available at www.soundtransit.org/realignment.

Again, projects now under construction are not subject to the realignment plan. These include light rail extensions to Northgate, Tacoma's Hilltop neighborhood, Bellevue and Redmond, Federal Way and Lynnwood, which all have significant federal partnerships, as well as the Puyallup Sounder garage. Between now and 2024 Sound Transit remains poised to open all these projects on schedule – starting with Northgate this October!

Please don't hesitate to reach out to me with questions about realignment and the path ahead for Everett Link and your other projects of interest. Thank you!

Erik Ashlie-Vinke
Government & Community Relations Manager – North Corridor
Sound Transit
Mobile 206.617.1191

Connect with us!

SOUNDTRANSIT

FOR IMMEDIATE RELEASE — Aug. 5, 2021

Sound Transit Board adopts plan for delivering critical transit expansions as quickly as possible

Realignment plan outlines flexible framework and ambitious targets for responding to affordability gap

Following 17 months of discussions and engagement with jurisdictions and stakeholders, the Sound Transit Board today adopted a realignment plan that will serve as a framework for delivering critical transit expansions across the region as rapidly as possible.

The steep rise in real estate and construction costs in the region in combination with advancing environmental review and project designs have driven up cost estimates for future transit expansions, contributing to a $6.5 billion affordability gap for delivering projects on earlier schedules. While projects already in construction are not affected, the adopted realignment plan will guide the delivery dates for the next generation of voter-approved projects.

"In the next three years Sound Transit will nearly triple the length of our light rail system from 22 to 62 miles," said Sound Transit Board Chair and City of University Place Councilmember Kent Keel. "The realignment plan will guide our work to expedite the next waves of projects, including reaching Tacoma, Everett, West Seattle and Ballard and delivering bus rapid transit and Sounder expansions. These projects are critical for keeping people moving in the face of our population growth and for protecting our economy and environment. To succeed, we will need expanded collaboration at the local, state and national levels."

The adopted plan transparently reflects estimated affordable delivery dates for each project under current revenue and cost projections. However, for priority projects that face delays under current financial projections, the realignment plan also establishes more ambitious completion targets that are based on plans to intensively pursue additional financial capacity and cost reductions.

"The adopted realignment plan shows what is achievable under our current financial projections, but also sets targets for delivering projects sooner by closing the affordability gap that is identified for each project," Keel said. "I am grateful for the leadership of System Expansion Committee Chair Claudia Balducci for working with me in developing this hybrid approach."

Despite the affordability gap, current financial projections are sufficient for delivering many projects with minimal delays. Through securing additional funding and reducing costs, the realignment plan reflects the Board's commitment to seek to eliminate financially necessitated delays altogether.

Details of the realignment plan, including affordable and target schedules for each project, are available at www.soundtransit.org/realignment.

Project tiers
The plan prioritizes voter-approved projects by dividing them into four tiers. Projects in the top two tiers will be managed under the more ambitious completion targets unless or until it becomes necessary to fall back to affordable completion dates that allow more time to generate the required revenues. Tier 3 and 4 projects will be managed under their affordable schedules unless the program affordability gap is eliminated for Tier 1 and Tier 2 projects, and then shrinks still further to allow Tier 3 and Tier 4 projects to be delivered more quickly. Expenditures on any one individual project will be managed to protect the affordable schedule for all other projects.

Monitoring economic forecasts
The realignment process began early in the COVID-19 pandemic as governments around the country braced for significant impacts of a national recession to their revenues. The process continued in early 2021 as Sound Transit updated project cost estimates to reflect market pressures and advancements of project designs. Realignment deliberations to date have included more than 20 realignment presentations at eight Executive Committee meetings and four System Expansion Committee meetings, three Board workshops, and two special meetings of the Board.

Fortunately, rebounded economic forecasts have restored long-range revenue projections, though project cost estimates remain high. Sound Transit, together with its regional economists, will continue to regularly update financial projections at the same time environmental review and design work continue to update project cost estimates.

Current construction unaffected
Projects now under construction, including light rail extensions to Northgate, Tacoma's Hilltop neighborhood, Bellevue and Redmond, Federal Way and Lynnwood, as well as the Puyallup Sounder garage, are not subject to realignment. Between now and 2024, Sound Transit remains poised to open all these projects on schedule. All but the Tacoma Hilltop project are currently trending on or below budget.

CONTACT: Geoff Patrick, (206) 398-5313, geoff.patrick@soundtransit.org

— Sound Transit: Connecting more people to more places to make life better and create equitable opportunities for all. Visit www.soundtransit.org —

associated earth sciences incorporated

July 27, 2021
Project No. 20210280E001

Town of Woodway
23920 113th Place West
Woodway, Washington 98020-5299

Attention: Mr. Bill Trimm
Mr. Eric Faison

Subject: Scope of Services and Cost Estimate
Geologic Hazard Code Update
Town of Woodway, Washington

This letter provides a scope of work and fee estimate for Associated Earth Science, Inc.'s (AESI's) services for the subject project.

SCOPE OF SERVICES

In accordance with your request, this letter presents our scope of work to assist the Town of Woodway in updating their current geologic hazard code. Our scope of work would include the following:

Task 1. Review of the existing geologic hazard code, area geologic mapping, and other available relevant data.

Task 2. Preparation of a Best Available Science (BAS) memorandum addressing geologic hazards in the Town of Woodway and best practices from other jurisdiction's regulation (primarily *Snohomish County Code*) of these hazards.

Task 3. Provide specific and detailed recommendations on potential code amendments based on the BAS memorandum and review draft code amendments prepared by City staff based on the AESI recommendations.

Task 4. Attend up to 2 staff meetings, 2 planning staff meetings, and 1 public hearing regarding the proposed code amendments.

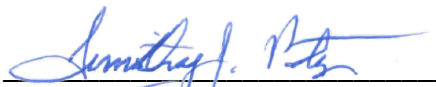
COST ESTIMATE

Tasks 1 through 3	$7,500
Task 4	$3,500
TOTAL	**$11,000**

Our work would be billed on a time and expenses basis in accordance with the attached Schedule of Charges. We understand that our work will be subject to the conditions of the Town of Woodway's Contract for Consultant Services.

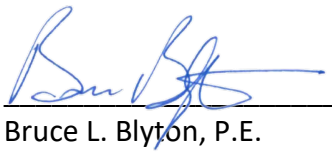
We appreciate your consideration of this scope of services and cost estimate. If you should have any questions, please feel free to contact us at your earliest convenience.

Sincerely,
ASSOCIATED EARTH SCIENCES, INC.
Kirkland, Washington



Timothy J. Peter, L.E.G., L.Hg.
Senior Engineering Geologist

_____
Client Date
Authorized Representative Signature



Bruce L. Blyton, P.E.
Senior Principal Engineer

_____
Client (please print name)

Attachment: Schedule of Charges

AESI offers paperless invoicing as an emailed PDF document to your accounts payable department/representative. By providing an email address, you will receive emailed PDF versions of your invoices (no copies will be mailed).
Please provide the appropriate email address here:

_____

TJP/ld
20210280E001-001

Effective January 2020

ASSOCIATED EARTH SCIENCES, INC.
SCHEDULE OF CHARGES

Our compensation will be determined on the basis of time and expenses in accordance with the following schedule unless a lump sum amount is so indicated in the proposal or services agreement. Current rates are as follows:

Personnel Charges - Engineers, Hydrogeologists, Geologists, Scientists, and Technicians

Sr. Principal	$235.00/hour
Principal	$205.00/hour
Sr. Associate	$180.00/hour
Associate	$170.00/hour
Senior	$160.00/hour
Sr. Project	$150.00/hour
Project	$135.00/hour
Sr. Staff	$115.00/hour
Staff	$95.00/hour
Legal Testimony (4 hour minimum)	$400.00/hour

Other Personnel and Disbursement Charges

CAD Operator and Workstation	$105.00/hour
Geographic Information Services (GIS)	$105.00/hour
Prints – Sizes A and B	$3.00/each
Prints – Sizes C, D, E, and F	$6.00/each
Project Assistant	$80.00/hour
Laboratory Technician	$95.00/hour
Clerical, Technical Editing, etc.	$65.00/hour
Mileage	Federal Reimbursable Rate + 15%
Per Diem	To be established on a project basis
Subcontractors and Miscellaneous Expenses	cost plus 15%
Water Level Data Logger	$60.00/month
Barometer Data Logger	$40.00/month
Aerial Drone Equipment (certified drone operator charged separately)	$200/day

Laboratory Charges

Atterberg Limit	$140.00/test
Consolidation	$600.00/test
Constant Head Permeability (ASTM:D2434-68)	$400.00/test
Direct Shear	$400.00/3 point test
Ethylene Glycol Test (3 rock minimum)	$120.00
Fractured Face Count (AASHTO T-335)	$100.00/test
Hydrometer	$210.00/test
Moisture Content	$25.00/test
Organic Content	$75.00/test
Percent Passing #200	$105.00/test
Permeability (Falling Head)	$250.00/test
Proctor ASTM:D-1557 and ASTM:D-698	$255.00/test
Sand Equivalent	$115.00/test
Sieve with Wash #200	$200.00/test
Specific Gravity + #4	$125.00/test
Specific Gravity - #4	$150.00/test
Unit Weight	$80.00/test
Void Ratio	$125.00/test

Other laboratory tests and equipment rental will be provided on a per job basis.

TOWN OF WOODWAY

RESOLUTION 2021-428

A RESOLUTION REPEALING RESOLUTION 13-270-B, REGARDING TEN-YEAR NOTICE TO OLYMPIC VIEW OF THE TOWN'S RESUMPTION OF SEWER SERVICE AND ASSUMPTION OF FACILITIES LOCATED WITHIN THE TOWN'S LIMITS

WHEREAS, on March 1, 2004, the Town of Woodway ("Town") and Olympic View Water & Sewer District ("Olympic View") entered into an Agreement to Transfer Facilities ("Agreement") providing for the transfer of the Town's sewer utility assets to Olympic View; and

WHEREAS, on November 18, 2013, the Town Council adopted Resolution 13-270-B, pursuant to the Agreement and RCW 35.13A, providing Olympic View with ten years' notice of the Town's intention to resume sewer services and assume jurisdiction over the responsibilities, property, facilities and equipment of that portion of Olympic View located within the Town limits; and

WHEREAS, the Town Council desires to repeal Resolution 13-270-B and continue its contractual relationship with Olympic View;

NOW, THEREFORE, the Town Council of the Town of Woodway does hereby resolve as follows:

Section 1. Resolution 13-270-B is hereby repealed.

Section 2. The Mayor is authorized to notify Olympic View that the Town has decided not to exercise its rights, at this time, to resume sewer services and assume jurisdiction over Olympic View's responsibilities, property, facilities, and equipment located within the Town.

PASSED this 16th day of August 2021 by the Town Council of the Town of Woodway.

TOWN OF WOODWAY

_____

Michael S. Quinn, Mayor

ATTEST:

_____

Heidi K. S. Napolitino, Clerk-Treasurer

Draft

TOWN OF WOODWAY

ORDINANCE 2021-629

AN ORDINANCE OF THE TOWN OF WOODWAY AMENDING CHAPTER 2.16, REVISING THE SALARY SCHEDULE; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND AUTHORIZING SUMMARY PUBLICATION BY ORDINANCE TITLE ONLY.

WHEREAS, Title 2 of the Town of Woodway Municipal code (WMC) identifies certain positions and associated compensation amounts for Town employees; and

WHEREAS, the Town Council of the Town of Woodway is authorized by Washington statute to set the compensation for Town officers and employees; and

WHEREAS, the Town Council wishes to revise the compensation range for certain positions;

NOW, THEREFORE, the Town Council of the Town of Woodway does hereby ordain as follows:

Section 1. Section 2.16.010 of the Woodway Municipal Code, concerning the Compensation of Officers and Employees is hereby amended to read as follows (deletions shown by strike out and additions shown by underline):

2.16.010 SCHEDULE.

Compensation for certain officers and employees of the Town shall be paid, as determined by the Mayor, within the ranges provided below. Retention bonuses pursuant to the Town's adopted retention policy are excluded from the range limitations provided below.

A. Clerk-Treasurer, a rate not to exceed ten thousand ~~range of three thousand seven hundred dollars to eight thousand five hundred~~ dollars per month.

B. Public Works Director, a rate not to exceed ten thousand ~~range of three thousand seven hundred dollars to eight thousand five hundred~~ dollars per month.

C. ~~Permit Technician/~~Deputy Clerk-Treasurer/Permit Technician, a rate not to exceed ~~range of one thousand five hundred dollars to~~ six thousand dollars per month.

D. Deputy Clerk-Treasurer, a rate not to exceed thirty-six dollars per hour.

~~C.~~E. Permit Technician, a rate not to exceed thirty-six dollars per hour.

~~D. Administrative Assistant/Permit Coordinator, a range of one thousand four hundred dollars to five thousand eight hundred dollars per month.~~

~~E.~~F. Public Works Crew Lead, a rate not to exceed seven thousand five hundred ~~range of three thousand dollars to six thousand~~ dollars per month.

Draft

~~F.~~G. Public Works Crew Member, a rate not to exceed six thousand five hundred ~~range of two thousand eight hundred dollars to four thousand eight hundred~~ dollars per month.

~~G.~~H. Building Official, a rate not to exceed three thousand dollars per month.

~~H.~~I. Building Inspector, a rate not to exceed three thousand dollars per month.

~~I.~~J. Police Chief, a base salary not to exceed ~~of three hundred dollars to~~ six hundred dollars per month for administrative responsibilities, plus a rate not to exceed ~~range of forty dollars to~~ sixty dollars per hour.

~~J.~~K. Assistant Police Chief, a base salary not to exceed ~~of one hundred dollars to~~ three hundred dollars per month for administrative responsibilities, plus a rate not to exceed ~~range of forty dollars to~~ sixty dollars per hour.

~~K.~~L. Police Officer, a rate not to exceed ~~range of forty dollars to~~ sixty dollars per hour.

~~L.~~M. Administrative Staff Member, Temporary Staff Member, and/or Part-Time Staff or Public Works Member, a range of fifteen dollars to fifty dollars per hour.

Section 2. If any part or portion of this Ordinance is declared invalid for any such reason, such declaration of invalidity shall not affect any remaining portion.

Section 3. This Ordinance shall take effect 5 days after date of publication by ordinance title only.

PASSED this 16th day of August 2021 by the Town Council of the Town of Woodway.

TOWN OF WOODWAY

_____

Michael S. Quinn, Mayor

ATTEST:

_____

Heidi K. S. Napolitino, Clerk-Treasurer

Draft

APPROVED AS TO FORM:

_____

Greg Rubstello, Town Attorney

Date Passed by the Town Council:

Date Published:

Effective Date:

Draft

COVID-19 Vaccination Mandates in the Local Government Workplace

August 11, 2021 by Flannary Collins
Category: Personnel Policies, COVID-19

Editor's note: This article was originally published in October 2020 and has been updated several times, including a July 6, 2021 U.S. Department of Justice legal memo supporting the legality of vaccine mandates under an emergency use authorization (EUA) and Governor Inslee's Proclamation 21-14 requiring most state employees and healthcare workers to be vaccinated.

For information on vaccine incentives (as opposed to mandates), see our blog Vaccine Incentives in the Local Government Workplace.

Planning for an eventual full return to the workplace is on everyone's minds, and in thinking about that return, one issue being debated is the legality of requiring employees to take a COVID-19 vaccine as a condition to returning to work.

We know employees can be required to take a COVID-19 test (but not a COVID-19 antibody test) in order to return to work, but can employees be required to receive COVID-19 vaccines? The answer appears to be "yes," with some caveats.

Thus, before adoption of a mandatory vaccination program, a local government employer needs to do their due diligence on researching the issues. This blog article sets forth some of the main legal issues to consider.

State Vaccine Requirement

On August 9, 2021, Governor Inslee issued Proclamation 21-14 requiring most state employees and all

healthcare/long-term care workers to be fully vaccinated (two weeks past the date of the final vaccination) by October 18 as a condition of employment, which means the employees would need to receive their final vaccination by October 4.

Based on the broad definitions of "health care provider" and "health care setting," we read the governor's proclamation as impacting a number of local government employees, including, but not limited to, some public hospital district staff. Department of Health-certified EMTs and paramedics, and any worker within a smaller health care setting in larger non-health care facilities, such as school nurse offices and county vaccination clinics.

After October 18, employers are prohibited from allowing non-vaccinated health care providers to work or volunteer within health care settings. Workers can request accommodations for ADA or religious purposes, as discussed below, but the proclamation reminds employers they do not need to provide such accommodation if it would create an undue hardship.

Local Vaccine Mandates

Governor Inslee has also encouraged local governments and other branches of state government to adopt similar vaccine mandates for all their employees, which some have begun to do (such as the City of Seattle and King County). Such local mandates likely impact collective bargaining agreements. See the resources linked at the bottom of this blog for more guidance involving union-represented employees.

Importantly, local government employers need to be aware of the laws that may impact mandatory vaccination policies, including the Americans with Disabilities Act (ADA) and the Civil Rights Act of 1964.

We'll also need to keep our eye on litigation that challenges mandatory vaccination policies. Most claims center around whether an employer can mandate that employees receive a vaccine that the Federal Drug Administration (FDA) approved under the Emergency Use Authorization (EUA). Employees argue it cannot be mandated because the EUA requires an option to refuse administration of the vaccine and to be informed of the consequences of refusing the vaccine and of alternatives to the vaccine, along with their benefits and risks. The Department of Justice recently issued an opinion interpreting the law around EUAs as not prohibiting employers from imposing such mandates, and noting that the only federal court decision on this issue has rejected the challenge, although that case has been appealed and other case are still pending. Further, once vaccines receive final FDA approval, this argument will no longer have legal standing.

Final approval for one vaccine (Pfizer) may come as early as the September 6 Labor Day holiday.

Medical Accommodations Under the Americans with Disabilities Act

In terms of mandatory vaccination programs, the Americans with Disabilities Act (ADA) primarily comes into play with respect to: (1) an employer's pre-screening questions asked prior to administering a vaccine, which may elicit information about a disability; (2) ADA-covered disability reasons that may prevent a person from receiving a vaccine; and (3) providing a reasonable accommodation for employees with ADA-covered disabilities that prevent them from taking a vaccine.

The U.S. Equal Employment Opportunity Commission (EEOC) recently released detailed guidance about the ADA and COVID-19 mandatory vaccination programs. Highlights from the EEOC guidance are as follows:

- The ADA permits employers to adopt qualification standards — such as a mandatory vaccination program — that

prohibit employees from posing a direct threat to the health and safety of others in the workplace. In this circumstance, an unvaccinated employee could pose a direct threat to others in the workplace.

- A mandatory vaccination program may result in screening out or tending to screen out individuals with disabilities from employment because their disability prevents them from being vaccinated, and therefore, from being employed. If this occurs the employer must show an unvaccinated employee would pose a "direct threat" to the health or safety of the employee or to others, one that cannot be eliminated or reduced by reasonable accommodation.
- If an unvaccinated employee does pose a direct threat, the employer must try to provide a reasonable accommodation for the unvaccinated employee, such as telework, so long as the accommodation does not pose an undue hardship to the employer (e.g., significant difficulty or expense).
- Prior to adopting a policy on vaccinations, local government employers should review the EEOC guidance in full as well as Summit Law Group's Mandatory COVID-19 Vaccination Policy Guidance for Washington Employers, which explores the direct threat and reasonable accommodation issues in greater detail.

Religious Exemptions Under Title VII of the Civil Rights Act of 1964

A second issue to consider is whether Title VII of the Civil Rights Act of 1964 requires an employer to grant a religious exemption. Under Title VII of the Act, a sincerely held religious belief, practice, or observance can exempt an employee from a mandatory vaccination policy unless it imposes an undue hardship on the employer. Religious accommodations are subject to a lesser standard than medical accommodations, although the EEOC guidance recommends the employer assume an employee's request is based on a sincerely held religious belief. The employer must provide religious accommodation — in this case, opting out of a mandatory vaccine — only if the accommodation does not pose even a de minimis burden on the employer.

Constitutional Protections

The main constitutional arguments against government-mandated vaccination polices — e.g., substantive due process clause (14th Amendment), religious freedom clause (First Amendment) — apply only to state action (see *Shelley v. Kraemer*; *Grosjean v. American Press Co*), but even state-mandated vaccination policies have been upheld. In the seminal case from 1905, *Jacobson v. Massachusetts*, the U.S. Supreme Court upheld a Massachusetts state law that made smallpox vaccines compulsory. The court held that mandatory vaccines are within the state's police power because the state's interest in protecting public health and safety outweighed an individual's constitutional rights to liberty during the smallpox epidemic. The court also held this authority may be delegated to a local body.

Washington State has used its police power in requiring vaccinations for children attending schools (see Chapter 28A.210 RCW), although it recognizes medical and religious exemptions. While this Washington State statute has not been subject to a constitutional challenge, similar school vaccination mandates in other states have been upheld as a valid exercise of police power (see *Zucht v. King*; a 1920s mandatory vaccination program for school children in San Antonio, Texas, was upheld as a constitutional exercise of city police power). Last year, in response to the measles outbreak, the State of New York eliminated the religious exemption for vaccination for school children; this also survived legal challenges.

Collective Bargaining and Leave Issues

While not explored in this blog, other issues agencies should review are whether employees must be paid for the time it takes to get a vaccine (recommended) and whether a vaccination requirement is a mandatory subject of bargaining (also recommended); these matters and more are analyzed in Summit's Law's Mandatory COVID-19 Vaccination Policy Guidance for Washington Employers.

Conclusion

Before fully reopening, a local government should put in place a clear vaccination policy so employees understand what is expected of them once they return to the workplace. MRSC will continue to follow this issue and update our own guidance, including posting any employee vaccination policies on our COVID-19 Operations and Personnel Issues webpage.

MRSC is a private nonprofit organization serving local governments in Washington State. Eligible government agencies in Washington State may use our free, one-on-one Ask MRSC service to get answers to legal, policy, or financial questions.

About Flannary Collins

Flannary Collins is the Managing Attorney for MRSC. Flannary first joined MRSC as a legal consultant in August 2013 after serving as assistant city attorney for the city of Shoreline where she advised all city departments on a wide range of issues.

At MRSC, Flannary enjoys providing legal guidance to municipalities on all municipal issues, including the OPMA, PRA, and personnel. She also serves on the WSAMA Board of Directors as Secretary-Treasurer.

VIEW ALL POSTS BY FLANNARY COLLINS

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