

# Crafting Skills for Drafting Bills: How to Issue Spot in Legislation

(a.k.a. 45 minutes of my pet peeves)

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Seattle Code Reviser

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# What does **a** Code Reviser do?

- Chapter 1.03 of the Seattle Municipal Code gives me powers built on what the state Code Reviser has in RCW 1.08.015
- Among other things, I can:
  - Reorder and renumber the code, including creating new titles and chapters
  - Choose to codify or decodify provisions
  - Remove obsolete provisions
  - Fix typos
  - Update the names of entities when they change

# What does **this** Code Reviser do?

- In a two-person team, I review Seattle's bills before they go to the City Council
- While subject-matter experts advise on substance, largely I'm advising on legislative interpretation
- I have a few subject matters that are a natural growth of that detail orientation, like budget law and board/commission formation

# What's worth teaching in 45 minutes?

- What to think about if you're drafting from scratch
- How to import existing law into your municipality
- How to spot issues in state laws that apply to your municipality

Formatting and stylistic consistency are **means**. The **end** is reducing legal risk to our municipalities by issue-spotting ambiguity and other ways that laws don't work.

# Drafting from scratch

- Taking up infinite space
- Disciplining your definitions
- Remembering to use the definitions
- Minding your “and”s and “or”s
- Using the right nouns for your lists
- Making sure your exceptions work
- Handling cross-references

# Taking up infinite space

- If you're making a new chapter of code, you have as many sections as you want. There's no checked bags fee. So don't cram, and give your section numbers breathing room
- **My rule:** 3,000 words, or five subsection levels, is too much for one section. You can lose your place in reading the ordinance, and the cross-references get awful
- **My suggestion beyond the rule:** If your subsections are severely imbalanced in word count, they might not belong together

# RCW 46.63.220 has about 2800 words in 17 subsections. (13) has over 800

(13)(a) Except as provided in (d) of this subsection, a county or a city may only use revenue generated by an automated traffic safety camera program as authorized under this section for:

(i) Traffic safety activities related to construction and preservation projects and maintenance and operations purposes including, but not limited to, projects designed to implement the complete streets approach as defined in RCW 47.04.010, changes in physical infrastructure to reduce speeds through road design, and changes to improve safety for active transportation users, including improvements to access and safety for road users with mobility, sight, or other disabilities; and

(ii) The cost to administer, install, operate, and maintain the automated traffic safety cameras, including the cost of processing infractions.

(b) Except as provided in (d) of this subsection:

(i) The automated traffic safety camera program revenue used by a county or city with a population of 10,000 or more for purposes described in (a)(i) of this subsection must include the use of revenue in census tracts of the city or county that have household incomes in the lowest quartile determined by the most currently available census data and areas that experience rates of injury crashes that are above average for the city or county. Funding contributed from traffic safety program revenue must be, at a minimum, proportionate to the share of the population of the county or city who are residents of these low-income communities and communities experiencing high injury crash rates. This share must be directed to investments that provide direct and meaningful traffic safety benefits to these communities. Revenue used to administer, install, operate, and maintain automated traffic safety cameras, including the cost of processing infractions, are excluded from determination of the proportionate share of revenues under this subsection (13)(b); and

(ii) The automated traffic safety camera program revenue used by a city or county with a population under 10,000 for traffic safety activities under (a)(i) of this subsection must be informed by the department of health's environmental health disparities map.

(c) Except as provided in (d) of this subsection, beginning four years after an automated traffic safety camera authorized under this section is initially placed and in use after June 6, 2024, 25 percent of the noninterest money received for infractions issued by such cameras in excess of the cost to administer, install, operate, and maintain the cameras, including the cost of processing infractions, must be deposited into the Cooper Jones active transportation safety account created in RCW 46.68.480.

(d)(i)(A) Jurisdictions with an automated traffic safety camera program in effect before January 1, 2024, may continue to allocate revenue generated from automated traffic safety cameras authorized under RCW 46.63.230 and 46.63.250(2)(c) as determined by the jurisdiction, as well as for the purposes established in (a) through (c) of this subsection, by:

(I) Up to a 10 percent increase in the number of traffic safety camera locations authorized to detect violations for automated traffic safety cameras authorized under RCW 46.63.230; and

(II) Up to a 10 percent increase in the number of traffic safety camera locations authorized to detect violations for automated traffic safety cameras authorized under RCW 46.63.250(2)(c).

(B)(I) Any automated traffic safety camera program in effect before January 1, 2024, with fewer than 10 traffic safety camera locations for automated traffic safety cameras authorized under RCW 46.63.230, which adds automated traffic safety cameras to one additional location for the use of cameras authorized under RCW 46.63.230, may continue to allocate revenue generated from automated traffic safety cameras authorized under RCW 46.63.230 as determined by the jurisdiction, as well as for the purposes established in (a) through (c) of this subsection.

(II) Any automated traffic safety camera program in effect before January 1, 2024, with fewer than 10 traffic safety camera locations for automated traffic safety cameras authorized under RCW 46.63.250(2)(c) as of January 1, 2024, which adds automated traffic safety cameras to one additional location for the use of cameras authorized under RCW 46.63.250(2)(c), may continue to allocate revenue generated from automated traffic safety cameras authorized under RCW 46.63.250(2)(c) as determined by the jurisdiction, as well as for the purposes established in (a) through (c) of this subsection.

(C) For the purposes of this subsection (13)(d)(i), a location is:

(I) An intersection for automated traffic safety cameras authorized under RCW 46.63.230 where cameras authorized under RCW 46.63.230 are in use; and

(II) A school speed zone for automated traffic safety cameras authorized under RCW 46.63.250(2)(c) where cameras authorized under RCW 46.63.250(2)(c) are in use.

(ii) The revenue distribution requirements under (a) through (d)(i) of this subsection do not apply to automated traffic safety camera programs in effect before January 1, 2024, for which an ordinance in effect as of January 1, 2024, directs the manner in which revenue generated from automated traffic safety cameras authorized under RCW 46.63.230 or 46.63.250(2)(c) must be used.

## This goes down to five subsection levels. Can you tell where?

# Disciplining your definitions

- Draft a definition in a definitions section only if you're using it more than once. Otherwise, either put it next to what it defines, or dispense with a definition and spell out the concept
- If your definition is more complicated than an "X means Y" sentence, other sentences should only say what's included or not
  - In an ordinance with penalties, how could you cite someone for violating a definition? Ask yourself what happens if something doesn't meet a definition, and that will tell you where to place it

# Remembering to use your definitions

- Whether you're drafting into a chapter with some definitions already, or you're making new definitions, use their exact wording and not a close relative
- Courts have a right to reject "C'mon, you know what we meant"
- This is a great reason to get your draft proofed by a colleague who doesn't know the subject matter – they're less likely to synonymize what you've metabolized

Minding your “and”s and “or”s

Lists get complicated quickly

**x** and (y or z)

does not =

(**x and y**) or z

# Using the right nouns for your lists

- RCW 46.63.220(13)(a), (b), and (c) require that revenue is allocated only to certain uses, “except as provided in subsection (d)”
- (13)(d)(i)(A), (d)(i)(B)(I), and (d)(i)(B)(II) each say that jurisdictions “**may continue** to allocate revenue” for certain purposes
- (13)(d)(ii) says that the “revenue distribution **requirements** under (a) through (d)(i) do not apply” to certain jurisdictions

# Using the right nouns for your lists

- If your list says that someone has to “comply with the following **requirements**,” put an **option** outside the list
- You might want to draft your list, then figure out the noun at the top of it

# Making sure your exceptions work

- An exception to “Everybody shall” = somebody **doesn't have to**
- An exception to “Anybody may” = somebody **isn't allowed to**
- So “this section does not apply” or other “except”/“exempt” language often backfires

# Handling cross-references

- If your ordinance is repealing existing code, check your code not only for references to it, but anything those repeals renumber
- If you're referring to an RCW definitions section, refer to the entire section rather than the definition's subsection, because the state Code Reviser renumbers them when a new definition is amended in

# How to import existing law into your municipality

When you find a law from somewhere else with the substance that you want, you probably can't just plug and play. Here are some adapters to try out

# Read your own code's provisions near where this material goes

- Different jurisdictions have different ways of describing the same thing. Some originate in state or federal law; some originate with one drafter whose name is lost to time
- Do you want to copy everything in hopes of getting the other jurisdiction's case law? Or do you want to rewrite in your code's voice?

# RCW 38.52.070

- Passed in 1951, it states that political subdivisions may use a list of emergency powers “without regard to [a long list of] time-consuming procedures and formalities”
- If that doesn’t sound like the RCW, it’s because it originally wasn’t – it was from a 1948 federal model ordinance on civil defense

# Model ordinance's warning

The form used in the Model Act is not adapted to any particular State, and each State should adjust this form to its local practices. These proposals should not be introduced into any State Legislature until after careful consideration of local conditions and existing statutes.

# Model ordinance's text

(In carrying out the provisions of this Act each political subdivision in which any disaster as described in Section 2 hereof occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested under this section in the light of the exigencies of the extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditure of public funds.)

# RCW 38.52.070

(2) In carrying out the provisions of this act each political subdivision, in which any disaster as described in section 2 hereof occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested under this section in the light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to, budget law limitations, requirements of competitive bidding and publication of notices, pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditures of public funds.

Political subdivisions: powers upon occurrence of disaster.

Certain legal formalities dispensed with.

# How to spot issues in state law that apply to your municipality

- You communicate for yourself more than for others
- The state writes for itself more than for you
- Statutes try to describe you without meeting you
- It might take multiple readings of a statute to figure out what it describes in your municipality

# RCW 41.56.905

“If any provision of this chapter conflicts with any other statute, ordinance, rule or regulation of any public employer, the provisions of this chapter shall control.”

What about charters?

# RCW 46.72B.190(3)(b)

A Seattle-sized city “may not alter, amend, or implement changes to” an **ordinance** that is “related to requirements” of certain RCW sections about transportation network companies

# RCW 46.72B.190(3)(b)

- Municipal governance on a subject is rarely in **an** ordinance. If it were, we wouldn't need code sections.
- One of the ordinances in Seattle's **code** on transportation network companies changed the department enforcing it, as part of a 400-page ordinance consolidating several departments and offices
- Is ***that*** preempted?

# RCW 64.06.080(1)

“Any ordinance, resolution, or **policy** adopted by a city or county that imposes a requirement on landlords or sellers of real property, or their agents, to provide **information** to a buyer or tenant pertaining to the subject property or the **surrounding area** **is effective only after:**

(a) A summary of the ordinance, resolution, or policy is posted electronically in accordance with RCW 43.110.030(2)(e); and

(b) An internet link to the ordinance, resolution, or policy, or the relevant portion of the actual language of the ordinance, resolution, or policy, is posted electronically in accordance with RCW 43.110.030(2)(e).”

# Conclusion

- Grammar is knowledge; issue-spotting is skill
- Learn what parts of legislation lead to the biggest variety of problems, and you'll hone the skills for great drafting