

## OVERVIEW OF PUBLIC DEVELOPMENT AUTHORITIES

Public development authorities (“PDAs”) are one governance model available to Washington cities and counties wishing to create a separate legal entity to undertake public projects and goals. PDAs are public corporations, also known as quasi municipal corporations, formed by a city or county under the authority of RCW 35.21.730, *et seq.* PDAs may be formed to undertake a specific project, or to provide certain specified public services. The mission of PDAs vary widely from promoting general economic development to narrower purposes such as the management of particular enterprises such as museums, historic districts, emergency communications, tourism promotion, historic preservation and affordable housing. PDAs are located throughout Washington State, and include the Pike Place Market Preservation and Development Authority (to operate the Pike Place Market), the Seattle Southside Regional Tourism Authority (to provide tourism promotion services), the Museum Development Authority of Seattle (to operate the Seattle Art Museum), Kitsap 911 Public Authority (to provide 911 dispatch services), Bellevue Public Development Authority (to operate the Meydenbauer Convention Center), the Northeast Public Development Authority (economic development in certain areas of Spokane), and the Cultural Development Authority of King County (4Culture), among others.

PDAs provide potential for more entrepreneurial decision making, opportunities for private citizen involvement, focused goals and management, alternative contracting methods and, in some cases, additional funding. The PDA statute limits the liability of the forming city or county. At the same time, PDAs are subject to oversight of their forming city or county, and PDAs are subject to many of the same legal constraints as cities and counties.

While traditionally PDAs have been formed by a single city or county to take on a local project, PDAs may also be formed to undertake regional public projects and goals. By combining the authority under the PDA statutes (RCW 35.21.730 *et seq.*) and the Interlocal Cooperation Act (chapter 39.34 RCW), local governments have used PDAs as an alternative governance model to take on regional projects jointly.

**Purpose and Authority.** PDAs may be created to (1) administer and execute federal grants or programs, (2) receive and administer private funds, goods or services for any lawful purpose, and (3) perform *any lawful public purpose or public function*. RCW 35.21.730(5). The purpose and scope of the PDA is specified in the PDA’s charter and formation documents.

PDAs have statutory authority to (1) own and sell real and personal property, (2) contract with a city, town, or county to conduct community renewal activities under chapter 35.81 RCW, (3) contract with individuals, associations, and corporations, and the State of Washington and the United States, (4) sue and be sued, (5) loan and borrow funds and issue bonds and other instruments evidencing indebtedness, (6) transfer any funds, real or personal property, property interests, or services, (7) do anything a natural person may do, and (8) perform all manner and type of community services. PDAs may not operate beyond the jurisdictional boundaries of their forming entity, unless otherwise agreed to by the extra-territorial jurisdiction, as discussed below.

While PDAs have broad statutory authority to perform any public purpose or public function, such authority is not unlimited. PDAs cannot undertake a public function that the forming city or county could not lawfully perform. *See Memorandum Opinion of the Attorney General of Washington to Robert V. Graham, State Auditor, March 10, 1989.* PDAs are limited to perform only public purposes or public

functions that the creating (or contracting) municipality may undertake directly. The PDAs charter may further limit the authority of the PDA.

**Formation; Limitation on Liability.** A city or county may form a PDA by passing an ordinance or resolution approving the PDA’s charter. The charter is the backbone of the PDA, and includes key information about the PDA, such as the PDA’s name, scope of the project or purpose, the term of the PDA, the size and composition of its governing board, provisions for the appointment and removal of board members, and the process and consequences of dissolution. In addition, charters often contain special features unique to the purpose of the PDA with respect to reporting to the forming city or county and other matters that establish a structure for oversight (for example, dispute resolution, method of dissolution, and citizen or public involvement). The charter may also address certain administrative matters, such as the process for approving bylaws to govern board operations and administration, conflicts of interest, and compliance with open public meetings, public records, and other laws applicable to public entities.

A key benefit of a PDA as an optional governance model is the statutory limitation on liability of the creating city or county. RCW 35.21.730(5) provides “[t]he [creating] ordinance or resolution shall limit the liability of such [PDA] ... to the assets and properties of such [PDA] ... in order to prevent recourse to such cities, towns, or counties or their assets or credit.” This limitation on liability must be included in the formation resolution or ordinance, and will be stated on bonds and other obligations of the PDA. The PDA charter may also limit the liability of the forming and, in the case of a regional undertaking, the participating municipalities. The debts and other obligations of the PDA will only be the responsibility of the forming city or county or other municipal participants if such entities agree to such liability by contract. The limited liability is statutory, and if agreed to in the charter or other contract, contractual. These statutory and contractual provisions provide a layer of protection to the forming city or county and other jurisdictions from potential liability in contract or tort, subject to potential disregard of the PDA’s separate existence in certain exceptional circumstances. The forming county or city could minimize this possibility by ensuring (1) openness and clarity in all dealings regarding the separate existence of the PDA, (2) observance of corporate formalities, and (3) reasonable capitalization of the PDA based on foreseeable risks of debt and liability.

**Governance.** PDAs are separate legal entities from their formation city or county, governed by a board of directors nominated and appointed as provided in the charter. Washington law does not require PDAs to have a certain board composition or membership, and as a result, the board may be organized as appropriate to fit the PDA’s stated purpose. A PDA board may be comprised of representatives of key stakeholders (for instance, members of the hotel industry for a PDA focused on tourism, or representatives of participating police and fire departments for PDAs providing 911 dispatch services), or individuals with specific expertise relevant to the undertaking (financing, construction, legal, economic development or housing). The PDA’s charter will typically specify the size, composition, nomination and appointment process, term, officers and other characteristics of the board.

**Oversight of the PDA.** While PDAs are separate legal entities, the creating city or county is required to maintain a level of oversight and control of the PDA’s operations. RCW 35.21.745(1) provides that a city or county that creates a PDA “shall provide for its organization and operations and shall control and oversee its operation and funds in order to correct any deficiency and to assure that the purposes of each program undertaken are reasonably accomplished.”

Washington law does not require a certain process for ongoing monitoring. The method for overseeing the operations of the PDA is generally provided for in the charter or formation ordinance or resolution. For example, charters often limit the scope of authority of the PDA and contain provisions for reporting on financial, budgetary and other operational matters. These organizational documents can provide

oversight and constraints on the operations of the PDA tailored to meet the needs of the parties involved and the purpose of the PDA.

While it is clear that Washington law requires the creating city or county to control and oversee the operations of the PDA, the purpose of such oversight and control is to be in a position to “correct any deficiency and to assure that the purposes of each program undertaken are reasonably accomplished.” A city or county is not required, for instance, to oversee the day-to-day operations or confirm each board activity, but maintain a level of involvement to ensure the PDA is fulfilling its authorized purpose and otherwise complying with applicable requirements. Because PDAs are separate legal entities and the liabilities of the PDA are limited to those assets and resources of the PDA, cities and counties should exercise caution when exerting too much control over the PDA potentially blurring the lines of separation between the forming city or county and the PDA.

**Service Area.** Forming cities and counties also oversee PDA operations by controlling where the PDA may operate. By statute, a PDA’s authority is limited to the jurisdictional boundaries of its forming entity, unless otherwise agreed to by the forming entity and the extra-territorial jurisdiction. RCW 35.21.740. Permission to operate extra-territorially may take a variety of forms, such as an interlocal agreement, service contract or other type of documentation, depending on the function and services provided by the PDA. While such agreement may limit the PDA’s activities to a certain project or specify the terms under which the PDA may operate extra-territorially, it may not extend the purpose or authority of the PDA beyond the scope of its original charter.

**Financial and Other Resources of the PDA.** Despite the broad authority to undertake any public project or purpose, PDAs have limited options to generate revenue. PDAs do not have the power of eminent domain nor the power to levy taxes or special assessments. RCW 35.21.745. PDAs may collect project or other operating revenues, receive grants, receive public or private funds, and accept real or personal property. PDAs may receive payments in exchange for services. PDAs may also borrow money and issue bonds, including tax-exempt obligations if certain requirements are satisfied, and may pledge project revenues, grants, or available sources to the repayment of such obligations. As noted above, all debts and other liabilities incurred by the PDA must be satisfied exclusively from the PDA, except as otherwise agreed by contract. PDA creditors do not have any right of action against or recourse to any other public entity, or such entity’s assets, on account of the PDA’s debts, obligations, liabilities or acts or omissions, unless such entity agrees to such recourse by contract.

**Legal Requirements Applicable to PDAs.** As public entities, PDAs, and their officers, employees and board members, “are subject to general laws regulating local governments, multimember governing bodies, and local governmental officials, including, but not limited to, the requirement to be audited by the state auditor and various accounting requirements provided under chapter 43.09 RCW, the open public record requirements of chapter 42.56 RCW, the prohibition on using its facilities for campaign purposes under RCW 42.17A.555, the open public meetings law of chapter 42.30 RCW, the code of ethics for municipal officers under chapter 42.23 RCW, and the local government whistleblower law under chapter 42.41 RCW.” RCW 35.21.759. PDAs and their public funds are also subject to the constitutional limitations on the lending of credit and gifting of public funds. PDAs undertaking economic development activities or projects that include significant private sector involvement are encouraged to give special attention to these limitations when planning PDA operations.

**Regional Projects and Services.** As discussed above, PDAs may be formed by a city or county to operate within the boundaries of the creating jurisdiction and, with permission, extra-territorially. For some regional projects and goals, however, the public entities involved seek more of a multi-jurisdictional structure, with each party having a role in decision making and representation at the governance level. The PDA statutes (RCW 35.21.730 *et seq.*) do not alone provide for the formation of a multi-

jurisdictional PDA, as the statutes state that a PDA may be formed by a single city or county. Cities and counties wanting to work together have formed PDAs with multi-jurisdictional representation by combining the PDA statutes with the authority granted to local governments in the Interlocal Cooperation Act (chapter 39.34 RCW). Under this governance structure, the PDA would continue to be formed by one city or county, however, the PDA's charter would be paired with an interlocal agreement among the parties to establish the roles and responsibilities, representation on the board of directors, contractual limitations on liability, and other matters applicable to each jurisdiction involved. Examples of PDAs with multi-jurisdictional representation include South Sound 911, a communications and regional dispatch center located in Pierce County, and the South Correctional Entity Facility Public Development Authority, formed to issue bonds to finance a multijurisdictional misdemeanor correctional facility located in south King County.

**Conclusion.** PDAs provide a governance model that allows Washington cities and counties to create a separate legal entity to undertake public projects and goals. There are a number of statutory and other legal requirements to be observed. Many cities and counties have formed PDAs to implement a wide range of community projects, including joint undertakings. These many examples provide models for, and lessons that can be applied by, any new PDA.

Please call any of our public finance and municipal law attorneys if you have questions or would like more information.

Alison Benge	<a href="mailto:Alison.Benge@pacificallawgroup.com">Alison.Benge@pacificallawgroup.com</a>	206.602.1210
Deanna Gregory	<a href="mailto:Deanna.Gregory@pacificallawgroup.com">Deanna.Gregory@pacificallawgroup.com</a>	206.245.1716
Gerry Johnson	<a href="mailto:Gerry.Johnson@pacificallawgroup.com">Gerry.Johnson@pacificallawgroup.com</a>	206.245.1700
Stacey Lewis	<a href="mailto:Stacey.Lewis@pacificallawgroup.com">Stacey.Lewis@pacificallawgroup.com</a>	206.245.1714
Jon Jurich	<a href="mailto:Jon.Jurich@pacificallawgroup.com">Jon.Jurich@pacificallawgroup.com</a>	206.245.1717
Faith Li Pettis	<a href="mailto:Faith.Pettis@pacificallawgroup.com">Faith.Pettis@pacificallawgroup.com</a>	206.245.1715
Toby Tobler	<a href="mailto:Tobias.tobler@pacificallawgroup.com">Tobias.tobler@pacificallawgroup.com</a>	206.602.1215

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