



# City of Leavenworth

Office of the Mayor

Senator Brad Hawkins  
203 Legislative Modular Building  
PO Box 40412  
Olympia, WA 98504

October 11, 2023

Senator Hawkins,

I am writing to respectfully ask that you request an unofficial Attorney General's Opinion regarding the use of lodging taxes for affordable housing projects. Per our internal legal analysis of RCW 67.28.180 and 67.28.160, as well as the analysis of the Municipal Research and Services Center, both attached, it is our understanding that any municipality may use lodging taxes to repay revenue bonds for affordable workforce housing.

We are specifically seeking clarification to confirm that the City of Leavenworth has councilmanic authority to use lodging taxes to repay revenue bonds for affordable housing projects within one-half mile of a transit station.

Thank you for your consideration.

Sincerely,

Carl Florea, Mayor

700 US Hwy 2 / PO Box 287  
Leavenworth, WA 98826  
(509) 548-5275 Ext. 125

Mayor Carl J. Florea  
[cflorea@cityofleavenworth.com](mailto:cflorea@cityofleavenworth.com)



**THOMPSON \* GUILDNER  
& ASSOCIATES INC. P.S.**  
110 Cedar Ave, Ste 102  
Snohomish, WA 98290  
360.568.3119  
[www.trustedguidancelaw.com](http://www.trustedguidancelaw.com)

October 11, 2023

Carl Florea  
City of Leavenworth Mayor  
700 Hwy. 2  
Leavenworth, Washington, 98826

Matthew Selby  
City of Leavenworth City Administrator  
700 Hwy. 2  
Leavenworth, Washington, 98826

*via email*

Re: Request for Legal Opinion - Use of Lodging Tax to Pay Revenue Bonds for Loans or Grants to Nonprofits and Housing Authorities for affordable Workforce Housing

Dear Mayor Florea and Administrator Selby,

### **I. Introduction and Summary Opinion**

By e-mail dated October 6, 2023, Mayor, you reported the following information and requested our opinion as follows (your inquiry is italicized):

We are going to be asking Sen. Hawkins to request an attorney general's opinion as to whether the City of Leavenworth can use existing lodging taxes to pay off bonds issued to create affordable housing within ½ mile of transit. The MRSC says the law (see their comments below) does allow us to do this. The Hospitality Association says it only applies to King County and Seattle. Sen. Hawkins asked that we write a letter (attached) along with the MRSC opinion and an opinion from our own legal counsel. *Thus, I am asking if you would also review the laws in question and send us your opinion (hopefully favorable) that we can include in the request.*

This letter responds to that inquiry and provides our opinion. In summary, we conclude that Leavenworth may pledge its lodging tax to repay revenue bonds used to fund loans or grants to nonprofit organizations or public housing authorities for affordable workforce housing within one-half mile of a transit station. Such revenue bonds may be issued without submitting the matter to the voters. Our opinion is qualified to compliance with statutory requirements and forms for such bonds and to the terms and definitions of Chapter 67.28 RCW.

Of necessity in our opinion, we conclude and opine that the authority to use lodging tax for revenue bonds for affordable workforce housing is not limited solely to a city located in a county with a population of more than 1.5 million people as might be thought under RCW 67.28.180.

### **II. Analysis and Explanation**

**a. City Ordinance and Code**

In 1997, by Ordinance 1051, Leavenworth, in accordance with SSB 5867, readopted and codified its lodging tax. The codification is Chapter 3.48 Leavenworth Municipal Code. The City's code has not been changed since 1991. Section 4 of the Ordinance, LMC 3.48.040, provides as follows:

**3.48.040 Tourism fund.**

There is created a special fund in the treasury of the city and all taxes collected under this chapter shall be placed in this special fund to be used solely for the purpose of paying all or any part of the cost of tourist promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities, **or to pay for any other uses as authorized in Chapter 67.28 RCW, as now or hereafter amended.** (emphasis added)

Therefore, if Chapter 67.28 RCW—whether as adopted as of 1997 or as amended since—allows for the use of lodging tax to repay revenue bonds to fund loans or grants for affordable workforce housing in a City such as Leavenworth, City code by the emphasized language authorizes such use.

**b. Chapter 67.28 RCW**

When the City readopted its lodging tax in Chapter 3.48 LMC, it did so in accordance with SSB 5867. The Senate Bill made minor amendments to RCW 67.28.150, RCW 67.28.160, and wholesale changes to Section 67.28.180. Importantly, however, none of the changes mention in any fashion the use of lodging tax revenues in association with affordable or workforce housing.

Chapter 67.28 RCW was amended from time to time after 1997, but for the purposes of this opinion, the key amendments were adopted in 2015 SHB 1223. Each RCW 67.28.150, RCW 67.28.160, and RCW 67.28.180 were amended. For the purposes of this opinion, the critical amendment to RCW 67.28.150 was as follows:

**RCW 67.28.150**

**Issuance of general obligation bonds—Maturity—Methods of payment.**

To carry out the purposes of this chapter including, but not limited to, financing loans or grants to nonprofit organizations or public housing authorities for affordable workforce housing within one-half mile of a transit station, any municipality has the power to issue general obligation bonds within the limitations now or hereafter prescribed by the laws of this state.

The critical amendment of RCW 67.28.160, in virtually parallel language, was as follows:

**RCW 67.28.160**

**Revenue bonds—Issuance, sale, form, term, payment, reserves, actions.**

(1) To carry out the purposes of this chapter including, but not limited to, financing loans or grants to nonprofit organizations or public housing authorities for affordable workforce housing within one-half mile of a transit station, the legislative body of any municipality has the power to issue revenue bonds without submitting the matter to the voters of the municipality and may

pledge the special taxes provided for in this chapter to the repayment of such revenue bonds.

The distinction between the two sections is general obligation bonds in .150 and revenue bonds in .160. RCW 67.28.180 is lengthy and authorizes the levy of an excise tax. It mentions housing only in one subsection, subsection (3)(d)(ii)(A). The entire subsection reads as follows:

(3)

\* \* \* \*

(d) On and after January 1, 2021, the revenues under this section must be used as follows:

(i) At least thirty-seven and one-half percent of the revenues under this section must be deposited in the special account under (e) of this subsection.

(ii) At least thirty-seven and one-half percent of the revenues under this section must be used:

(A) For contracts, loans, or grants to nonprofit organizations or public housing authorities for affordable workforce housing within one-half mile of a transit station, as described under RCW 9.91.025 or for housing, facilities, or services for homeless youth; or

(B) To repay:

(I) General obligation bonds issued pursuant to RCW 67.28.150 to finance such contracts, loans, or grants; or

(II) Revenue bonds issued pursuant to RCW 67.28.160 to finance a fund to make such contracts, loans, or grants; or

(III) Revenue bonds issued pursuant to RCW 67.28.160 to finance projects authorized by an authority under chapter 43.167 RCW to promote sustainable workplace opportunities near a community impacted by the construction or operation of tourism-related facilities.

(iii) The remainder must be used for capital or operating programs that promote tourism and attract tourists to the county.

The question becomes: Does anything in subsection (3)(d)(ii)(A) or in RCW 67.28.180 limit or restrict the general authority in RCW 67.28.150 or .160 for a City such as Leavenworth to use lodging for affordable workforce housing in accordance with those two sections? The answer is no.

Subsection (3) begins as follows:

(3) Any levy authorized by this section by a county that has a population of one million five hundred thousand or more is subject to the following:

Subsection (3) restricts counties, and in particular, a county with a population of one million five hundred thousand or more only. At issue in this opinion is a city levy in Chelan County, not a county with a population of one million five hundred thousand or more.

### III. CONCLUSION

It is our opinion that Leavenworth may use revenue from its existing Lodging Tax as levied in Chapter 3.48 LMC to repay revenue bond for loans or grants to qualified parties related to affordable workforce housing meeting required location qualifications.

Very truly yours,



**Thom Graafstra**

Of Counsel

Thompson, Guildner, & Associates, Inc., P.S.

[thomg@trustedguidancelaw.com](mailto:thomg@trustedguidancelaw.com)

[emilyg@trustedguidancelaw.com](mailto:emilyg@trustedguidancelaw.com)



**Emily Guildner**

Partner



## Carl Florea

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**From:** Eric J. Lowell <elowell@mrsc.org>  
**Sent:** Friday, August 18, 2023 12:33 PM  
**To:** Carl Florea  
**Subject:** RE: Clarification

Carl,

The hospitality association is most likely referencing RCW [67.28.180](#)(3)(d)(i)(A) which is actually regarding a levy that is only for “a county that has a population of one million five hundred thousand or more.” The statute that AWC & MRSC’s Homelessness and Housing Toolkit for Cities publication is referring to is RCW [67.28.160](#)(1) which states:

“To carry out the purposes of this chapter including, but not limited to, financing loans or grants to nonprofit organizations or public housing authorities *for affordable workforce housing within one-half mile of a transit station, the legislative body of ANY MUNICIPALITY* has the power to issue revenue bonds without submitting the matter to the voters *of the municipality and may pledge the special taxes provided for in this chapter to the repayment of such revenue bonds*. However, the legislative body must create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the legislative body may obligate the municipality to pay all or part of amounts collected from the special taxes provided for in this chapter, and/or to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, added to, repaired, or replaced pursuant to this chapter, as the legislative body determines. The principal of and interest on such bonds is payable only out of such special fund or funds, and the owners of such bonds must have a lien and charge against the gross revenue pledged to such fund.” [emphasis added]

Lodging taxes can be used to repay revenue bonds for affordable workforce housing, and this option is available to any municipality. Let me know if you have further questions concerning this inquiry.

Regards,

**Eric Lowell (He/She/They)**

Finance Consultant

206.625.1300 x105

**MRSC** Empowering local governments

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**From:** Carl Florea <cflorea@cityofleavenworth.com>

**Sent:** Friday, August 18, 2023 11:50 AM

**To:** Eric J. Lowell <elowell@mrsc.org>

**Subject:** Clarification

I am wishing to confirm with MRSC that the use of lodging taxes to pay off bonds used for affordable housing within ½ mile of transit station (bus stop) is applicable to the City of Leavenworth. The way I read your published booklet on housing for cities, it appears that is the case. But when I brought that up to the Hospitality Association they argued that it did not apply outside of the City of Seattle and King county. I see no such limitations in what I read and want to confirm with you that is the case. Thank you!