

A Short Course on Local Planning

The Short Course on Local Planning, always free and open to all, has been presented in Washington communities since 1977.

Table of Contents

Washington's framework for land use planning.....	3
Constitutional issues in land use planning.....	5
Comprehensive planning under the Growth Management Act	7
Roles in planning process	11
Typical steps in the legislative process	13
Short form of procedures for quasi-judicial public hearings.....	14
Appearance of Fairness doctrine.....	15
The Open Public Meetings Act (OPMA)	16

If you are a planning commissioner, this course was created especially for you. It is also a source of basic information for staff, elected officials and the general public about land use planning processes in Washington State.

Agency contact

Commerce Staff
shortcourse@commerce.wa.gov
 Growth Management Services
 360-259-5216

GROWTH MANAGEMENT SERVICES

Why plan

Land areas have been planned by people across the world for thousands of years. This work included concepts for the placement of buildings, transportation access, infrastructure, public spaces and much more. In the early 1900s, many communities in the U.S. began more formally planning for their local needs. The importance of comprehensive planning became more evident as communities grew and concerns rose about environmental protection, economic vitality, infrastructure, public health and safety, housing, and natural resource conservation.

For example, between 1990 and 2020, our state's population grew from 4.1 million people to 7.6 million people. It is projected to grow to 9.8 million people by 2050.¹

Adding more people, along with other factors, can change our communities. By anticipating that change through comprehensive planning, communities can plan for development and manage the way they grow.

Your community's comprehensive plan starts with a vision of a preferred future, which looks ahead at least 20 years. This vision and the plan's goals and policies guide local actions to help your community achieve its desired future. Your plan helps you to:

- Protect and enhance the good things about your community, such as neighborhoods, parks, or open spaces.

Identify community needs and how to meet them.

- Save money by identifying priorities for public spending, and be prepared to find and use external sources of funding.
- Identify and develop achievable strategies for your community's needs, such as affordable housing or more jobs. While local governments by themselves don't create housing or jobs, they can set the stage through planning.
- Build a stronger sense of community, grow your local economy, and coordinate with other agencies in the region.

¹ www.ofm.wa.gov

- Be better prepared to meet the needs of the future.

Each one of us has a stake in our community's future. We all want to live in great places, but they don't happen by accident. They happen because people care about their communities and take the time to ask what's good here, what's missing, what could be better, and how we will plan for growth that will likely come. Comprehensive planning is a process for people to work together to make great communities.

Washington's framework for land use planning

Long before the Growth Management Act was adopted, a variety of constitutional provisions and state laws enabled local planning.

The constitutional basis for planning

The constitutionality of local governments regulating land use was tested and upheld in a 1926 U.S. Supreme Court decision. In **Village of Euclid v. Amber Realty**, the court found that government has a legitimate interest in regulating where certain land uses should occur, in what form, and under what process. The court allowed the Village of Euclid to designate specific areas of land for specific uses. This authority is now known as "zoning."

The Washington State Constitution (*Art. 11, Sec. 11*) recognizes that state and local governments have authority to make police, sanitary and other regulations so long as they support public health, safety, morals or general welfare and don't conflict with general laws.

Planning at the subdivision level

While some early communities were master planned, many grew organically, or were "planned" at the subdivision level through application of Washington's subdivision statute. This law requires that before subdivisions are approved, appropriate provisions are made for:

"The public health, safety, and general welfare, and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school". RCW 58.17.110

Every city and county must have local codes that implement this law and must approve subdivisions consistent with this law.

Early planning statutes created tools to allow land use planning.

Washington State adopted laws before 1970 to allow land use planning at the local level. Local governments use one of these laws to authorize local planning.

Planning Commission Act (RCW 35.63) allows comprehensive planning by a city or county through a planning commission or planning agency. This was extended to all code cities by RCW 35A.63.

Planning Enabling Act (RCW 36.70) is directed at counties and requires a more detailed comprehensive plan.

Major land use laws

Washington State has three major statutes that overlay the basic planning laws. They provide processes for the planning and management of land and development. These are encoded as the Revised Code of Washington (RCW). Agencies can also develop guidelines to implement state law, adopted as Washington Administrative Codes (WAC).

The State Environmental Policy Act

(SEPA) is modeled on the National Environmental Policy Act (NEPA) and requires a review of the impacts that a plan, regulation, or development project may have upon the natural and built environment to give decision makers full information about the potential consequences of their decision. SEPA applies to every comprehensive plan amendment, most amendments of municipal land use regulations, and many types of development projects. Every proposal or project subject to SEPA must document anticipated environmental impacts. This is done by using environmental checklists, threshold determinations and specific, scientific analyses. For large or complex projects, an "environmental impact statement" is often required (RCW 43.21, WAC 197-11, and on-line SEPA Handbook, Department of Ecology).

The Shoreline Management Act (SMA)

arose out of a citizen initiative and is intended to protect the ecological functions of **shorelines of the state**, plan for water-dependent uses, and for public access. Shorelines of the state include marine shorelines, rivers, large lakes, and associated wetlands and flood zones. The SMA requires local governments with these shorelines to adopt a Shoreline Master Program (SMP), which identifies regulated shorelines and shore lands within their jurisdiction, permitted uses, and policies guiding those uses. The Department of Ecology must

approve all SMPs and ensure that they are consistent with state policies and guidelines. (Chapter 90.58 RCW, 1971, and WAC 173-26, Part III)

www.ecy.wa.gov/programs/sea/shorelines/smp

The Growth Management Act (GMA)

requires certain populous and fast growing counties and the cities within them to adopt comprehensive plans containing specific information and analysis, with twin goals of focusing urban growth and protecting rural and resource lands from sprawl. The GMA requires coordinated regional and local planning, and spells out the elements that must be included in comprehensive plans. All development in counties and cities that fully plan under the GMA must be regulated by rules that are consistent with and implement the comprehensive plan. (Chapter 36.70A RCW, 1990, and WAC 365-196

www.commerce.wa.gov/serving-communities/growth-management/)

Some Federal laws that influence local land use planning

Federal lands, including Federal Indian Reservations, military reservations, national parks, forests, monuments and wildlife refuges make up 51 percent of Washington's land area.

Tribal interests may intersect with local land use planning. There are 29 federally recognized tribal governments within Washington, and 25 Indian reservations, comprising more than eight percent of Washington's land base. Tribes are recognized as distinct, independent, political communities, wholly responsible for planning and permitting on reservation lands. Tribes also participate in "government to government" consultation on a variety of issues like transportation, land use, gaming, hunting and fishing. As of 2022, SHB 1717 requires counties to engage in land use planning with federally recognized tribes that have a reservation or ceded lands within the county. (Governor's Office of Indian Affairs, goia.wa.gov)

As authorized by the **Clean Water Act**, the **National Pollutant Discharge Elimination System (NPDES)** Permit Program controls water pollution by regulating pollutant discharge from point sources such as pipes or manmade ditches into waters of the United States. The Washington State Department of Ecology's Water Quality Program is delegated responsibility by the U.S. Environmental Protection Agency (EPA) for implementing all federal and state water pollution

control laws and regulations. A wastewater discharge permit is required for disposal of waste material into "waters of the state," which include rivers, lakes, streams, and all underground waters and aquifers. Permits stipulate specific limits and conditions of allowable discharge, and may require certain activities. www.ecy.wa.gov/programs/wq/wqhome.html

The **Endangered Species Act (ESA)** was passed by congress in 1973 to protect and recover imperiled species and the ecosystems upon which they depend. Under the ESA, species may be listed as either endangered (in danger of extinction throughout all or a significant portion of its range), or threatened (likely to become endangered within the foreseeable future). The Act is administered by the U.S. Fish and Wildlife Service (terrestrial and freshwater organisms) and the U.S. Department of Commerce National Marine Fisheries Service (marine wildlife such as whales and anadromous fish such as salmon). The law's ultimate goal is to "recover" species so they no longer need protection under the ESA. Cities and counties play a role in designating fish and wildlife habitat conservation areas and reviewing development proposals to consider threatened or endangered species. www.fws.gov/endangered/laws-policies/ and www.nmfs.noaa.gov/pr/laws/esa/.

There are many other state and federal laws that impact aspects of local planning, and thousands of state and federal court decisions interpreting and applying statutory planning rules.

Constitutional issues in land use planning

Community planning must balance many issues while creating a plan for managing growth. Constitutional rights and responsibilities must be respected. If you find yourselves with questions in these areas, ask your city or county legal counsel.

Due process

Procedural due process means that before government makes changes that significantly affect individual or property rights, citizens receive notice that a change is being considered, and they have the opportunity to comment. Procedural due process is most important as a part of permitting actions, it also applies to meetings. If an action would change the property rights of a property owner, legal notice and an opportunity to be heard are required. Failure to give proper notice of a meeting could invalidate any action taken at the meeting.

Substantive due process means the right to be subject to rules that are reasonable in aim and scope and that are appropriate for local government regulation. This means that any regulation should answer the following questions:

- **Is the regulation for a legitimate public purpose** such as protecting public health, public safety or water quality? Does it address issues that are the domain of local government?
- **Is the regulation appropriate to accomplish the purpose?** For example, if the goal is to protect water quality, is a requirement to build a house 75 or 100 feet away from a wetland an appropriate way to meet the goal?
- **Is the regulation reasonable?** Continuing the example, is the size of the setback appropriate to protect water quality, and based on the characteristics of the lot, can the property owner reasonably use their land? In cases where regulations may appear to conflict with the constitution, regulations should include an “out” (variance) for situations where otherwise constitutional regulations apply to a specific applicant in an unconstitutional way.
- **Is the regulation clear and easy to apply?** A proposed regulation must be clearly understood and fairly applied. Design guidelines can be particularly troublesome if they use subjective standards and

words such as “harmonious,” or “in good relationship with the surroundings,” which are difficult to enforce. Using pictures of acceptable building forms or window treatments can help to provide more clarity. A vague regulation can be invalidated if appealed to court.

Takings

Both the U.S. Constitution (5th Amendment), and the Washington Constitution (Art. I, § 16) state that no private property shall be taken (or damaged) for public or private use without just compensation having been made first. Where local governments have authority over the use of private property, they must be sensitive to the constitutional limits on their authority. Takings claims arise in three circumstances:

- **Physical occupation or damage:** Property has been physically invaded or appropriated through condemnation or an occupation that has a significant impact on the value of the property. Examples may include occupation for a storm water facility or a trail connection. This normally requires compensation, unless it can be shown as a need directly related to the particular project.
- **Regulatory takings:** Land use regulations may deprive an owner of reasonable use of his or her property, such as the right to buy and sell property, or the right to exclude others. Courts generally uphold regulations that protect public health and safety, or environmental concerns, even when these regulations substantially reduce property value. Zoning or other changes to a general regulation, which decrease or change the development potential of a property to meet the needs of the larger community is not considered a taking. However, if a regulation deprives the owner of “all economically viable use of a property” or “investor-backed expectations” (even if temporarily) the owner may be entitled to just compensation. For this reason, regulations should generally have some exceptions to allow reasonable use of property.
 - **Exactions as a condition of development:** In order to impose conditions on land development, a local government must do the following:
 - Show a nexus, or identify a problem the condition is designed to address. Nexus

means that the condition imposed must relate to and help solve the problem created by the development. For example, if ocean views are protected by the comprehensive plan or regulations, and a proposed office building would cut off that view, the mitigation condition must address the loss of view. Thus, a condition requiring a bigger side yard setback would have nexus because it allows more view, whereas a condition to build frontage improvements would not.

- Show that the proposed development will create or contribute to the problem.
- Show that the condition will solve or alleviate the problem.
- Show that the proposed condition is “roughly proportional” to the problem created or contributed by the proposed development. For example, if a subdivision would add thirty new daily car trips to the adjoining street, a mitigation condition cannot require the developer to build a five-lane freeway.

To avoid takings claims, pay attention to these warning signals

- Does the regulation or action result in a permanent or temporary physical occupation of property?
- Does the regulation or action deprive the owner of all economically viable uses of the property?
- Does the regulation or action deny or substantially diminish a fundamental attribute of property ownership?
- Does the regulatory action have a severe impact on the landowner’s economic interest?

Other constitutional protections

The constitution allows some rights and freedoms that may be in friction with a community desire to regulate activities.

The Equal Protection Clause (EP) is part of the 14th amendment to the US constitution. The 1868 clause provides that no state shall deny to any person equal protection of the laws. In the planning context, this typically arises in enforcement actions. In this case, cities and counties cannot be selective in choosing against whom or when to enforce regulations.

Religious freedoms allow individuals to practice their religion. Local government laws may be applied to

religious institutions. For example, synagogues, temples, or churches may be required to comply with parking and building codes, or hours of operation; however, the regulation must not interfere with the right to practice religion.

Freedom of expression allows individuals to express themselves in their own way. Regulations may address aspects of expressive media such as signs or adult entertainment establishments, but must not interfere with the right to freedom of expression.

“64.40 Damages” for permit processing allows property owners who filed an application for a permit to file an “action for damages” to obtain relief from acts of an agency which are arbitrary, capricious, unlawful, or exceed lawful authority, or knowingly cause unlawful delay. (RCW 64.40)

Vesting

Washington state’s vesting rules generally entitle a property owner to use property according to the rules and regulations in place at the time a complete application for a building permit or a subdivision is submitted. Vesting rules enable developers with the right to proceed with their project even if, before the application is finally decided, the regulations affecting the project change.

Moratoria

A moratorium is a swift government pause on accepting applications for certain development types until a particular issue has been studied and addressed. Cities and counties can authorize a moratorium on accepting development applications for six months at a time; or up to one year if a work plan is developed for related studies. Examples include a proposed change in zoning or when a community faces a utility-related shortage. A moratorium cannot be used as a long term land use tool. (RCW 35.63.200, RCW 35A.63.220, RCW 36.70A.390)

For Further Study

A Short Course on Local Planning Resource Guide, Chapter 4 Constitutional Rights and Responsibilities in Planning

Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property Bob Ferguson, Attorney General (2018) www.atg.wa.gov/avoiding-unconstitutional-takings-private-property
<https://mrsc.org/Home/Explore-Topics/Legal/Planning/Regulatory-Takings.aspx>

Comprehensive planning under the Growth Management Act

The Growth Management Act (GMA) was adopted in 1990 as a response to concerns about unprecedented and largely uncontrolled growth in the 1970s and 80s, and the risks that uncontrolled growth posed to our environment and quality of life.

The GMA has 14 goals

- These goals guide preparation of comprehensive plans.
- Encourage compact urban growth
- Reduce sprawl
- Encourage efficient multimodal transportation
- Plan for and accommodate housing for all
- Encourage economic development
- Protect property rights
- Predictable permitting
- Maintain and enhance natural resource industries
- Retain open space, enhance recreation
- Protect the environment
- Encourage citizen participation
- Plan adequate public facilities and services
- Encourage historic preservation
- Manage shoreline development

The GMA has some basic requirements:

All counties must designate and conserve resource lands of long-term commercial significance.

“Designate” means identifying resource lands not characterized by urban growth and conserving them to protect forestry, agricultural and mineral extraction industries over the long term. Agricultural soils are carefully assessed for long-term commercial significance. (RCW 36.70A.170)

All counties and cities must designate and protect environmentally critical areas. These include wetlands, fish and wildlife habitat conservation areas, critical aquifer recharge areas, frequently flooded areas and geologically hazardous areas. Local governments must use the best available science and adopt regulations to protect functions and values of critical areas. (RCW 36.70A.172, WAC 365-195-900 to 925)

Faster growing counties must do more. In addition to the basic requirements above, faster growing counties, and the cities within them, must “fully plan”

under the GMA, meaning they must agree on countywide planning policies, identify urban growth areas, and develop detailed comprehensive plans.

Fully and partially planning map



Countywide planning policies (CPPs) shape regional policy

Developed by a county and all the cities within the county, countywide planning policies help to ensure that plans within a county are consistent with one another and that they work together to manage growth. CPPs may include:

- A mechanism for the county to designate urban growth areas. Some counties have chosen to assign future annexation areas to adjacent cities.
- A means to allocate population and housing targets to each city for incorporation into each city’s comprehensive plan. Some counties have chosen to also allocate employment targets.
- Policies that address siting of public facilities of a countywide or statewide nature such as wastewater treatment facilities, highways, prisons or airports.
- Policies to address the need for housing affordable to all income segments.
- Other regional issues such as economic development.

In the Puget Sound Region, Snohomish, King, Kitsap, and Pierce counties are required to develop multi-county planning policies to guide development in a coordinated way. These multi-county planning policies are published

in Vision 2050, providing region-wide policies for guiding private development, public policies, regulations, and investments.

Comprehensive plan elements

The GMA (RCW 36.70A.070) and WAC 365-196 provide specific direction on the elements that must be included in a comprehensive plan and the contents of those elements. In general, each element must include an inventory of existing conditions, future needs, and policies to guide implementation.

- **The Land Use Element** includes a land use map showing where and at what density future growth will be accommodated. It must include policies for protection of the quality and quantity of groundwater, storm water run-off, and guidance for corrective actions to mitigate pollution of waters of the state, including Puget Sound, and consider strategies for physical activity.
- **The Housing Element** must inventory existing housing supply, and describe how the community is planning for current and future needs of all income bands, including assumptions about the types of housing that could accommodate people in each income band. The element is also to look at the impacts of past racial discrimination and exclusion in housing, and include policies to address future displacement.
- **The Transportation Element** must inventory existing transportation networks and identify needed improvements, including those that will arise with future growth. This element must address transit, if applicable, and include a bicycle and pedestrian component.
- **The Capital Facilities Element** must include an inventory of capital infrastructure such as parks or water and wastewater systems to understand current needs and future demands with growth. This element requires detailed financing information for the plan's immediate six year time period along with cost estimates for providing capital e facilities over the remaining life of the plan (typically 20 years). If a local government cannot pay for identified facilities, then it must re-evaluate and adjust the plan until the needs and the ability to pay are in balance.
- **The Utilities Element** must consider the infrastructure needed to provide electricity, natural gas, and telecommunications, whether provided by the local jurisdiction or by other providers.
- A fully planning county must adopt a **Rural Element**, which defines rural land use patterns and policies to

protect rural character. Counties may have designated pre-1990 development in limited areas of more intense rural development (LAMIRDs), in which higher levels of development may occur.

Optional elements

A jurisdiction may include other optional elements in the plan to meet unique local needs or preferences, such as a historic preservation, social services,, or climate change element. RCW 36.70A.070 also includes an economic development element, and a parks and recreation element, but these are consider optional because funding was not provided to develop the elements when these elements were added to statute. Some counties with larger ports must also develop a port element (RCW 36.70A.085).

The comprehensive plan must be internally consistent.

Each plan element is based on the same future land use plan map and population projection. The plan must be consistent with the countywide planning policies and must also be coordinated with plans of adjacent cities and counties. Each jurisdiction's development regulations, planning activities and capital budget decisions must be consistent with and implement the plan.

State laws change

The Growth Management Act is often amended. Be sure to review the statute and latest guidance from Commerce on the planning requirements.

www.commerce.wa.gov/about-us/rulemaking/gma-laws-rules/

Implementing your plan

The GMA requires local government actions to not simply be “consistent” with the plan but to implement it. There are three main ways to implement a comprehensive plan: regulations, spending priorities and other tools.

Your jurisdiction has broad flexibility and choices in developing and implementing your comprehensive plan. It is up to you to determine the regulations, spending priorities and other tools that are the right fit, and apply them carefully to help your community grow towards the vision.

Zoning and other development regulations shape the community

Development regulations are adopted into municipal codes. They are the rules for what kinds of development are allowed, what it will look like, and how development applications will be processed. These regulations provide predictability regarding future development. Local codes typically include the following components:

- Zoning codes implement the land use map, and provide standards on building height and setbacks, and lot coverage.
- A subdivision code sets out the requirements and procedures for processing subdivision applications. Street and utility standards specify the construction details of streets and other public facilities.
- Critical areas regulations guide development away from places that are inappropriate for development. They protect people and property from hazards such as flooding and geological hazards, and protect environmentally sensitive areas such as coastal areas, wetlands or wildlife habitat from the impacts of development.
- Concurrency programs ensure that public facilities such as roads, water and sewer are provided to serve development.
- Other regulations may implement specific comprehensive plan goals such as design guidelines, landscaping requirements or tree protection.

Capital facility elements set priorities for infrastructure investments

Within the needs set out in a capital facilities element, a jurisdiction may choose to invest in a certain area to address a social issue, or encourage certain types of development. It also can choose to make specific types of infrastructure investments such as transportation or park facilities to implement the community vision. In making decisions about infrastructure investments, attention should be paid to equity and displacement impacts.

Other methods to implement goals

Cities and counties can choose to use a variety of other tools to achieve local goals.

- Inter-local agreements between counties and cities may authorize sharing of local authority to permit development or to share revenue in potential annexation areas.
- A detailed land use plan called a “planned action” for a specific sub-area such as a downtown or redevelopment area can offer greater predictability for both the developer and local jurisdiction, and encourage the types of development envisioned in the plan by doing upfront environmental analysis to reduce risks.
- A transfer of development rights (TDR) program can be used to obtain the potential to develop in sensitive environmental lands or important resource lands, and transfer that development potential into an urban area.
- Multi-family tax exemptions can encourage development of multifamily residential units and/or affordable units in targeted areas.
- Impact fees can help to pay for the added impacts of growth to the transportation, parks, or schools systems, or the fire department.

For Further Study

For specific topics, visit www.mrsc.org

Updating your comprehensive plan & regulations

The comprehensive plan is intended to be a long-range document that guides decisions over the long term. The plan can be updated only once a year so that changes are considered concurrently.

Plans need updating, to stay current
Every ten years, the Growth Management Act requires every local government to take a fresh look 20 years into the future, and make appropriate updates to the comprehensive plan and development regulations.

Why update your plan and regulations?
The periodic update will help you to do the following:

- Respond to shifts in demographics, changes in state law, or new countywide planning policies
- Evaluate progress toward accomplishment of short-term goals in the existing plan
- Review long-term financial projections and agree on priorities to renew or expand infrastructure
- Plan for potential or newly annexed areas

Big picture, longer term issues

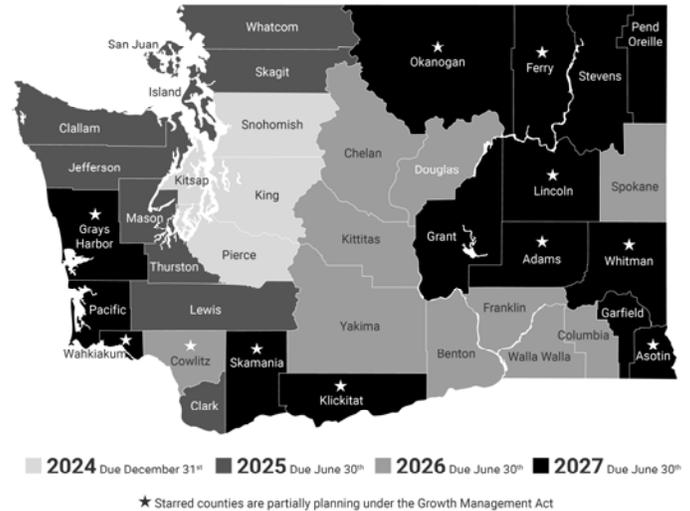
In addition to updating the required components of your comprehensive plan, your community may want to consider new or emerging issues.

- Changing demographics, like immigration and aging
- New forms of development and changing lifestyle preferences
- Impacts of climate change, such as sea-level rise, drought, or severe storms
- Rapidly changing technologies, such as on-line shopping and electric vehicles
- Local food production, physical activity, and sustainability concerns, such as local power production.

Update Schedule

The GMA includes a schedule which requires all counties and cities to update their comprehensive plan and regulations by rolling due dates of 2024 through 2028, and every ten years thereafter.

Periodic update map



Example steps to update your plan

- Let your community know the plan is being updated, and when and how they should participate.
- Review what exists now within your community, and look ahead to what will be needed in 20 years.
- Develop a list of items to be updated in the plan. Work through the comprehensive plan amendments and ensure there are lots of opportunities for the community to participate in the process.
- Provide notice to the state 60 days before you intend to adopt so the plan can be reviewed for consistency with the GMA, and with state and regional plans. Unlike other states, Washington State does not approve local plans; they are presumed valid upon adoption.
- Update regulations to address changes in state law or to implement comprehensive plan policies.
- Adopt your comprehensive plan and regulation update before the statutory deadline; clearly state in the adopting ordinance that the periodic update is complete.

For Further Study:

www.commerce.wa.gov/serving-communities/growth-management/periodic-update/-update/

Roles in planning process

Many groups and agencies contribute to the process of land use planning and the development of the community. This collective experience and knowledge will help your community make wise and time-tested decisions that represent the broad public interest.

Elected officials are the legislative body of a city or county. They review policy recommendations from planning commissions regarding plans and development regulations, but only they have the authority to adopt plans and regulations. Elected officials also make decisions about how to fund capital facilities, and where to focus staff effort.

Planning commissioners are appointed by the elected body to represent broad interests of the community. They serve as a sounding board for new ideas, promote community interest in planning, and provide leadership in public participation programs. Planning commissioners make recommendations to elected officials.

Staff or consultants manage the planning process. They:

- Research and present information in staff reports, prepare draft plans, policies, and ordinances.
- Handle required public notice of meetings, actions, and keep the record of the process.
- Process administrative permitting applications, and enforce adopted codes.

Most local governments hire **Hearings Examiners** to hear quasi-judicial development proposals and appeals of administrative land use decisions.

Other advisory groups such as a Parks Board, Diversity, Equity and Inclusion Commission, or Utility Commission, may be appointed to provide broad perspective on plans and regulations. Regional agencies and special districts such as school, sewer or water districts should participate in local planning to coordinate on land use and capital facility planning issues.

The Public includes a diverse collection of individuals, or groups such as the Chamber of Commerce, environmental groups, private utilities, or neighborhood groups.

Growth Management Hearings Board

Although the GMA permits direct review by the courts, the Legislature established the Growth Management Hearings Board and authorized that this Board will “hear and determine” allegations that a city, county, or state agency has not complied with the goals and requirements of the GMA, and related provisions of the Shoreline Management Act (SMA) RCW 90.58, and the State Environmental Policy Act (SEPA) (RCW 43.21C). In order to recognize regional differences, the Legislature created three Growth Management regions with Board members appointed from Central Puget Sound, Eastern and Western Washington. (RCW 36.70A.250-302) www.gmhb.wa.gov/default.aspx

The Board provides a less costly and expedited review of county and city comprehensive plans and development regulations. Appeals to the Hearings Board must be made within 60 days of the adoption of a plan or regulation. The Board’s decisions must be made 180 days after a petition is filed with the Board. If a city or county is found out of compliance with the Growth Management Act, they may not be eligible for certain state grants and loans.

Public participation

Public involvement is an essential foundation of planning. When the public is engaged in the planning process, community decisions better reflect the shared values of the community as a whole. A good process helps contentious issues be understood, discussed, and hopefully, resolved through the planning process.

Public involvement ideas

When there is no specific proposal, it may be difficult to get public input on general matters such as a legislative recommendation for change. Examples of outreach that may attract public participation include:

- Insert a flyer in utility bills or city newsletters
- Use traditional media such as placing legal or display ads, and developing relationships with the local radio or print media
- Hold public open houses, workshops, or meetings
- Visit Chamber of Commerce meetings, Kiwanis, Rotary, neighborhood groups of all income levels, or other community meetings or staff information booths at community events
- Use social media such as websites, Facebook, building e-mail lists obtained from your own lists, or from the Chamber of Commerce, home-owner associations, faith-based and civic organizations, or other groups, including members of the community that you might not otherwise hear from, that can help you understand how better to equitably allocate resources.

If a member of the public, remember:

- If you are new to or unfamiliar with planning processes, ask questions of staff or have staff attend your organization's meetings.
- Planning processes take time and you are an important part of the process.
- Stay informed and find out the opportunities and timing for public input. If possible, attend meetings that relate to the subject you are interested in.
- Be concise and respectful when testifying. Signing a petition does not replace participating in other ways.
- Fundamental choices about how the community wishes to develop and codes that development must meet are made at the time of planning, not permitting.

Effective planning commissions

Well-run meetings can improve public participation, and can help your community make wise decisions. Here are some tips and tools for effective meetings:

- Ensure a quorum will be present at meetings (a majority, more than half, of the voting members holding office).
- Adopt bylaws, establish procedures, and use ground rules to provide basic structure for your meetings. Make an annual work plan.
- Elect a chair, and help the chair run a productive, effective meeting. Robert's Rules of Order are helpful, but not essential.
- The chair should make everyone feel welcome, and should work from a timed agenda, beginning and ending the meeting on time.
- The chair should ensure everyone is heard, and no one dominates. Everyone should have an open mind, and treat all parties with due respect. At a hearing, members should address applicants, citizens, and staff by last name. First names suggest familiarity.
- Members should read the meeting packet ahead of time and come prepared to participate fully in the meeting.
- The group should use staff resources well, by asking staff to research issues, invite guests, manage the process, and ensure regular communication between council and planning commission.
- Each member of a deliberative body brings his or her own perspective, experience, and opinions to the table — but remember that you are a part of a team.

Types of land use decisions

Clarity in the rules of planning processes helps to support strong local decisions. Understand the types of local government actions and the various roles in the planning processes.

Depending on whether your planning commission is recommending land use policies or deciding on specific development proposals, different rules can apply.

Legislative decisions make the rules. These include amendments to the comprehensive plan, development regulations, or area-wide zoning. Recommendations on these changes are made by the planning commission, but are adopted by elected officials. Public process and citizen participation are required. Decisions may be appealed to the Growth Management Hearings Board within 60 days of publication of notice of the decision.

Administrative and quasi-judicial decisions apply the rules.

1. **Administration decisions:** Staff are authorized to permit or deny proposals based on how a proposal meets established zoning and development standards. Examples include building permits or short plats.
2. **Quasi-Judicial decisions:** A planning commission, hearing examiner or elected body acts in a judge-like capacity, weighing evidence and adopting findings and conclusions. In these cases, the **Appearance of Fairness Doctrine** applies, and all communications on the proposal must be disclosed. Examples of quasi-judicial actions are conditional use permits or major variances.

The **Local Project Review Act** (RCW 36.70B, adopted in 1995) revised the way permits are to be processed in Washington State. Strict time limits are imposed for processing permit applications. For any quasi-judicial action requiring a public hearing, only one public hearing is allowed. Appeal processes for administrative and quasi-judicial actions are established locally and generally have a strict time limit. Appeals may be taken to a different local decision body, such as a city council, a hearings examiner, or to Superior Court under the Land Use Petition Act (RCW 36.70C). Appeals to Superior Court must be filed within 21 days of the decision.

Typical steps in the legislative process

Amendments Proposed: Changes to policies, regulations, or land use may be proposed by officials or interested parties. The planning commission is generally required to review the proposed change and make a recommendation to elected officials.

Professional Review: Staff or consultants provide a staff report reviewing proposed changes against established criteria, and may make recommendations based on their analysis. The staff report should include:

- A concise explanation of the proposal.
- A review of applicable criteria and comprehensive plan goals and policies, regulations, state law, and constitutional limitations.
- An analysis of the facts relevant to the decision.

Public Review: The public is invited to provide comments on the proposed amendments. As a planning commissioner, you should prepare to hear public comment.

- Educate yourself in the details of the items at issue so you can understand public concerns.
- When necessary, set time limits for speakers, or organize testimony, so everyone has a chance to participate.

When listening to testimony, it is important for you to listen and be mindful of the relevant criteria or considerations that affect the issue in front of you.

At a public hearing:

- Listen and be patient. Understand which groups are providing comment and who is not represented.
- Watch your body language, and don't take things personally.

Recommendations

Your recommendations must be based on the criteria affecting the decision, and not just on how many people argue for a certain choice. Elected officials ultimately make the final decision and rely on your rationale for the recommendation.

Your recommendations should reflect adopted plans and regulations, community values, consider professional advice, and should be the result of thoughtful deliberation.

The record should include:

- A staff report, including references to decision criteria and local policies you used to make the decision.
- Minutes or a verbatim record of any hearing and any exhibits offered during the hearing.
- Findings supporting the reasons for approval or disapproval of the proposal.

Steps for quasi-judicial processes

Your planning commission may be involved in quasi-judicial processes. A quasi-judicial process is different than a legislative process because:

- The proposal is site specific.
- Commission members must not discuss the project outside of the hearing, and must disclose any prior information or ex-parte contact about the proposal under the Appearance of Fairness doctrine.
- State law requires review and decision within time lines identified within the local code.

Short form of procedures for quasi-judicial public hearings

1. Chair declares the public hearing is open.
2. Chair states that everyone present will be given an opportunity to be heard; however, state if testimony is be subject to time limits and also if the commission or council does have a policy of closing meetings at a certain time (e.g. 10:00 p.m.). State that the hearing is being recorded and that prior to speaking, individuals should state their names and addresses.
3. Appearance of Fairness.
 - a. Chair requests anyone who objects to the Chairman's participation, or any other commission or council member's participation, to please state so.
 - b. Chair asks the commission or council members if any have interest in the property or issue. Chair asks commission or council members if they can

hear and consider this matter in a fair and objective manner.

- c. Chair requests member of the commission or council to place on record the substance of any communication each has had outside of the hearing with opponents or proponents on the issue to be heard. After the communication is placed on the record, the Chair should request whether any interested parties wish to rebut the substance of the communication.
4. Chair requests staff to make their presentation.
 5. Applicants invited to comment.
 6. Chair invites comments from citizens in favor of the proposal.
 7. Chair invites comments from citizen against the proposal.
 8. Chair invites applicants to rebut the opposition.
 9. Additional comments from those against and those for the proposal should be recognized, if needed.
 10. Chair requests whether the commission or council members have questions of the applicant, citizen, or staff.
 11. Chair declares the public hearing closed.
 12. Commission or council deliberates on the record, discussing Findings of Fact and Conclusions.

Appearance of Fairness doctrine

When boards, commissions, or councils are required to hold hearings, they must not only be fair, they must also be free from even the appearance of unfairness.

This doctrine applies only to quasi-judicial actions of local decision-making bodies. These are actions that determine the legal rights, duties, or privileges of specific parties in a hearing such as development permit applications, site-specific rezones, subdivisions, variances, special use permits, or conditional use permits. **This doctrine does not apply to legislative actions** such as comprehensive plan amendments, development regulation amendments or area-wide rezones.

The basic standard is that if a person has an interest of any kind in an issue or takes evidence improperly outside of a hearing, the proceeding can be invalidated. These issues can arise in the following instances:

- You have a business, social or familial connection to a matter in front of the board.
- Someone approaches you outside of a hearing with information supporting or opposing a pending matter. This is called ex-parte communication and is not allowed outside of hearings. Tell the person you could be disqualified from participating in the hearing and that they should present their comments through the public hearing process.

Appearance of fairness concerns can be avoided by the following procedures:

- Poll the commission or board members at the start of each hearing to see if anyone has information related to appearance of fairness.
- Ask the audience if anyone wishes to voice an objection to the participation of any board or commission member due to appearance of fairness considerations.
- If there are objections, the board or commission member is provided the opportunity to disqualify or refuse to disqualify themselves from participating. A board or commission member disqualifying themselves from participation shall leave the hearing room while the application is being considered.

For Further Study

A Short Course on Local Planning Resource Guide, Ch. 2

The Appearance of Fairness Doctrine in Washington State www.mrsc.org/subjects/legal/aofpage.aspx

Knowing the Territory: Basic Legal Guidelines for Washington City, County and Special Purpose District Officials. MRSC, October 2013.

The Open Public Meetings Act (OPMA)

The process of land use decision-making should be transparent and open to the public. OPMA training is required for members of any governing body of a public agency, sub-agencies, such as planning commissions, library boards, or certain committees that act on behalf of the governing body.

A **meeting** is defined as any regular scheduled meeting or special meeting of a body such as a council or a planning commission in which a majority of the body is present and discusses the business of the body. OPMA applies to councils, commissions or boards when they hold hearings, take public comment, deliberate or discuss, review or evaluate, or make decisions. Boards and commissions subject to OPMA requirements cannot meet as a quorum to discuss board/commission business, when that gathering has not been noticed as a meeting open to the public.

The OPMA requires that:

- All meetings must be advertised as to the place, the time and the agenda. Extra, special or moved meetings require special notice.
- All meetings must be open to the public.
- All discussion about governmental business must take place within the context of the meeting. Group emails, or a series of small meetings adding up to a quorum may be considered meetings and are subject to the OPMA.

Exceptions exist for discussion of sensitive topics such as litigation, real estate or contracts, but decisions must be made in a public meeting. Failure to comply with the OPMA may result in **personal** fines, invalidated actions, delayed process, and loss of the public trust.

OPMA Tips

- One-way emails are okay for distribution of information; it is best if these are from staff.
- Do not “reply all” to emails. Discussion of the commission’s business may be considered a meeting, even if it is by email. For transparency, group discussion should generally be limited to a public meeting for which advance notice has been given.

For Further Study

www.mrsc.org/subjects/legal/opma.aspx

The Public Records Act (PRA)

Public records training is required for elected officials and local public records officials.

A public record is any state or local record relating to the conduct of government or the performance of a governmental function, and which is prepared, owned used or retained (POUR) by any city, county, or district. Public records may include letters, documents, maps, sound recordings, or emails. The public is entitled to access applicable public records. This also applies to any government business conducted on personal electronic devices.

PRA Tips

- It is best practice for planning commissioners or elected officials to use a separate e-mail address (not their personal email address) for agency-related email.
- A separate email address is ideally provided by the jurisdiction to assure that records can be properly retained.
- The rule of thumb is “If you don’t want to see it on the front page of the paper, don’t write it in an email”.

For Further Study

Public Records Act for Washington Cities, Counties and Special Purpose Districts

<https://mrsc.org/Home/Explore-Topics/Legal/Open-Government/Public-Records-Act.aspx>

Local government Records Retention Schedules

<https://www.sos.wa.gov/archives/>

Acknowledgements

This publication is a product of the Department of Commerce in association with the partners listed below. We thank all the sponsors, speakers, and advisors of the short course. Commerce partners with two statewide planning associations to support planning education in Washington.

The Planning Association of Washington (PAW) is a grassroots educational organization serving the needs of planning commissioners and many other land use planning stakeholders. PAW created the short course in 1977. www.planningpaw.org

The Washington Chapter of the American Planning Association (APA-Washington) is a local chapter of the National APA, which certifies professional planners. APA-Washington greatly supported the development of this publication. www.washington-apa.org/

Commerce also partners with city and county risk pools, who have a strong interest in ensuring their members have the training they require to avoid risk.

The Washington Cities Insurance Authority
www.wciapool.org/

The Association of Washington Cities Risk Management Service Agency.
<https://wacities.org/services/risk-management-service-agency>.

The Municipal Research and Services Center (MRSC) is a private, non-profit organization based in Seattle, WA. MRSC is a valuable source of information for local governments. www.mrsc.org

Disclaimer: This document is intended to provide a brief overview of the topics included in the Short Course on Local Planning and is not intended as legal advice. If questions related to this material arise in your community, consult your city or county's legal counsel.

Photo credits: Anne Fritzel and City of DuPont.

Congratulations

You have completed the **Basic Short Course on Local Planning**. To learn more on these topics, read the **Short Course on Local Planning Resource Manual** and the other resources listed in each section of this booklet. When available, attend a short course in person where you can get more depth on these topics, ask questions of presenters, and experience an exchange of ideas.

Learn more about planning

With this foundation in the Short Course content and the basic structure for land use planning, you might want to learn more detail about specific planning topics. Attend Special Short Courses on special topics, or planning conferences from our partner planning associations. Dive into the wealth of planning resources available on the Web. Thank you again for your engagement in local planning and investing your time in your community's future.



1011 Plum Street SE, Olympia WA, 98504-2525
www.commerce.wa.gov/serving-communities/growth-management/

Updated September 2022