

A Short Course on Local Planning

Training citizen planners since 1977



Washington State
Department of
Commerce

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Prins Cowin, Administrative Supervisor
City of Kirkland Planning & Building Department



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A SHORTCOURSE

ON LOCAL PLANNING

We acknowledge that the Southern Salish Sea region lies on the unceded and ancestral land of the Coast Salish peoples, the Duwamish, Muckleshoot, Puyallup, Skykomish, Snoqualmie, Snohomish, Suquamish and Tulalip tribes and other tribes of the Puget Sound Salish people, and that present-day City of Kirkland is in the traditional heartland of the Lake People and the River People. We honor with gratitude the land itself, the First People – who have reserved treaty rights and continue to live here since time immemorial – and their ancestral heritage.



A SHORTCOURSE

ON LOCAL PLANNING



We strengthen communities



HOUSING AND HOMELESSNESS



INFRASTRUCTURE AND BROADBAND



SMALL BUSINESS ASSISTANCE



ENERGY



PLANNING AND TECH ASSISTANCE



COMMUNITY SERVICES AND FACILITIES



CRIME VICTIMS AND PUBLIC SAFETY



ECONOMIC DEVELOPMENT

A SHORTCOURSE

ON LOCAL PLANNING

In partnership with



Planning Association
of Washington



American Planning Association
Washington Chapter



Short Course Resources

<https://www.commerce.wa.gov/serving-communities/growth-management/short-course/>

[Short Course Video Study Guide](#) 

[Get credit for taking the Short Course](#) 

Read the **Guidebook** [A Short Course on Local Planning: Resource Guide \(295 pages, 2017\)](#)

Watch the **Videos**

[Introduction to the Short Course](#). 5 minutes

[Comprehensive Planning Basics](#). 11 minutes

[Implementing Your Plan](#). 10 minutes

[Updating Your Plan](#). 10 minutes

[Washington's Legal Framework for Land Use Planning](#). 7 minutes

[Constitutional Issues and Other Protections](#). 8 minutes

[Roles and Responsibilities in Planning](#). 7 minutes

[Public Participation and Effective Meetings](#). 7 minutes

[Open Public Meetings Act](#). 27 minutes [OPMA Certificate](#)

[Appearance of Fairness Doctrine](#). 17 minutes

More Washington Places to Learn About Planning

Municipal Research and Services Center www.mrsc.org



Planning Association of Washington www.planningassociationofwa.org/

Washington Chapter of the American Planning Association

www.washington-apa.org/

Regional Planner's Forums

www.commerce.wa.gov/serving-communities/growth-management/regional-planners-forums/

Any Questions Before We Start?

*For more information about services provided by
the Department of Commerce, contact:*

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ON LOCAL PLANNING

The Legal Basis of Planning in Washington State

Presented by:

Stephanie Croll, City of Kirkland Senior Assistant City Attorney



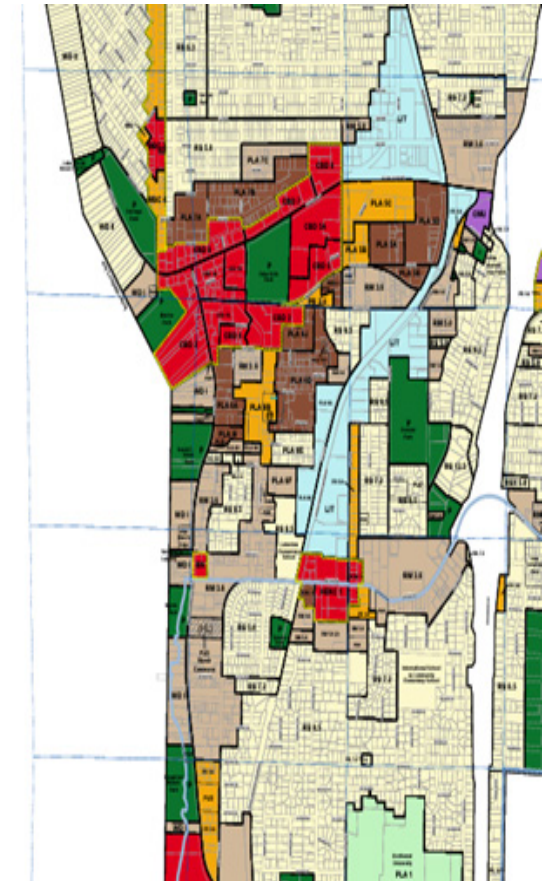
Washington State
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Land use regulation

- Profound impact on life in the United States
- High stakes on all sides
- Often no easy answers
- Long-lasting consequences; shaping communities
- Land use decision making process / framework is critical
- Litigation frequently results

CITY OF KIRKLAND ZONING MAP

	Commercial Mixed Use	BCK, BC1, BC2	Community Business
	Industrial Mixed Use	BN, BNA	Neighborhood Business
	Transit Oriented Development	CBD	Central Business District
	Office Mixed Use	FVNC	Finn Hill Neighborhood Center
	High Density Residential	HENC	Houghton Everest Neighborhood Center
	Medium Density Residential	JBD	Juanita Business District
	Low Density Residential	LIT	Light Industrial Technology
	Institutions	MSC	Market Street Corridor
	Park/Open Space	NRH	North Rose Hill Business District
	Totem Lake Urban Center	P	Park/Public Use
	Holmes Point Overlay	PLA	Planned Area
	Planned Unit Development	PO	Professional Office
	(HL) Historic Landmark	PR, PRA	Professional Office Residential
	(EQ) Equestrian	RH	Rose Hill Business District
	(AE) Adult Entertainment	RM, RMA	Multi-Family Residential
	Subject to Resolution/Ordinance No.	RS, RSX, RSA	Single-Family Residential
	Houghton Community Municipal Corp. Area	TL	Totem Lake
	Design Districts	WD	Waterfront District
		YBD	Yarrow Bay Business District



What we will cover

- Sources of Planning & Land Use Law
- Basics of Land Use Law Research
- Legal Basis for Planning in WA (Case Law & Constitution)
- Statutory Basis for Planning in WA
- Planning Commissions / Agencies / Hearing Examiner Authorization
- Due Process (Procedural & Substantive)
- Takings
- Reasonable Use Exceptions
- Vesting / Moratoria
- State Subdivision Act (Chapter 58.17 RCW)
- State Environmental Policy Act – “SEPA” (Chapter 43.21C RCW)
- Shorelines Management Act – “SMA” (Chapter 90.58 RCW)
- Growth Management Act – “GMA” (Chapter 36.70A RCW)
- Local Project Review Act (Chapter 36.70B RCW)
- Land Use Petition Act – “LUPA” (Chapter 36.70C)
- Constitutional Issues in Land Use Planning

Sources of planning and land use law

- **Constitutions (Federal & State)**
- **Statutes**
 - **Federal**
 - **State (Revised Code of WA “RCW”)**
 - **Federal Examples**
 - **Endangered Species Act (ESA)**
 - **Clean Water Act (CWA)**
 - **State Examples**
 - **Growth Management Act (GMA)**
 - **State Env Policy Act (SEPA)**
 - **Shoreline Management Act (SMA)**
 - **Open Public Meetings Act (OPMA)**
- **City Ordinances & Resolutions**
- **Comprehensive Plan & Updates**
 - **For jurisdictions planning under the GMA**
- **Administrative Regulations**
 - **Federal = Code of Federal Regulations (CFR)**
 - **State = Washington Administrative Code (WAC)**
- **Court Decisions**
 - **Federal**
 - **State**
- **Board, Agency and Commission Decisions**

Washington State Authority for Zoning

Washington Constitution, Art. 11 § 11

- Legal authority for zoning and land use regulation is found under Washington Constitution, Art. 11 § 11
 - Any city or town can establish police power zoning as long as not in conflict with general law:
 - “... any county, city, town or township may make and enforce within its limits all such police powers, sanitary and other regulations as are not in conflict with general laws...”

Chapter 36.70A Growth Management Act “GMA”

- Planning Commission / Agency / Hearing Examiner Authorization:
 - RCW 35A.63 (code cities);
 - RCW 35.63 (cities and towns)
- Chapter 36.70 Planning Enabling Act
- Chapter 36.70B Local Project Review Act
- Chapter 36.70C Land Use Petition Act “LUPA”
- Chapter 43.21C State Environmental Policy Act “SEPA”
- Chapter 58.17 - State Subdivision Act
- Chapter 90.58 Shorelines Management Act “SMA”

City and town classification

NOTE: When referencing statutes and other sources of authority, it is important to know whether your subject jurisdiction is a county, town, or city, and if a city, which type of city.

CITIES & TOWN GOVERNMENTS IN WASHINGTON:

Classified according to their population at the time of organization (usually incorporation) or reorganization

- **FIRST CLASS CITY:** 10,000 or more at time of organization
- **SECOND CLASS CITY:** population of 1,500 or more at time of organization
- **TOWN:** less than 1,500 at time of organization (no longer possible to form)
- **CODE CITIES:** Most Washington cities are classified as “code cities” under the Optional Municipal Code, Title 35A RCW. This Code was created in 1967, designed to provide broad statutory home rule authority in matters of local concern

Federal planning laws that influence planning

- Clean Water Act
- Endangered Species Act
- Tribes recognized as distinct, independent political communities



State Subdivision Act: Chapter 58.17 RCW

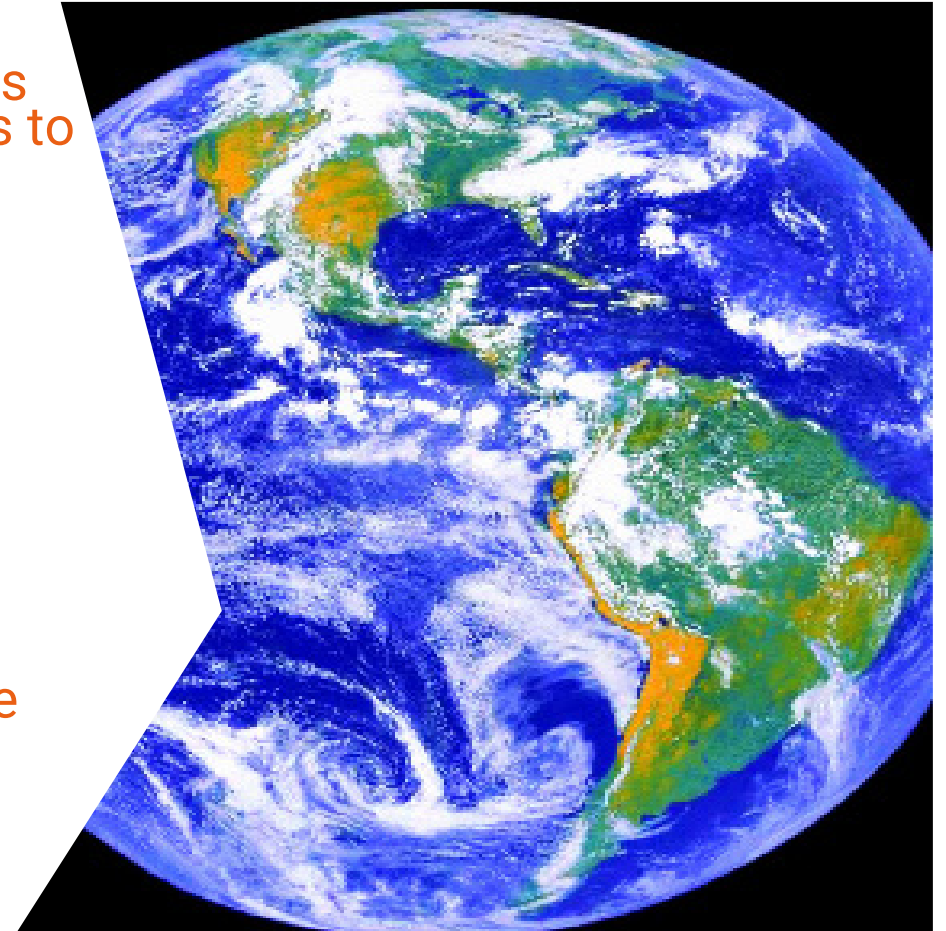
- Adopted 1969
- Established process for subdividing land for development
- Detailed process for investigating, reviewing and approving subdivisions for single family housing development
- Subdivision (generally 5 or more lots)
- Short subdivision (generally 4 or fewer lots)
- Binding Site Plans (concept to explore in the statute)
- Planned Unit Developments “PUDs” (typically multi-family / commercial)



State Environmental Policy Act (SEPA)

Chapter 43.21 RCW

- Adopted 1971 (and as subsequently amended)
- Essentially provides a mechanism for decision makers such as planners, hearing examiners and city councils to have full information about projects in order to make well-founded decisions
- Extensive procedural statute – requires a number of steps and analysis – applies to both the built and the natural environment
- STEP 1: initial application (standardized “SEPA Checklist”)
- STEP 2: threshold determination (non-significance (DNS); mitigated DNS; Significance (would trigger Environmental Impact Statement “EIS” ... EIS process generally takes a year or more to generate the science and fact-based background related to the proposal
- SEPA review occurs concurrently with general project review, to ensure that all relevant information is available to the decision makers.



Shorelines Management Act (SMA)

Chapter 90.58 RCW

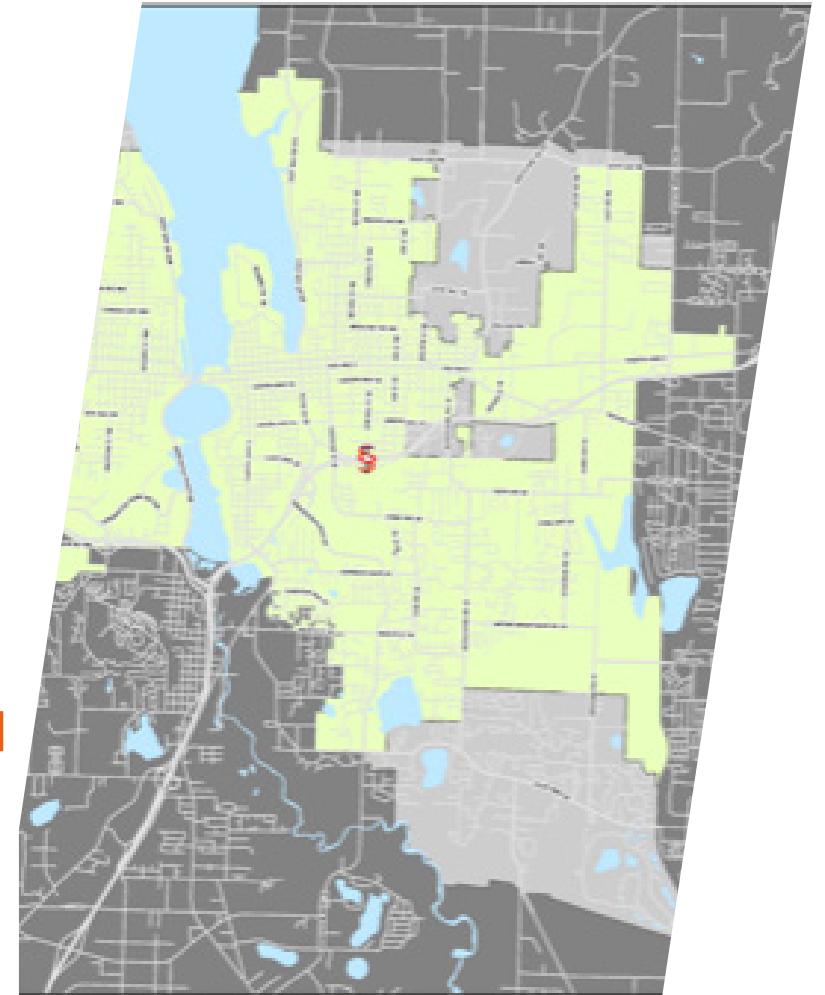
- Adopted 1971 by citizen initiative (and as subsequently amended)
- Predicated upon a federal statute
- Purpose is to protect Washington shorelines in the context of development
- Goal: Shorelines to remain an attribute and amenity available to all citizens at all times
- Regulations updated to require “no net loss” of shorelines
- SMA also has detailed procedural process that may flow either concurrently or non-concurrently with the underlying application
- Local jurisdictions adopt local Shoreline Master Programs (SMPs) which inventory local shorelines, and identify and prioritize shoreline uses
- SMPs must be compliant with state regulations / reviewed by Department of Ecology
- Water dependent uses (such as marinas) are given priority



Growth Management Act (GMA)

Chapter 36.70A. RCW

- Adopted 1990
- Establishes structure for comprehensive planning, concurrency / capital facilities, urban growth area (“UGA”) concept, critical area ordinances
- Cities and counties subject to the Act must plan on a 20-year horizon based on population growth projections
- Urban growth areas are drawn cooperatively between cities and counties based on population growth projections and needs analysis
- Required to be implemented at the local level
- Improvements that are necessary for development need to be in-place at the time the development is constructed; or funding sources need to be in-place to construct such improvements within a six-year horizon



Local Project Review Act Chapter 36.70B RCW

- Adopted 1995
- Legislative response to concerns regarding burdens and delays resulting from ever increasing number of environmental laws and development requirements
- See statute for significant timelines and required actions



Land Use Petition Action (LUPA) Chapter 36.70C.RCW

- Adopted 1995
- Requires and implements a streamlined process for appeals of land use decisions
- Purpose: reform process for judicial review of land use decisions
- Establishes uniform, expedited appeal procedures and uniform review criteria
- Act applies to judicial review of “land use decisions”
 - Such as: applications; interpretative or declaratory decisions; local jurisdiction’s enforcement of land use ordinances (with certain exceptions)

City of Kirkland

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5 **SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING**
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POTALA VILLAGE KIRKLAND, LLC, a Washington limited liability company, and LOBSANG DARGEY and TAMARA AGASSI DARGEY, a married couple, <p style="text-align: center;">Plaintiffs/Petitioners,</p> <p style="text-align: center;">vs.</p> THE CITY OF KIRKLAND, a Washington municipal corporation,	NO.	LAND USE PETITION AND COMPLAINT FOR DECLARATORY JUDGMENT, WRIT OF MANDAMUS, CONSTITUTIONAL WRIT, AND INJUNCTION
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Procedural due process

Procedural process essentially means that people have a right to have issues fairly heard and decided

- Key elements of due process are:**
- **Notice of what is happening**
 - **Opportunity to be heard**

Substantive due process

The question of substantive due process focuses on the outcome of the rules.

There are 4 basic questions to ask:

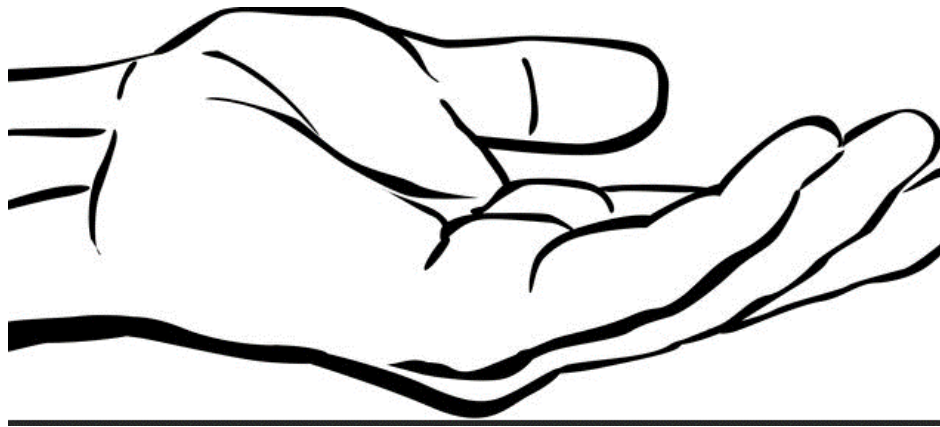
- Does the regulation have a legitimate purpose?
- Does the regulation appropriately accomplish the legitimate purpose – is there a rational basis between the legitimate purpose and the regulation?
- Is the regulation reasonable?
- Is the regulation clear and able to be understood?

REMEDY FOR DUE PROCESS VIOLATION:

INVALIDATION OF SUBJECT ORDINANCE OR REGULATION

Takings

- 1) Physical Appropriation of Property
- 2) Regulatory Taking



- Just compensation must be paid before property is taken
- Compensation must be paid even where property is not actually taken, but is damaged
- Regulatory takings can result when the use of property is substantially impaired by applicable regulations

Exactions and Dedications

Exactions and **dedications** are essentially conditions placed on the development of property by the decision-maker approving the development

EXAMPLES: requirement to pay money outright; contribute or dedicate for things like open space and parks; traffic improvement requirements...

Nollan / Dolan standard

Allows governmental entities to condition approval of permits on the dedication of property to the public, so long as there is a “nexus” and “rough proportionality between the property that the government demands and the social costs of the applicant’s proposal

Reasonable use exceptions

If the regulations applied to property are so severe that they prohibit any use of the property...

a jurisdiction may allow a reasonable use of the property in order to avoid takings claim.



Vesting

Relates to the question of what specific set of regulations apply to a development application that may progress over time

- Common law roots (case law)

STATUTORY CODIFICATION

- State Building Code Act
- Development Agreement
- Plats and Subdivisions



Moratoria

This term refers to a hold placed on development to allow a specific time period (usually six months) for relevant issues to be appropriately analyzed

EX: RCW 35A.63.220



Conclusion

Complex and ever-changing

- Concepts are often grey and difficult to understand, as opposed to clear black and white
- Accept that land use practice is often grey, sometimes without answers that are clearly “right” or “wrong”
- Seek to fully analyze issues from all angles, develop a strong factual record, and show how facts fit within the legal framework to support a decision
- Familiarize yourself with the relevant framework and standards and procedures that apply to the particular subject matter and process



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**Comprehensive
Planning under the
Growth Management Act**



Washington State
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Why Plan?

GMA Framework

Implementing the Plan

Updating the Plan



Why is Planning Important?

- Protect the good things about your community
- Agree on a shared vision for the future of your community
- Identify community needs
- Identify strategies to implement the vision and meet needs
- Agree on local spending priorities
- Build your sense of community



Planning helps to manage public expectations

- *“I need to know what I can do and when I can get my permit.”*

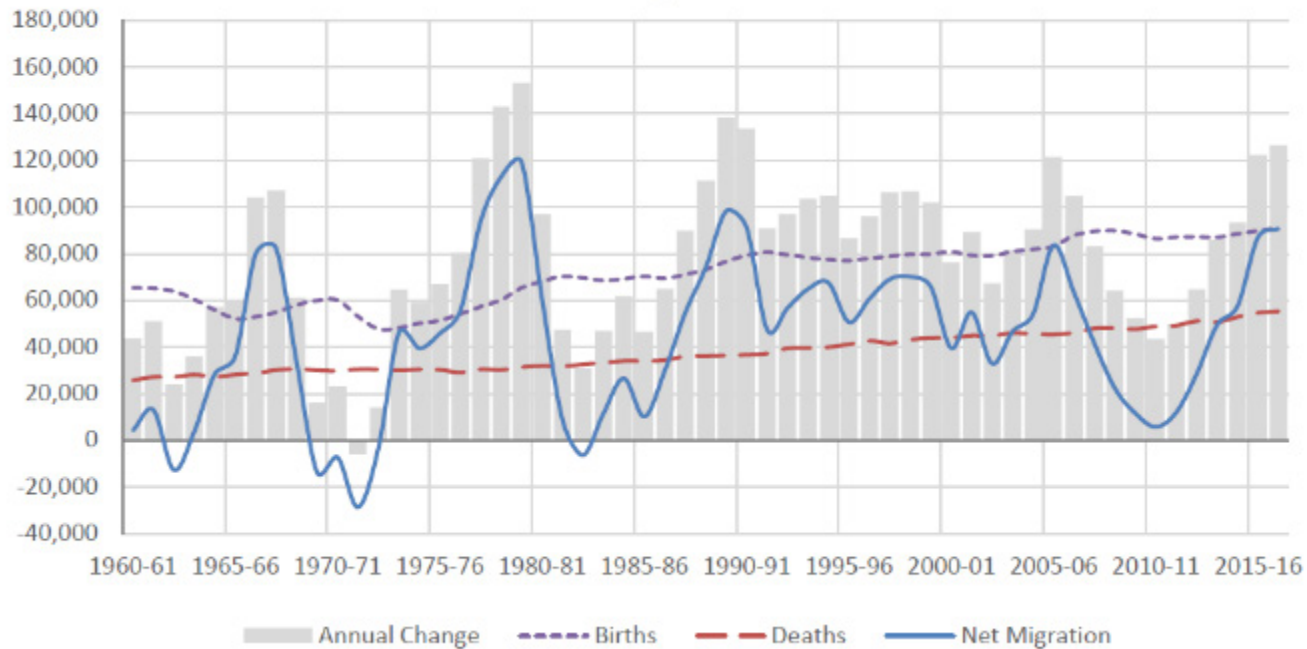


- *“This affects my neighborhood and my home. I should have a say in what happens.”*

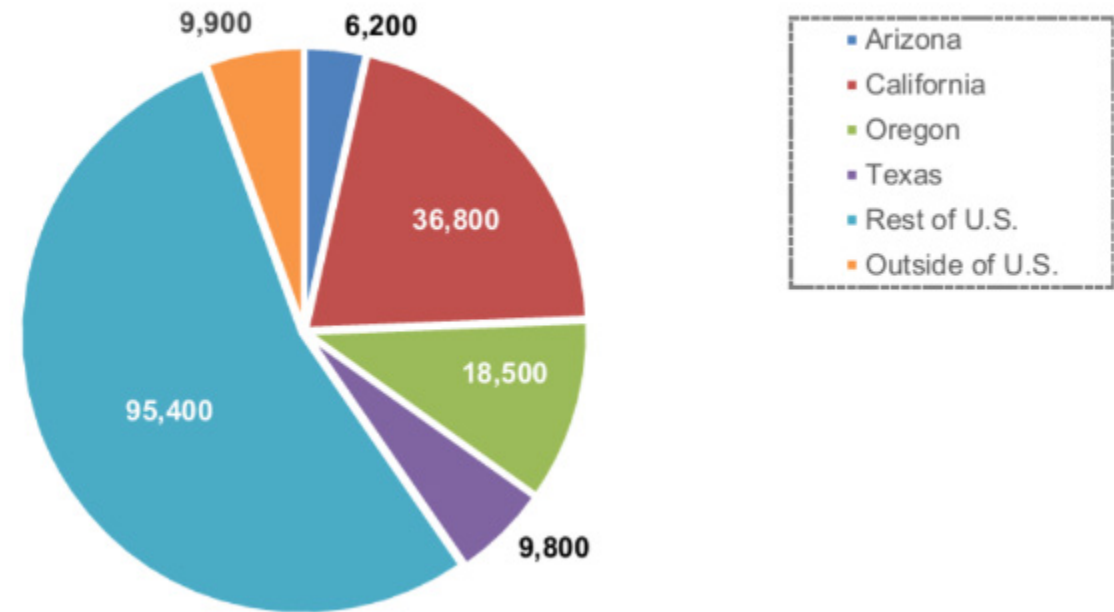


Accommodating future population growth

Washington State Population Change 1960-2017



Driver's Licenses Surrendered to Washington



Population change involves many factors that must be considered to accommodate future population growth (births, deaths, migration, etc.). (OFM)

Why a Growth Management Act?

The GMA was adopted in 1990 as a statewide planning framework to:

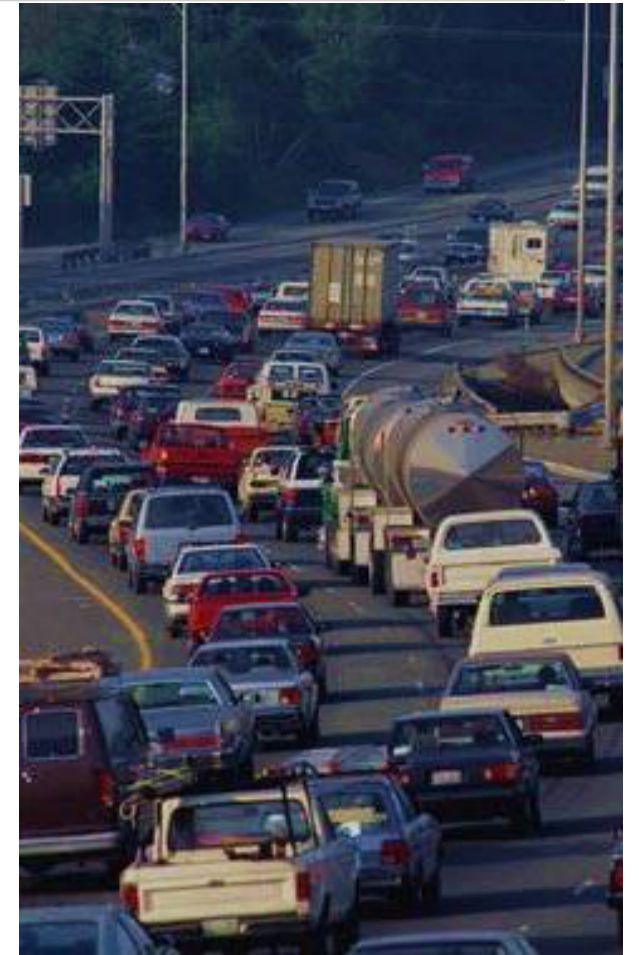
Address uncoordinated development and urban sprawl

Manage threats to the quality of life in Washington

Require local planning, guided by state law, and regionally enforced

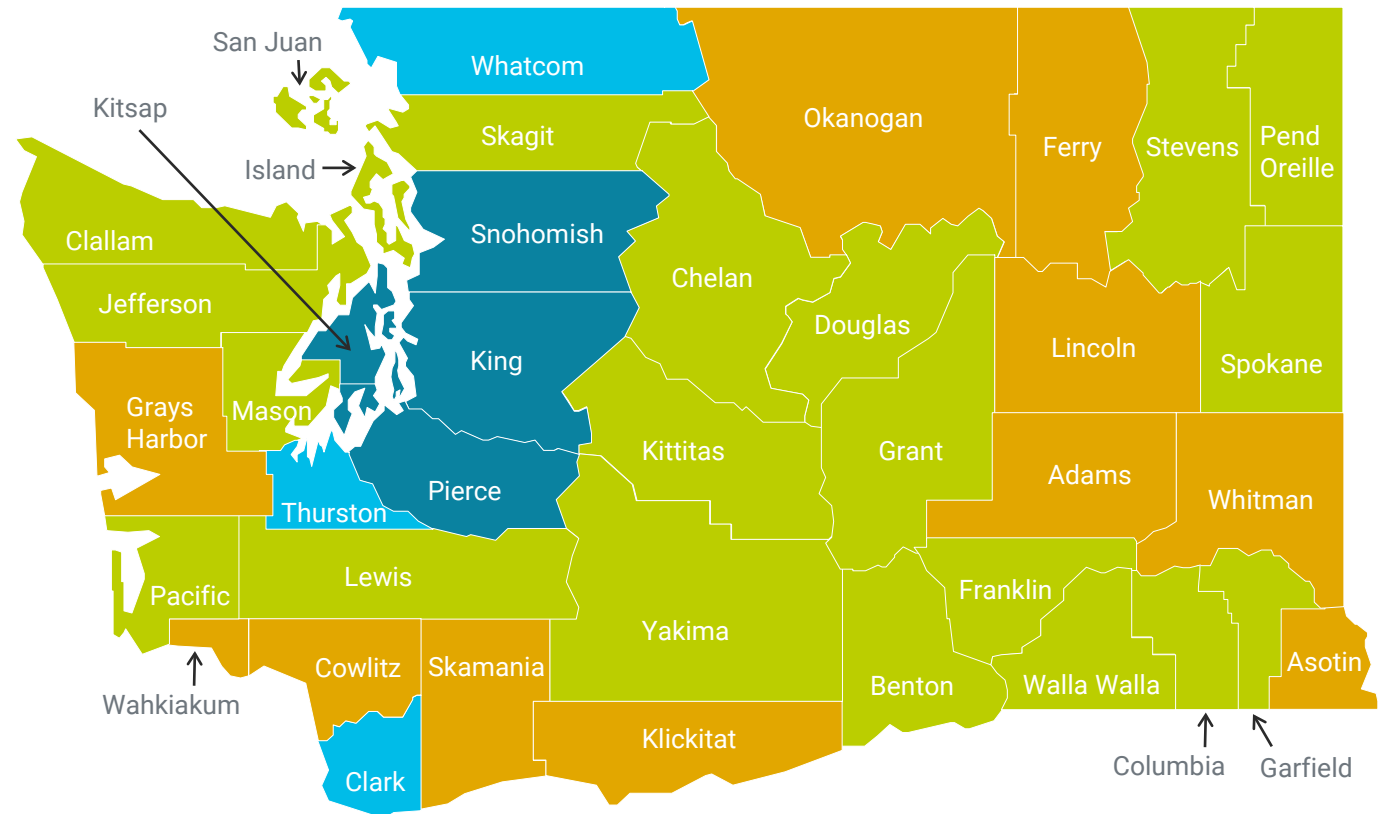
State law: **RCW 36.70A**

Advisory recommendations: **WAC 365-196**



Regional variation

	Metro Puget Sound	Other Buildable Lands	Rest of GMA	Partially Planning
Vision 2050				
Buildable Lands				
UGA				
Concurrency				
Countywide Planning Policies				
Local Project Review				
REET 2				
Impact Fees Authorized				
Essential Public Facilities				
GMHB Hears Appeals				
Rural Element				
Conservation of Resource Lands				
Periodic Review				
Designation of Resource Lands				
Best Available Science				
Critical Areas				
SMA				
SEPA				
Planning Enabling Act				



14 GMA Planning Goals

- Encourage **compact urban growth**
- **Reduce sprawl**
- Encourage coordinated, **multimodal transportation**
- **Plan for and accommodate** (2021) **housing** affordable to all economic segments
- Encourage **economic development**
- **Protect property rights**
- **Predictable permitting**
- **Maintain natural resource industries**
- **Retain open space, enhance recreation**
- **Protect the environment**
- Encourage **citizen participation**
- **Ensure availability of public facilities and services**
- Encourage **historic preservation**
- **Manage shoreline development**

The land speaks first

Natural resource lands, critical areas. . .



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

- Agricultural lands
- Forest lands
- Mineral resource lands

RCW 36.70A.170

All jurisdictions must **designate and protect environmentally critical areas**. “Best available science” must inform regulations that protect the functions and values of:

- Frequently flooded areas
- Geologically hazardous areas
- Critical aquifer recharge areas
- Fish and wildlife habitat conservation areas
- Wetlands

RCW 36.70A.172

WAC 365-195-900 through 925 provides guidance related to best available science.

Countywide Planning Policies

Regional framework to:

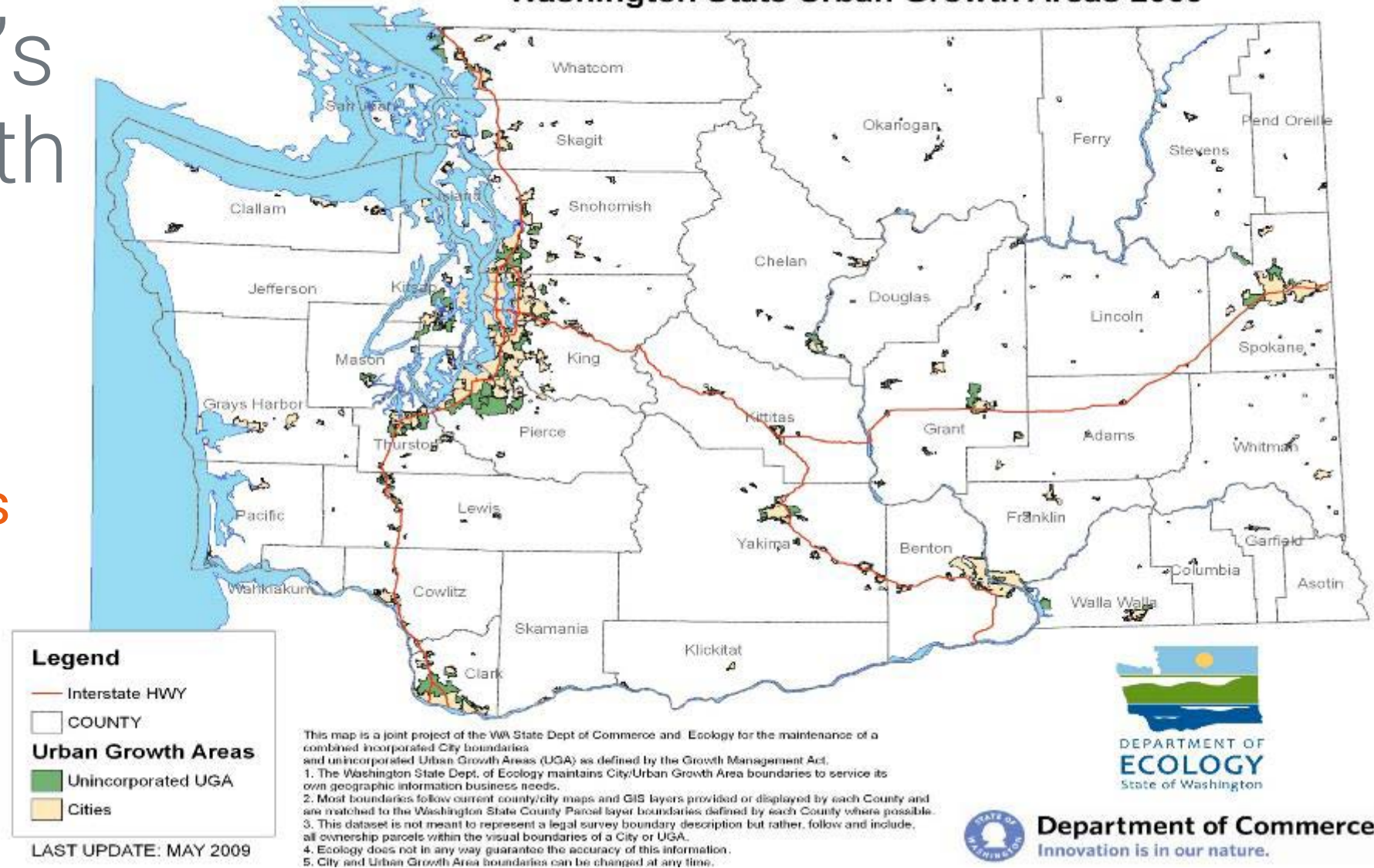
- Plan for future growth and address countywide population projections from the State Office of Financial Management.
- Designate and plan for urban growth areas and expansions to designated urban areas
- Plan for countywide facilities such as highways or airports
- Consider affordable housing needs
- Plan for countywide economic development
- Puget Sound region has multicounty planning policies assembled in Vision 2050



Washington's Urban Growth Areas

Fully planning counties must work with the cities to designate existing and future urban growth areas.

Washington State Urban Growth Areas 2009



Allocating Population

Urban areas to contain most of new growth

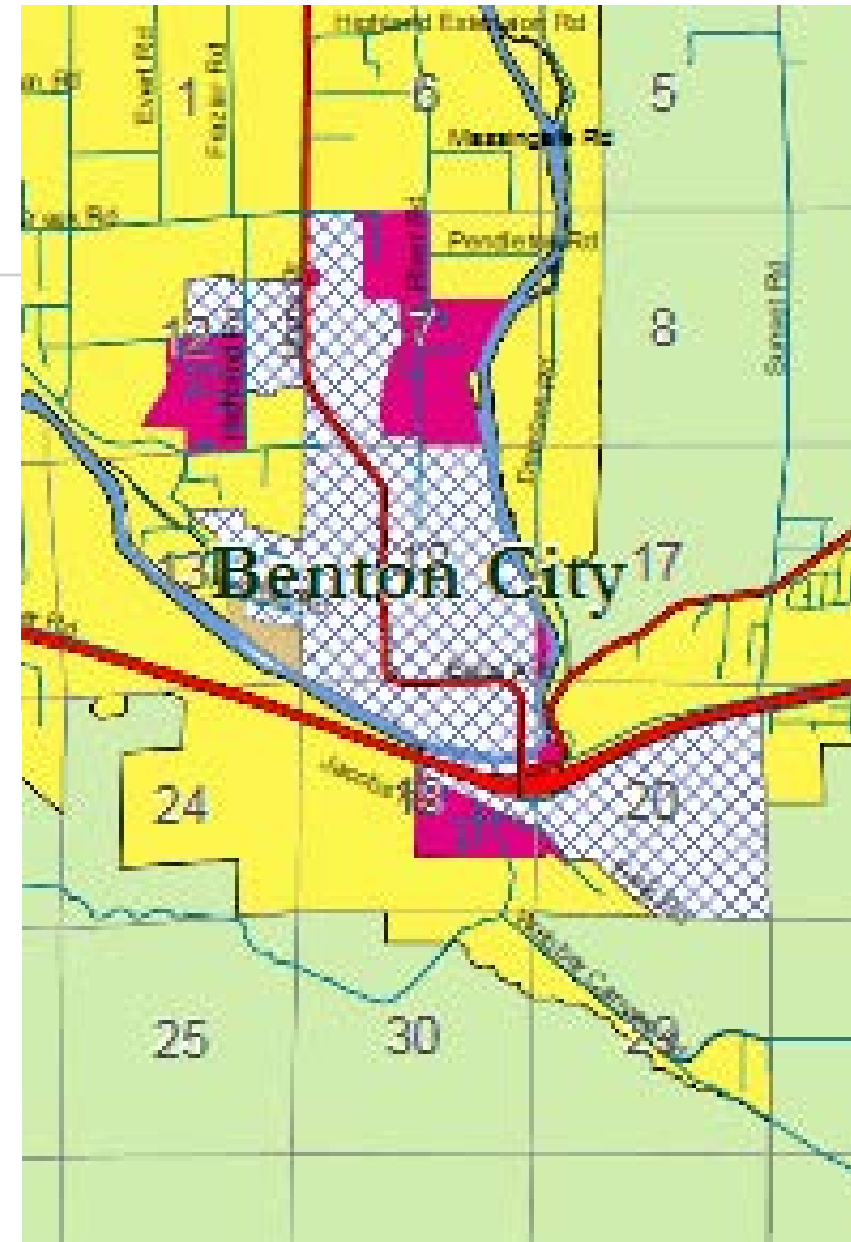
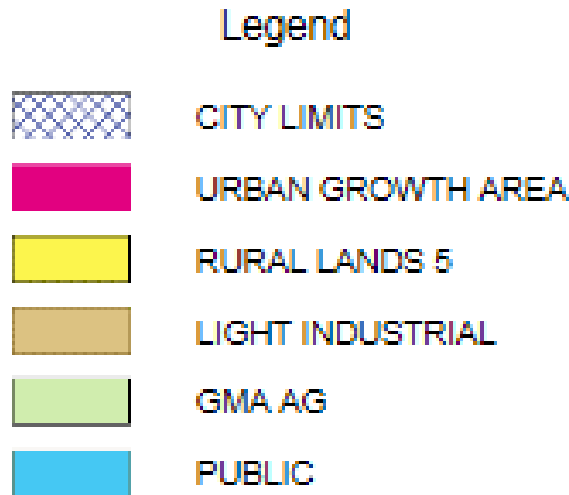
- UGA size based on 20-year countywide population projections from OFM **and countywide housing needs projections from Commerce**
- Greater housing / job densities
- Efficient use of facilities/public dollars

Rural areas to maintain rural character

- Low-density development
- Rural service levels
- Agriculture/Forestry
- LAMIRDs

“Buildable lands” counties

- must consider “reasonable measures” before expanding the UGA.



Buildable Lands, the Review and Evaluation Component of the Growth Management Act

7 counties



- *Looks back:* to what extent does achieved development, especially density, match planned development in the last period?
- *Looks forward:* is there sufficient capacity for residential and employment growth for the next 20 years?
- What *reasonable measures* could be used to better align actual development with planned development? **And match future zoning with housing needs**

Required elements of a GMA comp plan

Land Use: Land uses, stormwater planning, ground water, physical activity.

Housing: Identifies the character of residential areas, Inventories existing and projected housing needs and types, Identifies sufficient land for all types of housing, [addresses racially disparate impacts, displacement.](#)

Transportation: Inventory, assessment of current and future needs, bicycle and pedestrian component.

Capital Facilities: Inventory, assessment of current and future needs, coordination of planning affordability analysis of serving the land use plan.

Utilities: Inventory, assessment of current and future needs, coordination between providers and land development.

Rural (counties only): Define and protect rural character.

RCW 36.70A.070 and WAC 365-196



HB 1220:

Changes RCW 36.70A.070 (2) The Housing Element

Changes GMA housing goal:

- “**Plan for and accommodate** ~~encourage the availability of affordable~~ housing **affordable** to all economic segments.”

Requires Commerce to provide projected housing need to local governments:

- For moderate, low, very low, and extremely low-income households
- For permanent supportive housing, emergency housing and emergency shelters

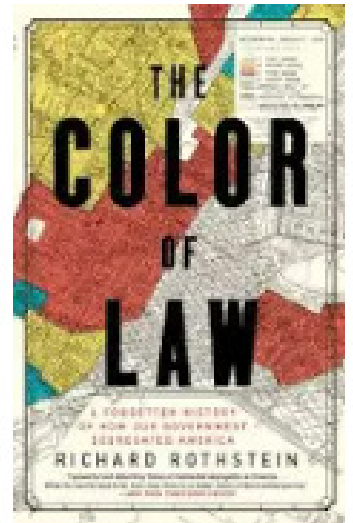
Local housing element to:

- Identify sufficient capacity of land for identified housing needs
- Within UGAs, moderate density housing options including, but not limited to duplex, triplex, townhomes
- Document barriers to housing availability such as gaps in local funding, development regulations, etc.
- Consider housing locations in relation to employment locations
- Consider role of ADUs

HB 1220

Disparate impacts, displacement and exclusion in housing

- **Identify local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing:**
 - Zoning that may have a discriminatory effect
 - Areas of disinvestment and infrastructure availability
- **Begin to undo racially disparate impacts, displacement and exclusion in housing**
- **Identify areas at higher risk of displacement and establish anti-displacement policies including:**
 - Preservation of historic and cultural communities
 - Investments in housing for lower income segments
 - Equitable development initiatives and land disposition policies
 - Inclusionary zoning and community planning requirements
 - Tenant protections



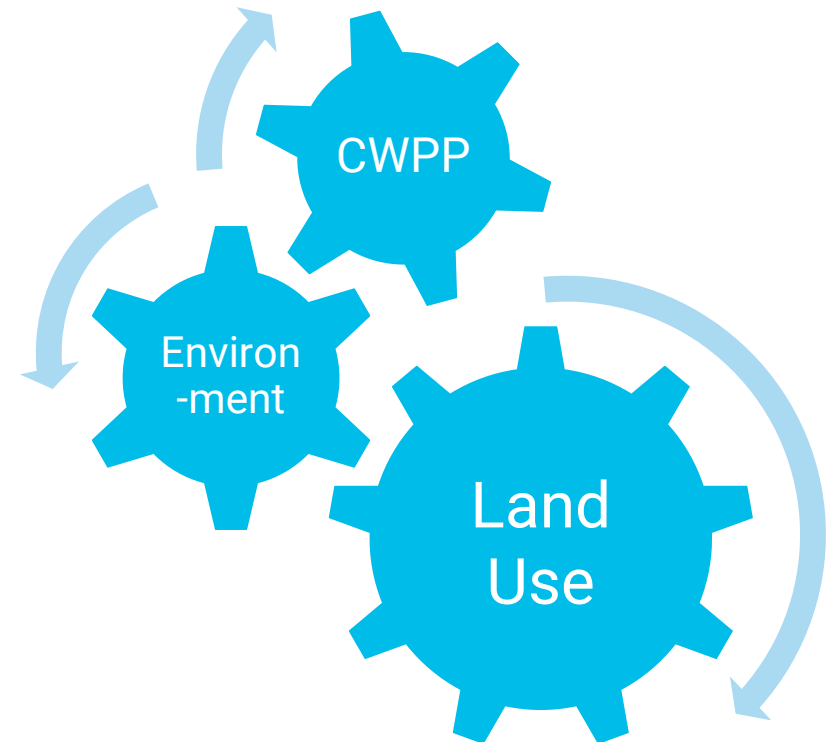
The plan must be coordinated and consistent

External consistency

- Countywide planning policies
- Adjacent jurisdictions

Internal consistency

- Is the plan based on the same set of assumptions? Do the plan elements all tell the same story?
- Can adequate public facilities be provided with planned development? (concurrency)



Adopting the comprehensive plan

Plan Adoption Process

- Public outreach early and often
- Review by planning commission
- Complete SEPA environmental review
- 60-days notice to state before adopting
- City or county council must adopt the comprehensive plan
- Transportation element to be certified by regional transportation organization

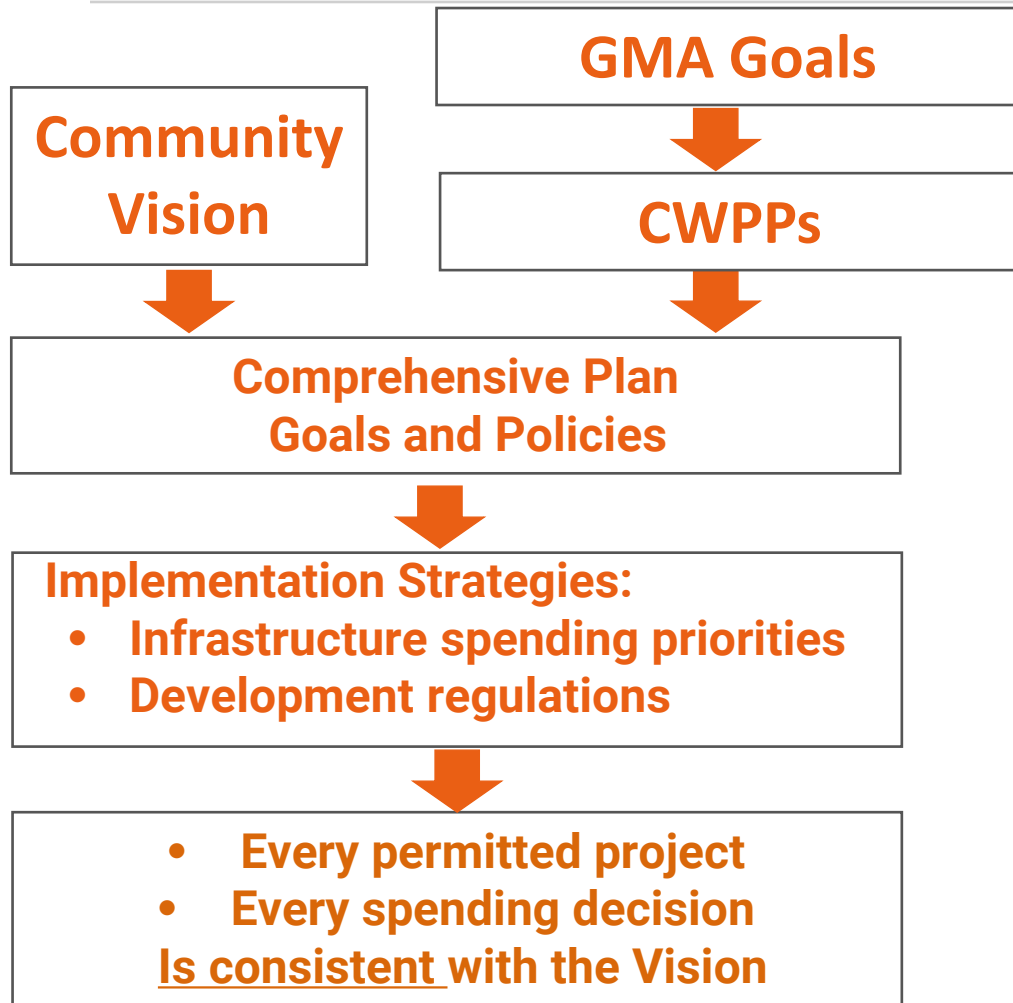
Plan Updates and Appeals

- Can be amended only once per year
- Must be updated every [10](#) years
- Appealable within 60 days to a regional Growth Management Hearings Board

www.gmhb.wa.gov



Implementing your Comprehensive Plan



- **Capital Improvement Plans (CIP)** priorities for local infrastructure investments must be consistent with the comprehensive plan.
- **Development regulations** must be consistent with and implement the comprehensive plan.

Development regulations implement the plan and set standards for development

Traditional zoning considers *maximum* densities and *minimum* lot sizes for efficient land use. Form based codes focus on design details.

Critical area regulations set buffers and restrictions in critical areas.

Subdivision regulations set out the process for dividing land and ensure “adequate provisions” for utilities, parks, schools, and other requirements of development.

Public works standards set out street widths and other standards related to public facilities.

Other regulations such as design standards, signs, landscaping, and parking regulate appearance, health, and safety within the community.



Capital facilities: truth in planning?

COMPREHENSIVE PLAN

Requirement to **adopt a level of service (LOS)** and maintain LOS as development occurs. * Required for transportation facilities.

Reassessment: If revenues can't pay for needed facilities over the life of the plan, the land use element must be reassessed.

DEVELOPMENT REVIEW

Concurrency programs ensure that transportation and other facilities keep pace with growth. If a new development would decrease level of service:

- The development must be denied,
- The developer must provide the improvement
- Or the levels of service may be reassessed.



Review and revision, if necessary, of comprehensive plan and development regulations every 10 years

RCW 36.70A.130

Grant and Loan Programs Requiring Update Completion (and no active appeals):

- Public Works Trust Fund
- Drinking Water State Revolving Fund
- Centennial Clean Water Fund
- Recreation and Conservation Office
- Pre-Disaster Mitigation Grants



2024 Due December 31st 2025 Due June 30th 2026 Due June 30th 2027 Due June 30th

★ Starred counties are partially planning under the Growth Management Act

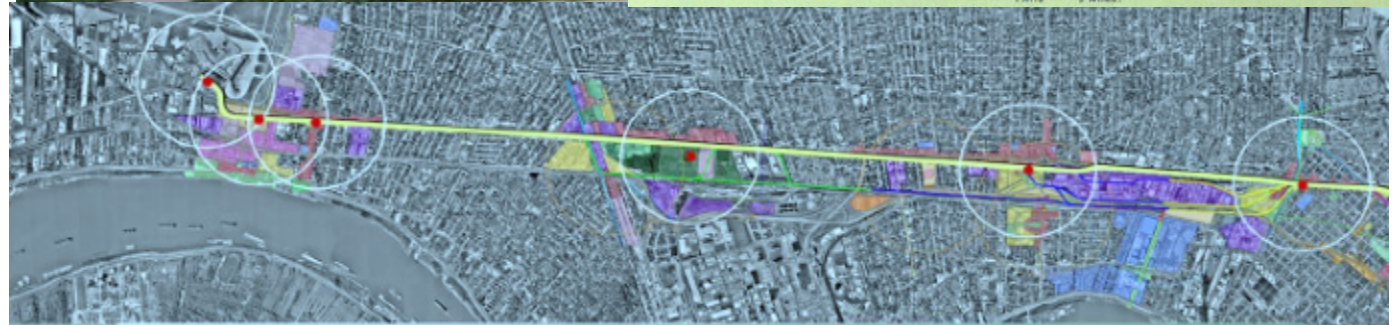
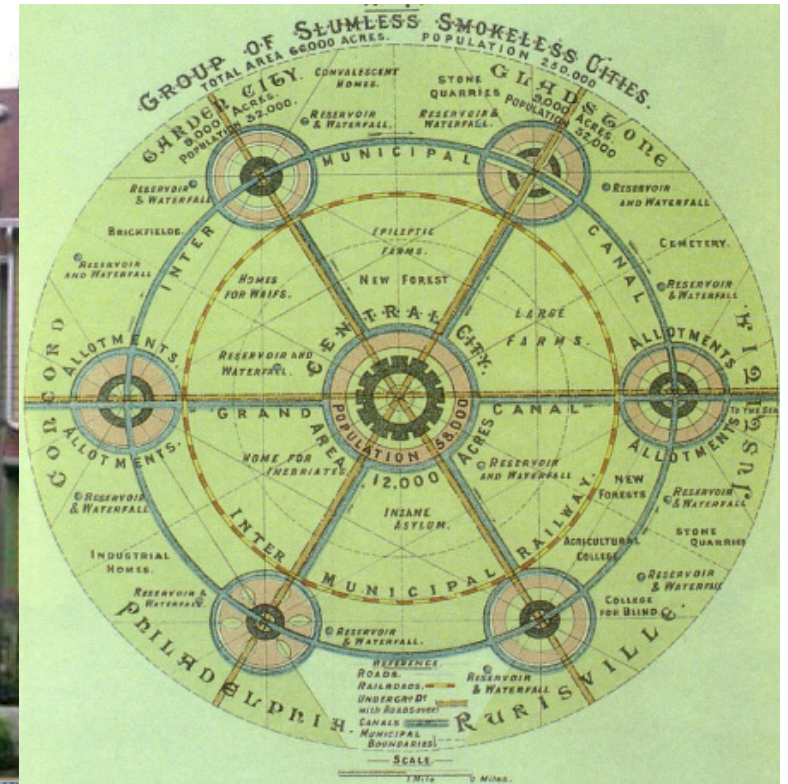
Final thoughts: Suggestions for land use....

Urban areas absorb most development

- Human-centered design is timeless
- The community (or neighborhood) is walkable
- Affordable housing options are available
- Diverse local economy

Rural character is maintained

- Low-density development
- Rural service levels
- Natural resource lands



Questions?



Washington State
Department of
Commerce

Then a 10-Minute Break!

www.commerce.wa.gov



Ted Vanegas
SENIOR PLANNER

ted.vanegas@commerce.wa.gov

360.280.0320

Kirkland 2044 Comprehensive Plan

Janice Swenson, City of Kirkland Senior Planner
jswenson@kirklandwa.gov



Washington State
Department of
Commerce

Key Themes For Update



Advance diversity, equity, inclusivity and belonging (DEIB)

Sustainability

Housing options for all and housing affordability

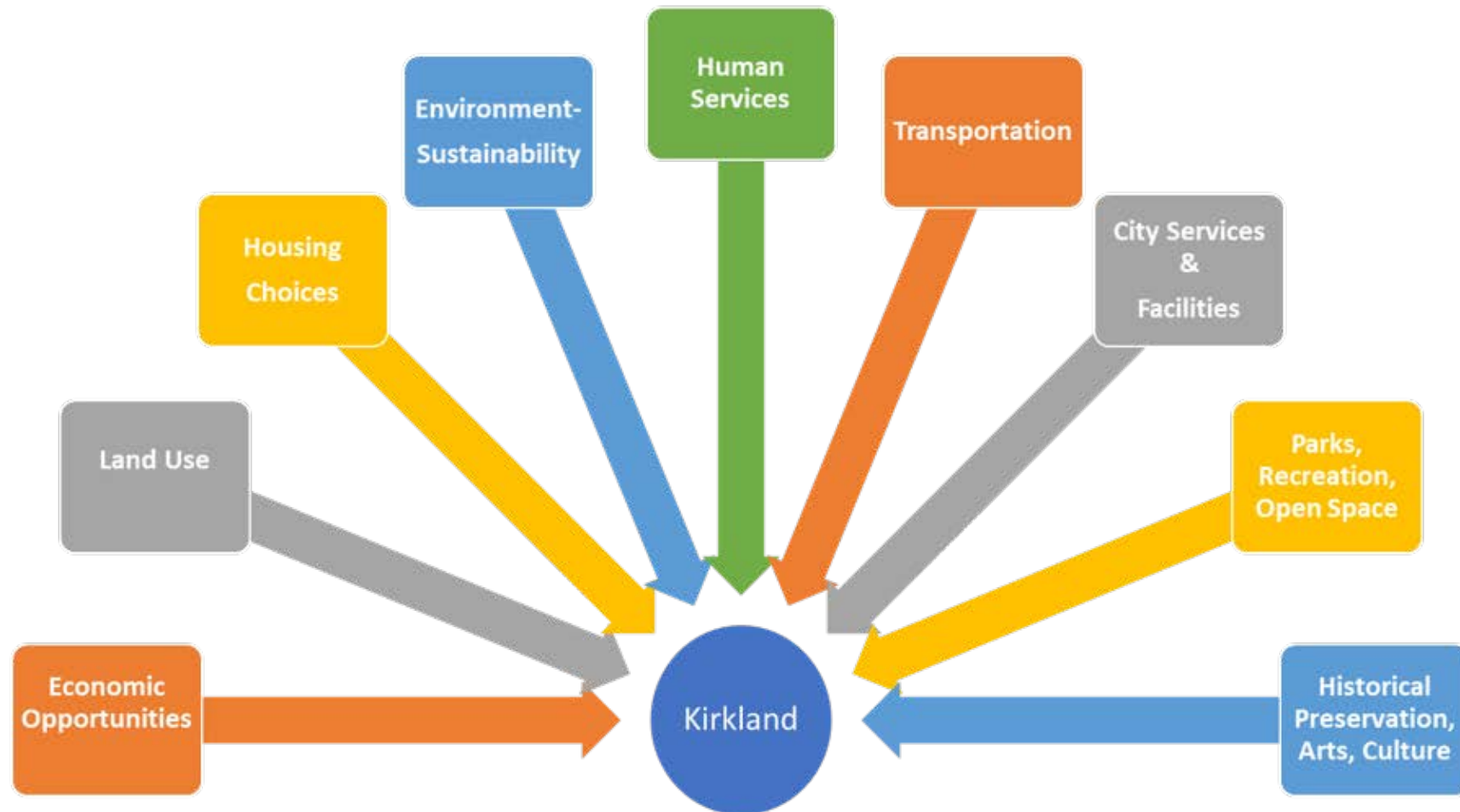
Mobility connections to regional transit system and accessibility

Resiliency (future emergencies, pandemic response, economic and fiscal planning)

Smarty City Initiatives (transportation, mobility, infrastructure, digital transformation, built environment, community/civic engagement)

Consistency with City Council goals

Element Chapters of Plan

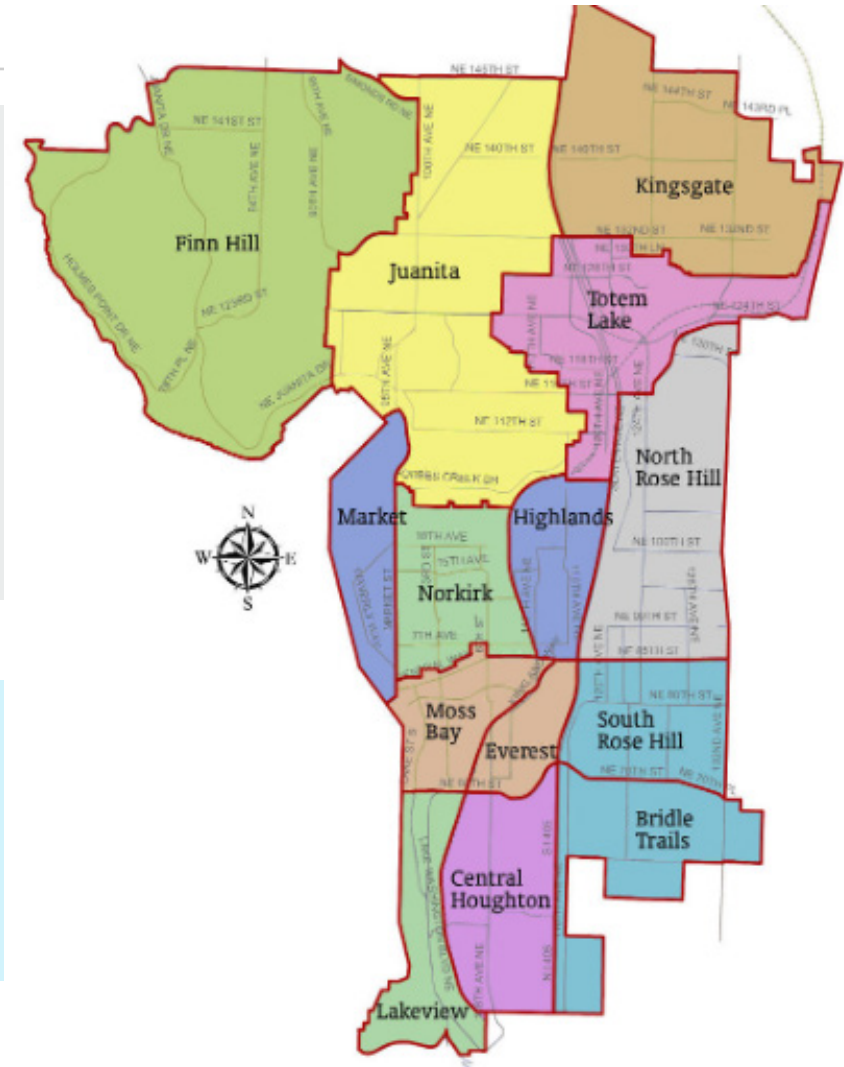


Neighborhood Plans

- ✓ **13 Neighborhood Plan Chapters in the Comprehensive Plan**
- ✓ **Set land use policies, zoning, regulations for neighborhood**
- ✓ **Describe unique community character and identity**
- ✓ **New or innovative ideas can emerge from process**
- ✓ **New update cycle with each major update; not on yearly rotating basis**

K2044 Update:

- * **Minor revisions recommended from Equity Review Report**
- * **2023-2024 update Juanita and Kingsgate Neighborhood Plans**



Kirkland's 2044 Growth Targets

HOUSING UNITS			JOBS		
Existing (2018)	K2044 Target (2019 – 2044)	Existing Capacity (2023) *	Existing (2018)	K2044 Target (2019 – 2044)	Existing Capacity (2023)*
38,656	13,200 (above 2018 existing)	19,595	49,280	26,490 (above 2018 existing)	36,082

**Estimate pending completion of the City's 2044 capacity analysis. Number reflects approximate remaining capacity from K2035 Plan (units/jobs planned for but not achieved) + additional capacity adopted in NE 85th St Station Area Plan*

Focus growth:

- Totem Lake Urban Center
 - Greater Downtown Kirkland
Regional Growth Center (pending)
(NE 85th ST Station Area + Moss
Bay)
-

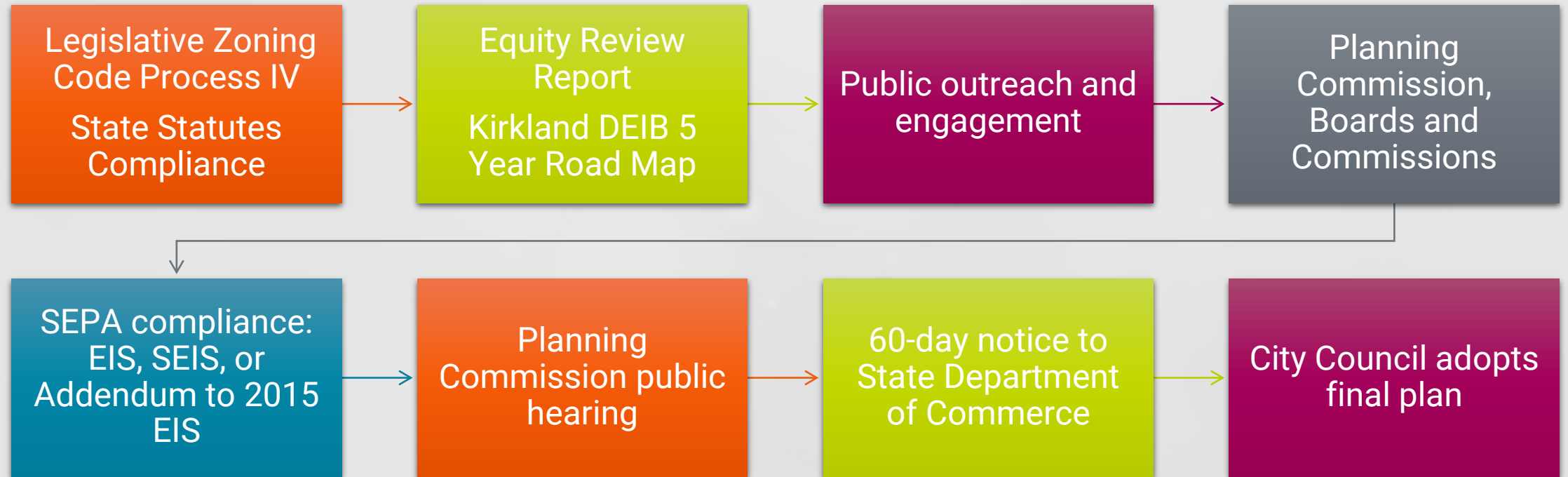
- New Sound Transit bus rapid transit station-
NE 85th Street/I-405 by 2026
- NE 85th Station Area Vision:
thriving, walkable district with
high tech, higher wage jobs,
affordable housing, sustainable
buildings, **park amenities,**
commercial, retail services,
linked by transit



Regional Coordination-Consistency

- New Growth Management Act or Legislative requirements
- Washington State Department of Commerce procedures
- Puget Sound Regional Council Vision 2050 Policies
- King County Countywide 2040 Policies
- Government agencies (Sound Transit; King County Metro Transit)
- Utility companies; water and sewer districts
- Other Eastside cities and tribes

Kirkland's Update Process 2023-2024



Staff's Role

- Intergovernmental coordination
- Interdepartmental coordination
- Listen to community's feedback
- Revise policies for consistency with local and state regulations; community input
- Comply with Zoning Code process requirements
- Recommendations to Planning Commission, City Council



Community's Role

- Participate in the public process
- Let us know what you think
- Provide written or oral comments to Boards, Commissions, City Council
- Attend public meetings
- Get others involved



Community Engagement Goals

INVOLVE PRIORITY POPULATIONS

Black, Indigenous, and People of Color (BIPOC)

People who identify as lesbian, gay, bisexual, transgender, queer, intersex, asexual plus (LGBTQIA+)

Seniors

Low-income households

People experiencing homelessness

Youth

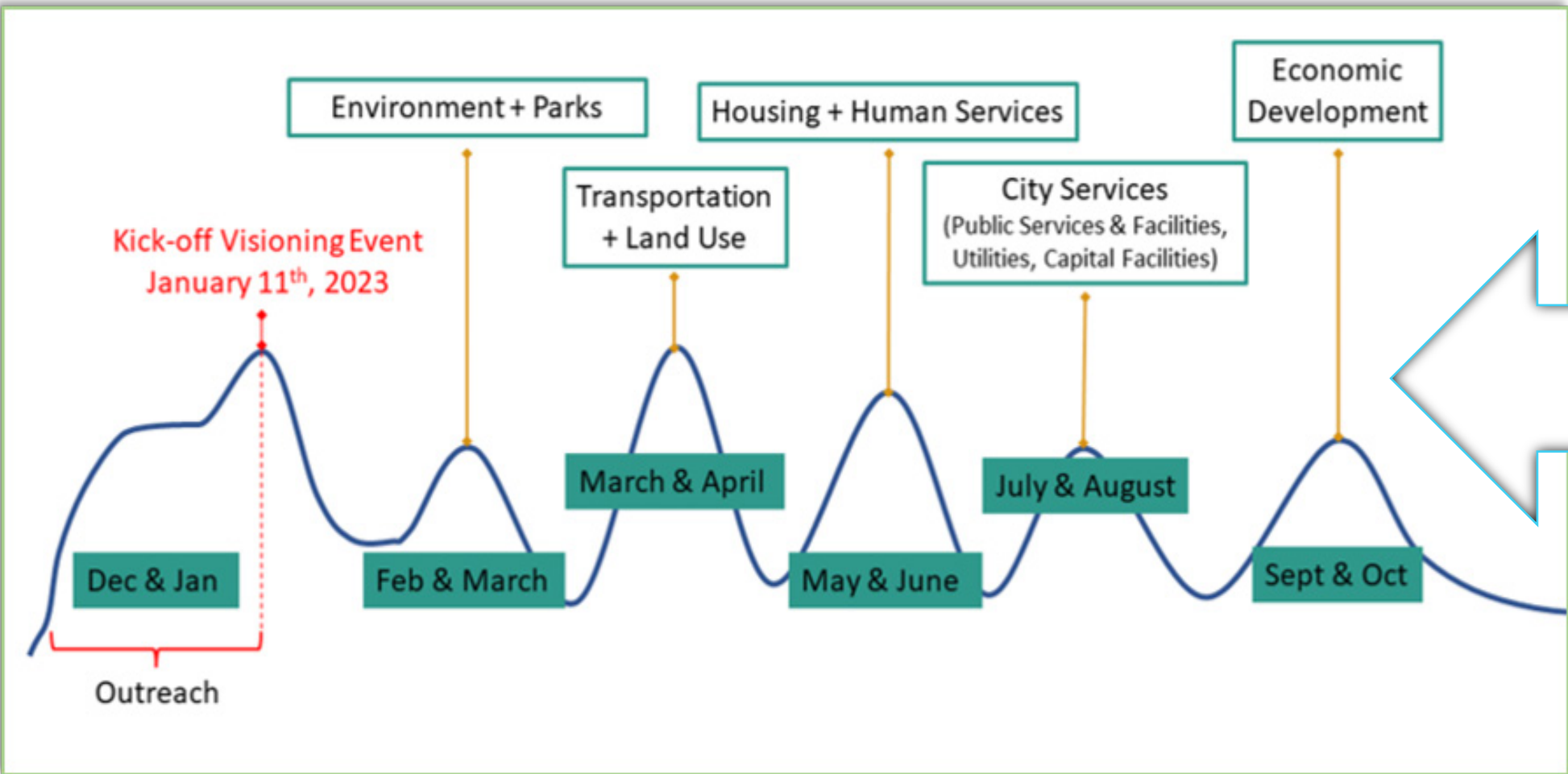
Renters

People with disabilities or accessibility challenges

Immigrant communities and people facing language barriers

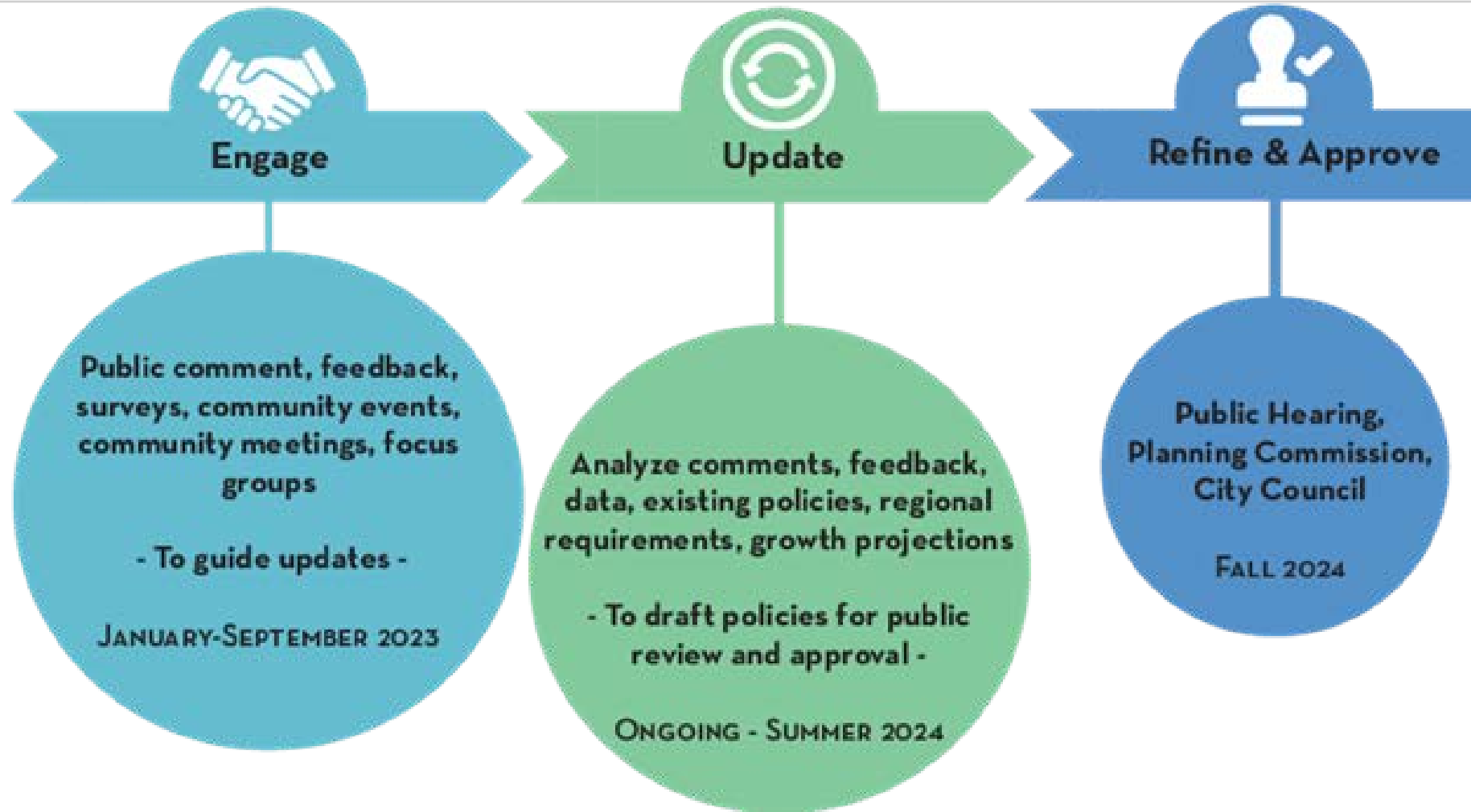


2023 Community Engagement Schedule



- Focus Groups
- Surveys
- Community Conversations
- Events
- Schools
- Public Comments
- Community Organizations

Phases of Plan Update 2023-2024



How to Get Involved



Visit [Kirklandwa.gov/K2044](https://kirklandwa.gov/K2044) for information-
sign up for email alerts



Take surveys for each topic area



Join a Focus Group to dive deeper into each Element



Send us your thoughts by emailing:
2044ComprehensivePlan@kirklandwa.gov



Ask for a presentation to your organization or neighborhood group

Any **Questions?**



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Roles & Responsibilities in Planning and Effective Public Processes

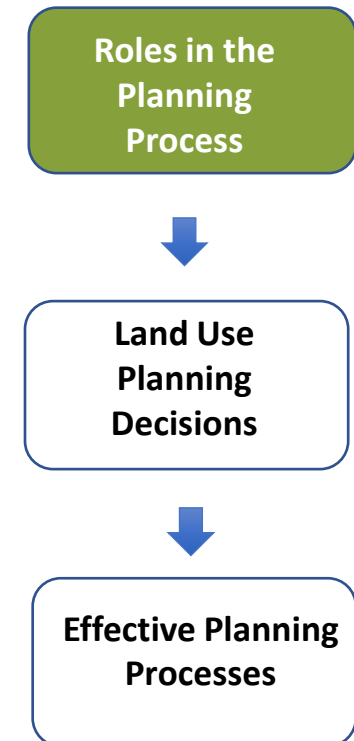
Allison Zike, City of Kirkland Deputy Planning & Building Director



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Planning Involves a Range of Participants

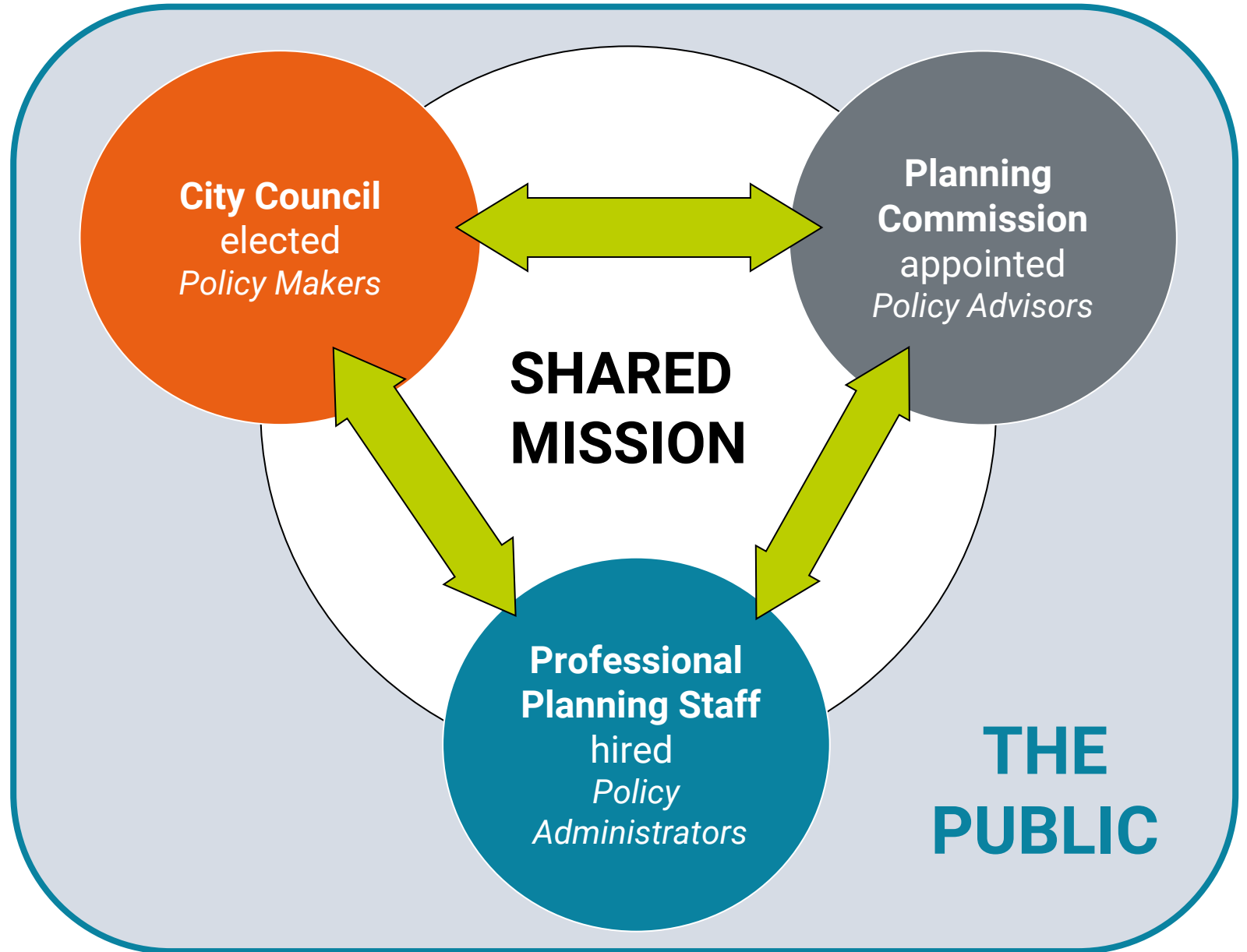
- Elected Officials
- Planning Commission
- Staff
- Hearing Examiner
- Other Appointed Bodies
- General Public
- Others (environmentalists, developers, agencies, tribes, media, utilities, courts, districts (*transit, school, water, sewer, fire*), etc.)



There are three types of decisions

- **Legislative**
 - Councils make these decisions
 - Plans, Policies, Budgets
- **Quasi-Judicial**
 - Hearing Examiners, Planning Commissions and sometimes Councils make these decisions
 - Project Based Land Use Decisions
- **Administrative**
 - Staff decisions

Roles and Responsibilities in the planning process



Elected Officials – City Council and Mayor

Policy Makers

- Key leaders and decision makers on policy, adopting comprehensive plan policies, and regulations
- Make final decisions on funding decisions for operating and infrastructure funding programs
- Communicate vision to residents, Planning Commission, and staff
- Appoints planning commissioners

City Council Obligations

1. Respect and support the Planning Commission's Role
2. Appoint residents to the Planning Commission who will commit the time and care needed to do their job right
3. Carefully review the recommendations from the Commission - take the time to understand the record and rationales
4. Agree with the Commission when you can, disagree when you must
5. When disagreeing with Commission, take the time to explain "why"
6. Provide periodic two-way feedback to the Planning Commission - meet jointly at least annually
7. Provide direction, scope, and resources for the Planning Commission's work program

Planning Commission

Policy Advisors

- Created under the premise that community residents can best objectively review and recommend sound regulations, free of political influence
- Provides recommendations to Council on policy (Comp Plan) and development standards (Zoning Code)
- **Kirkland's Planning Commission:**
 - Does not make any quasi-judicial decisions
 - Planning Commission is Council's fact-finding body.
 - Conducts study sessions with staff to direct policy/regulation development
 - Holds public hearings to collect public testimony related to code amendments

Planning Commission's Obligations

1. Respect and support the City Council's roles and prerogatives
2. Do your homework; read the packet before the meetings
3. Give careful consideration and weight to all the public testimony, facts, and criteria that govern a particular land use decision
4. Have an open mind, treat all parties with due respect, and strive to persuade rather than argue
5. At a hearing, address applicants, residents, and staff by surname or title; informal use of first names may suggest undue influence
6. Give appropriate deference to technical judgments within the staff's areas of expertise
7. Gracefully accept that the City Council will not always agree with the Planning Commission's recommendations

Effective Planning Commissions

Tips For the Planning Commission

- Make an annual work plan
- Good communication with Council
- Read meeting packet ahead of time and come to meetings prepared
- Use staff resources well
- Welcome public involvement

Effective Planning Commissioner

More Tips For the Planning Commission

- Attend and participate
- Do your homework – be prepared for the discussion
- Listen, be polite and be patient
- Focus on the decision criteria
- Avoid jargon
- Keep the long-term goals in mind
- Don't take anything personally

Effective Commission Chairperson

More Tips For the Planning Commission

- Make people feel at ease, encourage people to express their concerns
- Enforce the rules of procedure, ensure all have the opportunity to contribute
- Treat people fairly and equally, making no exceptions for VIPs or intimidators
- Run the meeting well – keep things moving
- Know the issues involved and make sure all are addressed

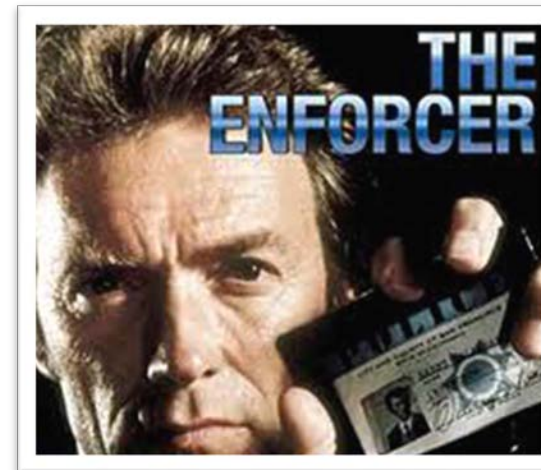
Planning Staff

- Various Departments/Divisions are involved in code development and development review
- Seeks public input from the community on plans, policies, and regulations
- Makes recommendations to Hearing Examiner, Planning Commission, and/or City Council on legislative and quasi-judicial actions
- Implements the adopted policies and development regulations on a day-to-day basis
- Provides technical assistance/guidance to the public for permits
- Code enforcement

City Council and Planning Commission Obligations to Staff

- Rely on the staff to administer and enforce the City Council's adopted policies and regulations
- Keep the workload priorities and schedule expectations in alignment with the resources available
- Give appropriate deference to technical judgments within the staff's areas of expertise
- If unhappy with staffs' administrative decisions or job performance, they should take the matter up privately through channels, not publicly

Planning Staff's Many Roles



Planning Staff's Obligations

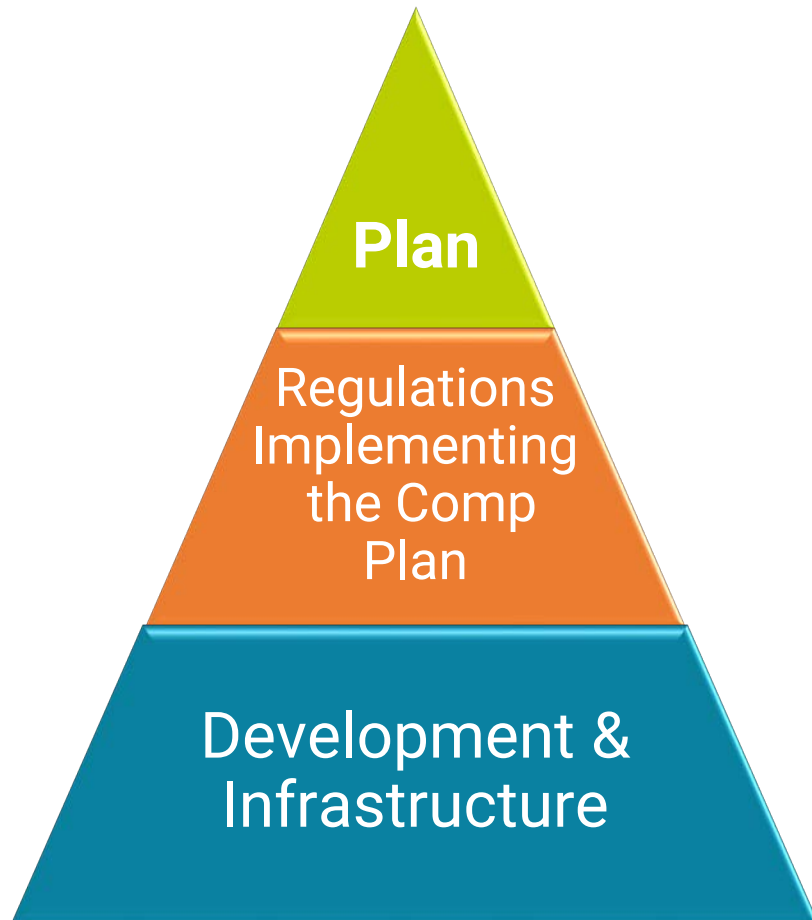
- Present thorough, objective analysis, reasonable alternatives, and professional recommendations based on facts and best practices
- Carry forward and explain the Planning Commission recommendation to the City Council, even if the staff did not agree with some part of it (alternative recommendations are ok)
- Respect and support the Commission's policy-advising role and the City Council policy-making authority, including their prerogative to disagree with staff and Planning Commission recommendations
- Provide responsive, complete, and timely answers to questions

Hearing Examiner

Typically involved in Quasi-Judicial activities.

- Professional hired/contracted to make permit recommendations/decisions based on the decisional criteria supported by an adequate record.
- Allows local legislative/advisory bodies that might otherwise conduct these public hearings to concentrate on policy-making (legislative) activities.
- Reduces local government liability exposure through more consistent and legally defensible quasi-judicial decisions.

Land Use Planning Decisions



1. **Legislative (Long Range Planning)** - Planning Commission developing and adopting policies and development regulations.
(Making the Rules)
2. **Quasi-Judicial (Current Planning)** - A board reviewing and making recommendations or decisions on permit applications.
(Acting as a judge)
3. **Administrative (Current Planning)** - Staff reviewing land development applications.
(Applying the rules)

Typical Steps in the Legislative Process

- Amendment to a plan or regulation proposed
- Professional review by staff or planning consultant
- Public involvement
- Staff recommendation to Planning Commission / Public Hearing
- Planning Commission recommendation to elected officials
- Council review (may include more public review)
- Council decision and adoption
- May be appealed to Hearings Board

Tips for Effective Planning Processes

Public Participation is Essential

“Each county and city that is required or chooses to plan...shall establish and broadly disseminate to the public a **public participation program** identifying procedures providing for **early and continuous public participation** in the development and amendment of comprehensive land use plans and development regulations implementing such plans.

RCW 36.70A.140 (GMA)

General Public

- **Community members** (people that live, work, or play in Kirkland) all provide valuable input based on their personal lived experience
- We seek **different perspectives** of what constitutes the big picture or public interest

General Public, cont'd.

Many projects include outreach to stakeholders representing a specific interest. Some examples:

- The **environmental community** can identify potential impacts to critical areas and natural resource lands and options for mitigation
- **The business community** can identify regulations and policies which may sound great in principle, but might be difficult to achieve
- **Developers** can be a sounding board to help local government better understand markets, market demand, and permit processes

Managing Public Hearings



- Require people to sign-in and provide their name for the record
- Time to speak is typically limited to 3 minutes
 - Chair can extend speaking time
- May arrange the order of speakers so that testimony is heard in the most logical groupings (i.e. proponents, opponents, adjacent owners, etc.)

When Listening at Public Hearings

Help people through the public hearing process.

Be respectful and patient:

- Patient with those uncomfortable with public speaking.
- Patient with those who are angry or perpetually challenging city government.
- Patient with other committee members who may not agree with you or understand your perspective.

Discussion, Deliberation, & Recommendations

Decision making bodies should:

- Discuss why supporting approval or disapproval. Base reasons on criteria.
- Determine positions and/or consensus for action. Do not seek new evidence, though argument and comment may be allowed.
- Motion to approve, disapprove, or modify
- Provide clear instructions to staff to prepare a final recommendation

A solid record is key for land use decisions

The record should include:

- Application and supporting documentation
- SEPA determination and documentation
- Staff report and pre-hearing correspondence including references to **relevant facts, local policies, and decision criteria** needed 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

Thank you!

Questions?



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Open Government Training

Darcey Eilers, City of Kirkland Assistant City Attorney



Presentation Overview

- **Background and Overview**
- **Open Public Meetings Act**
 - Chapter 42.30 RCW
- **Public Records Act**
 - Chapter 42.56 RCW



Open Government Trainings Act Requirements

- The “Open Government Trainings Act” (RCW 42.30.205; RCW 42.56.150, .152) requires OPMA and public records training for public records officers and statewide and local government officials.
- It requires that refresher training occurs no later than every 4 years.
- Training can be taken online, in person, or by other means.

Open Government

Open Government laws like the Public Records Act are often called “Transparency Laws” or “Sunshine Laws”

- Transparency builds public confidence in government.
- “The people, in delegating authority, do not give public servants the right to decide what is good for the people to know and what is not good for them to know.”
- “The people insist on remaining informed so they may retain control over the instruments they have created.”

Open Public Meetings Act



The Big Picture

- All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency
 - RCW 42.30.030
- Any action taken at a meeting held in violation of the OPMA is null and void.
 - RCW 42.30.060(1)
- Any member of a governing body who attends a meeting knowing it violates OPMA is subject to personal liability of \$500 and \$1,000 thereafter.
 - RCW 42.30.120(1)(2)
- A person who prevails on an OPMA suit is awarded costs and attorney fees.
 - RCW 42.30.120(2)

Broad Scope of an OPMA “Meeting”

- Meeting = Action + Quorum

All meetings of the governing body of a public agency shall be open and public

What is “Action?”

Action – Means the transaction of official business. It includes:

- Public testimony; all deliberations; discussions; considerations; reviews; evaluations
- Final Action – the OPMA is in effect whether or not “final” action is taken



What is a covered “Public Agency”?

- **Public agency means**
 - State agencies.
 - Counties, cities, school districts, special purpose districts, other muni districts.
 - Sub-agencies created by legislation.
 - Planning commissions, civil service commissions, etc.

All meetings of the governing body of a public agency shall be open and public

What is a covered “Governing Body”?

- Governing body is a multi-member board, commission, committee, council, or other policy or rule-making body.

OR

- Any committee of such a public agency when:
 - the committee acts on behalf of the governing body,
 - conducts hearings, or
 - takes testimony or public comment.

All meetings of the governing body of a public agency shall be open and public

Examples of Likely Meetings

- Email conversations
- Serial phone calls
- Texting and messaging involving a quorum discussing official business

Gathering involving a quorum to hear “State of City/County” presentation by mayor/executive.

A quorum at a dinner party at a board member’s home, discussion in the parking lot after adjournment, happy hour, or site visit, if official business is discussed.

MRSC Practice Tips for Electronic Communication

- **Passive receipt of info via email okay, but discussion of issues via email by quorum of members can constitute illegal meeting.**
- **Emails to quorum or more allowed to provide documents or factual information, such as things to review for next meeting.**
 - First line of email state: “For informational purposes only. Do not reply.”
 - Have staff send emails such as meeting documents and information.
- **Mixed media can constitute a meeting.**
 - An in person conversation between some members regarding business continued via email to others is still a meeting.
- **Be careful with social media!**

Regular Meeting Notice Requirements

- Held in accordance with a fixed schedule.
- Agendas available online at least **24 hours** in advance, unless
 - Aggregate value of taxable property less than \$400 million,
 - Population under 3,000, AND
 - Cost of posting notice online would exceed 1/10 of 1% of budget.
- Cities and towns required to notify public of preliminary agenda.
- No restrictions on type of business transacted.
 - Can amend the agenda at the meeting.
- Can go into executive session, even if not noticed.

Special Meeting Notice Requirements

- Called by presiding officer or majority of members.
- Notice must specify date, time, place, and business to be transacted.
 - Final action can only be taken on noticed agenda items.
- Notice must be delivered within 24 hours to:
 - Each member, unless waived or in actual attendance
 - Media outlets on file as requesting notice
- Notice posted online within 24 hours, unless:
 - No website
 - No full-time equivalent employees
 - No employee whose duty is to maintain a website
- Notice prominently displayed at main entrance of principal location if special meeting is held elsewhere, not remote, and can be done safely.

Meetings During an Emergency

- If a local, state, or federal emergency is declared and the agency determines it cannot hold an in-person meeting with reasonable safety, it may:
 - Hold a meeting at a physical location with limited or no public attendance.
 - Hold a fully remote hearing with cost-free option for public attendance.
- Notice not required for special meeting called to deal with emergency involving injury or damage to people or property when notice would be impractical or dangerous.
 - If agency has a website, online notice of special meeting required even if no employees or personnel in charge of website.

Public Comment at Regular Meetings

- **Agencies must provide opportunity for public comment at or before every regular meeting where final action is taken.**
 - Oral or written, submitted by reasonable deadline.
 - When feasible, provide opportunities for individuals with difficulty attending in person to provide oral comments remotely.
- **No need to connect public comment to final action taken.**
 - Final action can be taken on a matter that did not receive public comment at that meeting, so long as public comments were accepted at or before the meeting – don't need to connect final action with public comments.
 - Public comment on a specific topic can be accepted before meeting where final action is taken, such as a previous public hearing.

Executive Session

- Before convening, presiding officer must announce the purpose of and the time the executive session is over.
 - Open meeting must reconvene at announced time, even if executive session ends early.
 - If executive sessions runs long, must announce new time when originally scheduled to end.
- Limited points of discussion may take place in executive session, but final action must occur in public.
 - Cannot conduct “straw polls” in executive session.
- Executive session purpose must be entered into the minutes.

Common Executive Session Topics

- **Evaluate qualifications of applicants for public employment or review performance of public employee.**
 - Discussion of generally applicable compensation, benefits, conditions of employment, etc. must be in public.
- **Litigation, potential litigation, and legal risks of actions.**
 - For risks, an open discussion must present a danger of adverse legal or financial risk to the agency.
- **Conveying real estate.**
 - To consider site selection or acquisition when public knowledge would cause increased price.
 - To consider minimum price at which real estate will be offered when public knowledge would cause decreased price.
- **Full list at RCW 42.30.110**

Public Records Act



Purpose and Application

- Public records of government agencies are presumed **open**.
- **Purpose:** The “free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.”
- **Applies to Records of:**
 - State and local government agencies
 - Agencies that are the functional equivalent of public agencies
 - Limited extent to state legislature
- **Does Not Apply to:**
 - Court records (court files)
 - Private organizations or persons

Agency Requirements

- **Appoint a public records officer**
- **Adopt procedures to:**
 - Protect public records from damage and disorganization.
 - Provide full access to public records, such as by providing an index of available records (i.e. statements of policy, planning goals and policies, staff reports, interim and final planning decisions).
 - Provide timely action on public records requests.
- **Make non-exempt records available for inspection and copying during customary business hours for a minimum of 30 hours per week, excluding holidays.**
- **Publish a fee schedule if charging for copy or mailing costs. Fees cannot be charged for searching, reviewing, or redacting records.**

RCW 42.56.040; RCW 42.56.070-.090; PRA Model Rules at Ch. 44-14 WAC

“Public record” is broadly defined:

A public record is “any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function **prepared, owned, used, or retained** by any state or local agency regardless of physical form or characteristics.”

- Includes email, paper files, recordings, web content.
- Includes public records created on **personal computers or cell phones, other personal electronic devices, or non-agency email accounts**.
- May include social media posts.

RCW 42.56.010(3)

Requests Must Be For Identifiable Records

Requestors should be specific and request identifiable records from public agencies.

- For example, a request for all or substantially all records, prepared, owned, used, or retained by an agency is not a valid request for identifiable records under this chapter.
- A **request for “information”** is not a request for “records” under the PRA.
- Requestors should use an **agency public records request form** or, if agency form is not used, requestor must provide “fair notice” that they are seeking public records.
- Requestors can ask to **inspect** records or request **copies** of records.

RCW 42.56.520; RCW 42.56.080, RCW 42.56.040, RCW 42.56.100.

Initial Response: The 5-Day Letter

- Provide the record
- Provide an internet address and link to the **agency's** website
 - If the requestor notifies the agency that they do not have access to the internet, agency must provide copies or allow the requestor to view copies using an agency computer
 - Cannot direct the requestor to another agency's website
- Acknowledge receipt of the request and provide a reasonable estimate of time needed to respond
 - Reasonableness will depend on specific facts and circumstances
 - Examples are a need to provide third-party notice*, need for clarification, large volume, records in storage, records contain potentially exempt information, workload considerations
 - Avoid using blanket estimates for all requests (ex. 30 days)
 - **Must include estimate of time**, even if the exact amount of time needed is unknown
- Acknowledge receipt of the request, ask for clarification, *and* provide a reasonable estimate of time required to respond
- Deny the request

RCW 42.56.520(1); *RCW 42.56.540

Seeking Clarification

- If a request is unclear, seek clarification to determine what records the requestor seeks
- Requests for clarification **MUST** be accompanied by a reasonable estimate of time (“to the greatest extent possible”)
 - If requestor doesn’t clarify and the entire request is unclear, the agency doesn’t have to process the remainder
 - Otherwise, the agency must process the portions of the PRR that are clear
- Consider asking the requestor to suggest search terms or rephrasing the request in a way that makes sense and ask the requestor to confirm the agency’s understanding
- Benefits of seeking clarification?
 - Helps to provide the fullest assistance to requestor
 - Results in prompt disclosure by identifying only desired records
 - Means the requestor receives and pays for only those records requested

RCW 42.56.520

Searches

- **Read the request carefully** to understand what records are requested.
- **Conduct an adequate search** for responsive records.
 - Consider all formats (paper, electronic, etc.).
 - Consider records of current and former staff/officials
 - Consider possible locations (e.g., paper files, agency website, audio files, etc.)
 - Don't rely solely on computer searches and key words
- The agency bears the **burden of proof** to show the adequacy of the search
- **Document search efforts** (locations, search terms used, personnel consulted, etc.)

RCW 42.56.520

Most PRA Exemptions Narrowly Construed

- **If a record, or part of a record, is withheld from a requester, the agency must cite to an “exemption” in the law and explain why.** Common exemptions include personal information in employment records, attorney-client privileged information, pending investigative records, and protected health care information.
- When withholding part (redacting) or all of a record, agency must sufficiently describe the record (by date, type, authors/recipients, number of pages, etc.), typically on an **exemption log**.
- **“Privacy”** is invaded only if (1) privacy is a factor in the exemption, (2) release of the information would be highly offensive, and (3) is the information is not of legitimate concern to the public.

RCW 42.56.050, RCW 42.56.210 - .510, RCW 42.56.550

Enforcement and Penalties



- PRA enforced by courts for claims listed in PRA.
- A court can impose **civil penalties** up to \$100 per day per record. No proof of “damages” required.
- A court is to consider certain mitigating or aggravating **factors** in requiring an agency to pay a penalty.
- Requesters are awarded their **attorney fees and costs** if they prevail against an agency in court.
- Special provisions apply to inmate requests.
- Outside of the PRA, there can be criminal liability for willful destruction or alteration of a public record.

RCW 42.56.550, RCW 42.56.565; *Yousoufian v. Sims*

PRA Penalty Examples

- **\$600,000** – Snohomish County
- **\$575,000** – Snohomish County
- **\$550,000** – Clallam County
- **\$502,827** – L & I
- **\$500,000** – Board of Accountancy (*global settlement of 7 lawsuits and 15 PRA disputes*)
- **\$350,000** - Bainbridge Island
- **\$371,340** – King County
- **\$187,000** – Port of Olympia
- **\$175,000** – Mesa
- **\$174,000** – Seattle
- **\$150,000** – Jefferson County
- **\$100,000** – Shoreline
- **\$100,000** – Spokane County
- **\$85,000** – San Juan County
- **\$50,000** – City of Tacoma
- **\$45,000** – Kennewick
- **\$45,000** – Everett
- **\$45,000** – Port of Vancouver
- **\$15,498** – Kittitas County
-
- \$723,290 – UW (*reversed on appeal*)
- \$649,896 – DSHS (*reversed on appeal*)

Focus on Electronic Records

- **Websites are records.** Agencies must keep a copy of previous web site when updating. WAC 434-662-140
- **Create clear electronic records.** WAC 434-662-150
 - Emails on agency business are public records.
 - Save agency business-related e-mails from private e-mail accounts or personal devices to agency servers.
 - Use descriptive subject lines.
 - Shorten e-mail strings and limit cc's.
 - Limit volume of records (delete unimportant emails, don't "Reply-all").
- **Avoid making records** you don't want to see on the front page of the paper.

Risk Management Strategies for PRA

- **Communication is KEY!!**
- **Establish a culture of compliance** starting with agency leadership.
- **Know the law.** Ensure staff and officials are trained about the PRA's requirements and how to respond to records requests.
- **Protect the records.** Ensure there are systems in place to file, track, retrieve and preserve records, especially with changes in personnel.
 - **Retain important records** by transferring them to State Archives.
 - **Promptly destroy records** that have met their retention schedule.

Records Retention, Ch. 40.14 RCW

- Records must be retained per the ***Local Government Record Retention Schedule*** from Washington State Archives.
- After retention period has expired, then records should either be:
 - **Transferred to state archives to protect state history**
 - i.e., project files (after 6 years), maps and photographs, press releases, public opinion polls, speeches (after they have served local use).
 - **Destroyed after they meet retention to reduce PRA workload**
 - i.e., calendars (2 years), citizen complaints (3 years), contracts (6 years after completion), foreclosures (10 years after resolution).

Thank you!



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Any questions?