

A Short Course on Local Planning

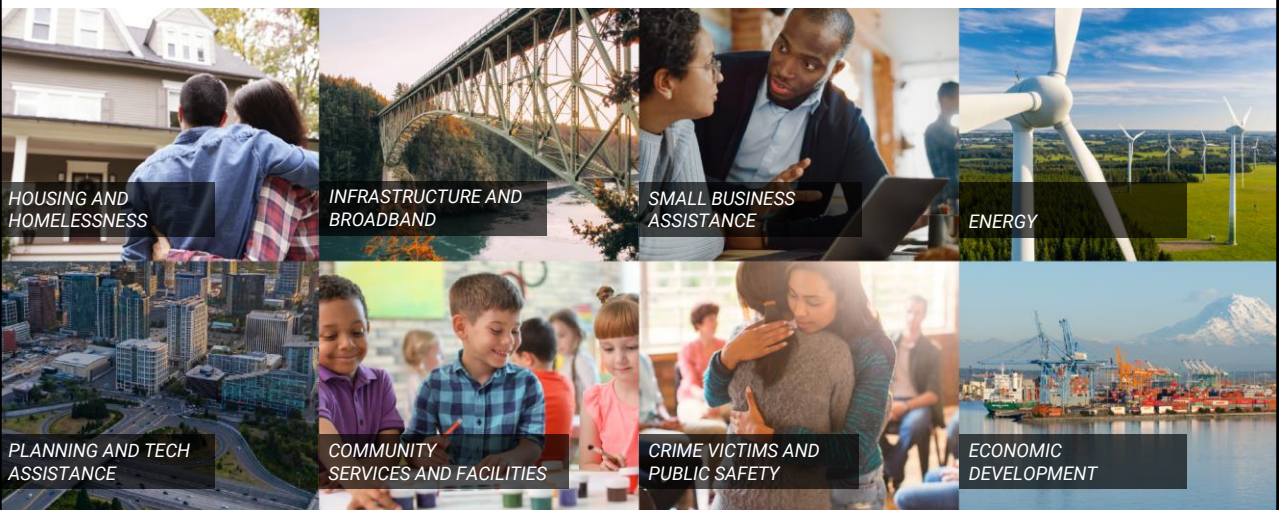
Training citizen planners since 1977



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We strengthen communities



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A SHORTCOURSE

ON LOCAL PLANNING

In partnership with



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Short Course – online resources

Visit us online at: www.commerce.wa.gov/serving-communities/growth-management/short-course/

Schedule of Short Courses

- Fall schedule coming soon

Course materials including:

- A Short Course on Local Planning: Resource Guide (295 pages, 2017)
- A Video Study Guide
- A Short Course certificate and OPMA certificate of completion

Information for elected and appointed officials

- New to planning commissions
- Effective meetings

Watch the resource videos!

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More 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 Begin?



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The Legal Basis of Planning in Washington State

THE SHORT COURSE ON LOCAL PLANNING
WASHINGTON STATE DEPARTMENT OF COMMERCE

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Disclaimer

This presentation reflects the views of its author. It is intended to provide general information only. It is not intended to provide any legal opinions or advice applicable to any particular situation and does not create an attorney-client relationship with any attendee or reader. If you would like more information regarding whether we may assist you in any particular matter, please contact us, using care not to provide us any confidential information until we have notified you in writing that there are no conflicts of interest and that we have agreed to represent you on the specific matter that is the subject of your inquiry.

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About Ryan Walters

- Municipal + land use attorney
- Former deputy prosecutor
- Former planning director
- Anacortes City Councilmember since 2012
- AICP planner

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What is land use planning?

- Regulation of
 - use or development
 - of real property
- Generally through
 - land use plans
 - zoning
 - other development regulations
- It's not the "building code," which is adopted under RCW 19.27.

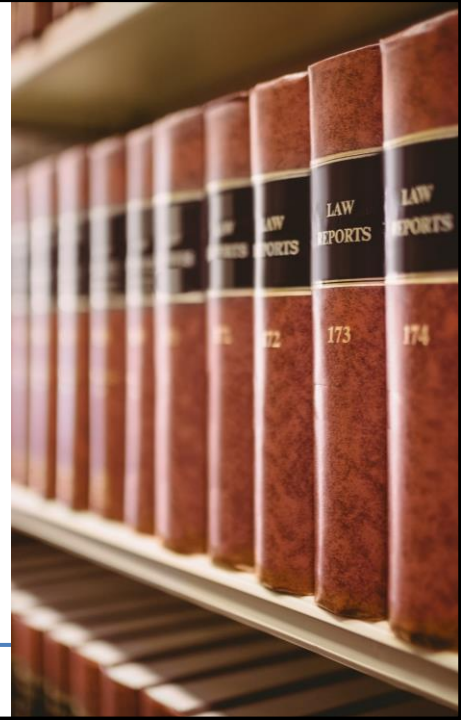
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Legal Authority for Planning in Washington State

- State Constitution
- State statutes
- City/town/county codes

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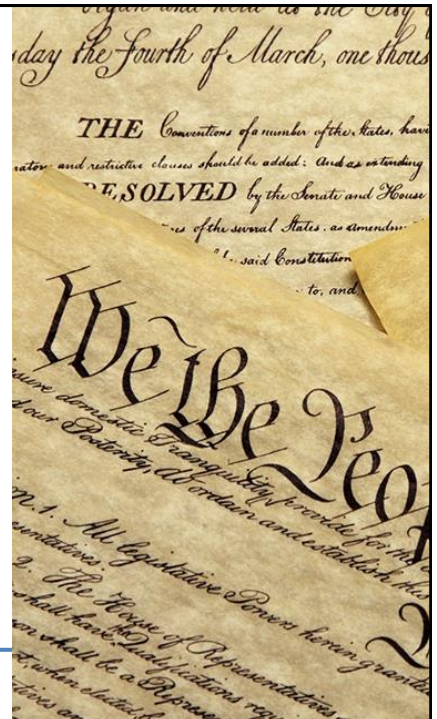


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Constitutional Authority

- Washington State Constitution
- Article XI (County, City, and Township Organization)
 - Section 11 (Police and Sanitary Regulations)
- “Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.”
- Police power was validated as sufficient to authorize zoning (regulations varying by location) by the U.S. Supreme Court in *Euclid (Ohio) v Amber Realty*, 272 US 365 (1926).

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Washington Statutory Basis

- Planning Enabling Act, et al.
RCW 36.70, 35.63, 35A.63
- Subdivision Act
RCW 58.17 (1969)
- State Environmental Policy Act (“SEPA”)
RCW 43.21C (1971)
- Shorelines Management Act (“SMA”) RCW
90.58 (1971)
- Growth Management Act (“GMA”)
RCW 36.70A (1990)
- Local Project Review Act
RCW 36.70B (1995)
- Land Use Petition Act (“LUPA”)
RCW 36.70C (1995)
- Appearance of Fairness Doctrine
RCW 42.36 (1982)
- Property Rights—Damages from
Governmental Actions
RCW 64.40 (1982)

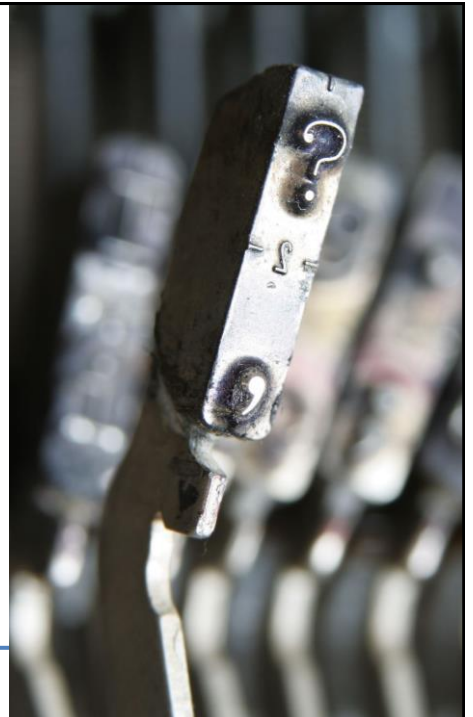
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Planning Enabling

- Various planning enabling statutes:
 - RCW 36.70 (counties)
 - RCW 35.63 (cities or counties)
 - RCW 35A.63 (code cities)
- Your code may cite to a specific statute as authority for creation of your planning department or planning commission; follow it
- Cities have implemented planning in various ways (e.g., Development Commission, Planning Policy Commission)

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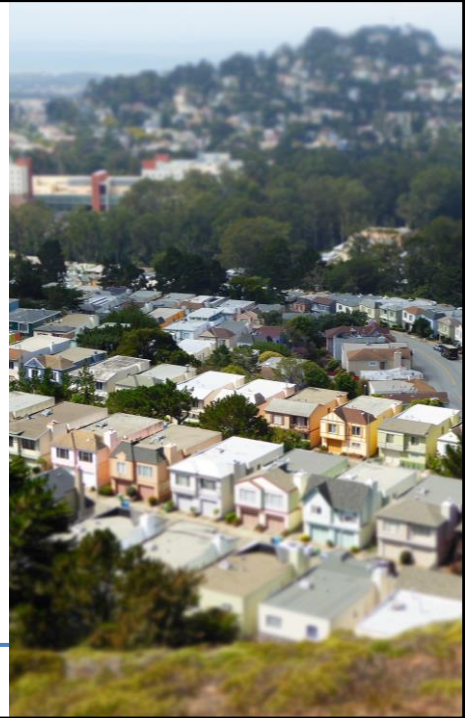


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Subdivision Act

- Adopted 1969
- Creates process for dividing land for separate sale and development
- Terms:
 - **short subdivision** = 4 or fewer lots (except that a city/county may increase up to 9 lots) with faster approval process
 - **subdivision** = 5 or more lots (or more) with two-step approval process (preliminary and final plat)
 - **plat** = the map representing the subdivision
- Subdivisions must be approved before lots may be sold

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State Environmental Policy Act ("SEPA")

- Adopted 1971; modeled on federal NEPA, introduced by Scoop Jackson
- Requires all state and local governments to review environmental effects of actions prior to taking them
- Applies to issuance of permits
- Applies to both "project" and "non-project" proposals
- Three steps:
 - Applicant submits SEPA checklist
 - Agency makes "threshold determination" of significant (DS) or non-significant (DNS) impact
 - If significant impact, then Environmental Impact Statement required
- Authorizes agencies to condition or deny a proposal based on its environmental impacts

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Shoreline Management Act

- Adopted 1971 by voter initiative to:
 - regulate development on shorelines
 - prioritize water-dependent uses
 - protect public access
- Requires cities and counties to adopt a “Shoreline Master Program”
 - consistent with state regs
 - and obtain approval from the Department of Ecology
- Recently updated to ensure “no net loss” of shoreline ecological function

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Growth Management Act (“GMA”)

- Adopted 1990
- RCW 36.70A
 - also WAC 365-185 through 365-199
- GMA is now THE primary framework for land use planning
- 13 unprioritized planning goals
 - + 14th shoreline goal incorporating SMA
 - + NEW 15th climate goal (E2SHB 1181)
- Balancing of the goals is allowed
- Required protection of natural resource lands and critical areas
- GMA plans and development regulations are **presumed compliant** upon adoption
- May be appealed to the Growth Management Hearings Board

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Local Project Review Act

- Adopted 1995 as “reg reform” for land use applications
- Requires:
 - option for consolidated application review
 - no more than one open-record hearing
 - no more than one closed-record appeal
 - public notices
- Creates 28-day deadline to determine an application complete
- Requires application processing in no more than 120 days (with exceptions)
- NEW requirements from 2023 legislation (2SSB 5290)

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Land Use Petition Act

- Adopted 1995
- Applies to judicial review of local government decisions on “land use decisions,” which include:
 - applications for project permits
 - interpretations of land use codes against a specific property
 - code enforcement
- Creates uniform review criteria
- Requires appeal within 21 days of the land use decision

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Appearance of Fairness Doctrine (1/2)

- Statutory doctrine (RCW 42.36) revised common law doctrine
- Applies to quasi-judicial land use decisions (not legislative decisions)
- Quasi-judicial: permit applications, subdivisions, variances, special-use permits, site-specific rezones not authorized by a comprehensive plan amendment
- Legislative: amendments to development regulations, comprehensive plan amendments, area-wide rezones

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Appearance of Fairness Doctrine (2/2)

- Prohibits personal bias
- Prohibits prejudgment bias
- Prohibits partiality
- Prohibits *ex parte* communications (with requirements for disclosure and rebuttal) during pendency of proceeding
- Does not preclude correspondence between a citizen and his or her elected official if such correspondence is made a part of the record...**but don't.**
- Avoid site-visits, research, communications outside the record
- Consequences for violation: void, delay, and damages

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Damages from Governmental Actions

- RCW 64.40
- Property owners who have filed an application for a permit may sue for damages to obtain relief from
 - acts of an agency that are
 - arbitrary,
 - capricious,
 - unlawful, or
 - exceed lawful authority,
 - or relief from a failure to act within time limits established by law
- Prevailing party entitled to reasonable costs and attorneys fees
- Must sue within 30 days of exhaustion of administrative remedies
- Essentially implements constitutional procedural due process requirement:
 - Notice of what is happening
 - Opportunity to be heard
 - Before deprivation of a right

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ON LOCAL PLANNING

Comprehensive Planning under the Growth Management Act



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Why do we plan?



- *Land use decisions have long-term effects.*
- *Your goals require coordination different groups or departments.*
- *Your goals require persistent effort.*
- *Infrastructure has long lead times and long payback periods.*
- *Regulations require a rational basis.*
- *The public expects fairness and transparency.*

Values in tension

"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."



What Makes a Good Plan?

Disciplined Imagination

Realistic:

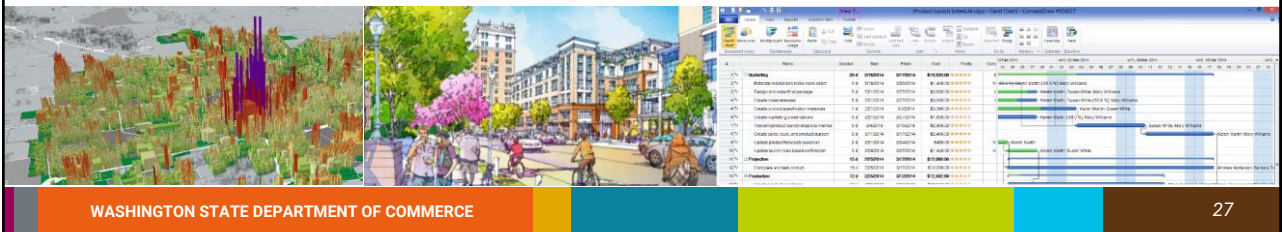
- Forecast
- Inventory
- Analysis

Compelling:

- Vision
- Goals and policies

Specific:

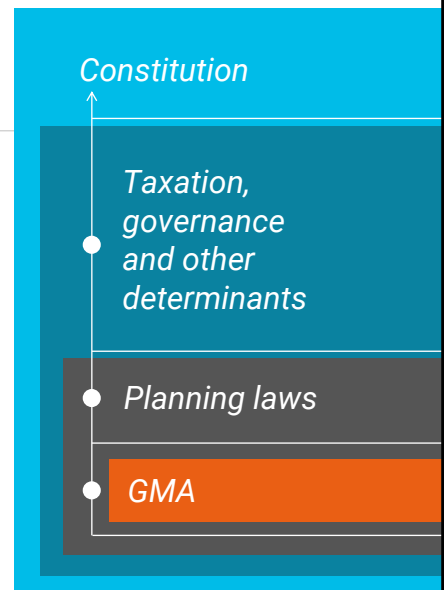
- Level of service
- Performance measures
- Implementation plan
- Projects



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Washington's framework

- *Growth Management Act – 36.70A*
- *Counties and Cities – Titles 35 & 36*
- *Local Project Review – 36.70B*
- *Shoreline Management – 90.58*
- *SEPA – 43.21*
- *Impact Fees - 82.02*
- *Water Law – Title 90*
- *Regional Planning – 47.80*
- *Subdivision – 58.17*



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Structure of the GMA

- *Goals & Requirements*
- *Regional variation*
- *Differentiated landscape*
- *Roles and procedures*
- *Implementation*

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The GMA consists of Goals and Requirements

GOALS are
aspirational
expressions of
intent to guide
local choices

36.70A.010 *Legislative Findings*
36.70A.020 *Goals*

Urban Growth
Sprawl
Transportation
Housing
Economic Development

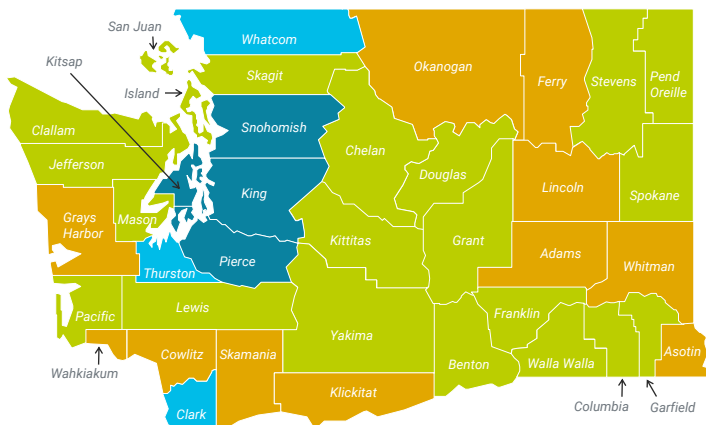
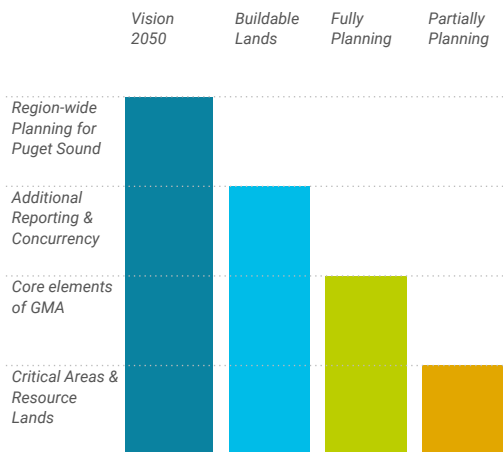
Property Rights
Permitting
Natural Resource
Industries
Open Space
Environment

Citizen Participation
Adequate Public
Facilities
Historic Preservation
Shoreline Management
Climate Change

REQUIREMENTS
Core Substantive
Mandates
-have the legal force
of law and must be
complied with

36.70A.060,170, 172 *Protect Critical Areas*
36.70A.060,131,170,177 *Designate & Conserve Resource Lands*
36.70A.110 *Direct New Growth to Urban Areas*
36.70A.070(6) *Provide Adequate Public Facilities*
36.70A.200 *Allow Essential Public Facilities*
36.70A.035 *Early and Continuous Public Participation*

Regional Variation

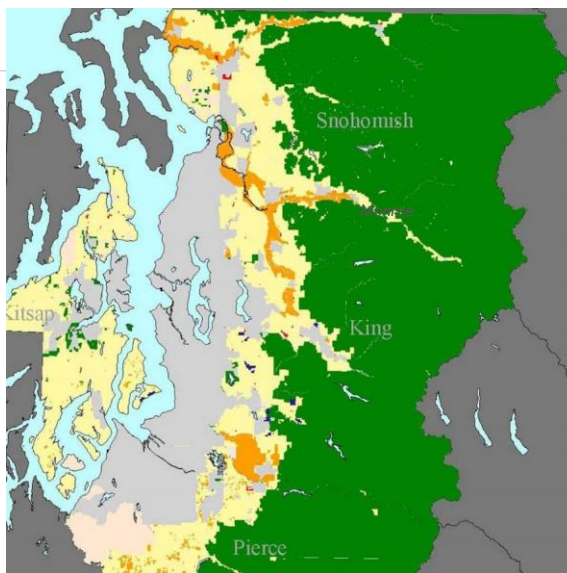


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The Differentiated Landscape under GMA



- Urban Growth Area
- Rural
- Agricultural Resource
- Forestry Resource
- Mineral Resource

Note: Critical Areas exist in all five land use types

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Roles and Procedures

- *Regional and Intergovernmental Coordination*
- *Comprehensive Plan*
- *Implementation*
 - *Development Regulations*
 - *Capital Facilities*
- *Periodic Update*

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It's not a single decision

Capital facilities / Transportation / Implementation strategy

Growth strategy

Housing needs analysis and land capacity analysis

Growth target allocation

Countywide planning policies

**IT'S A SET
OF NESTED
DECISIONS**

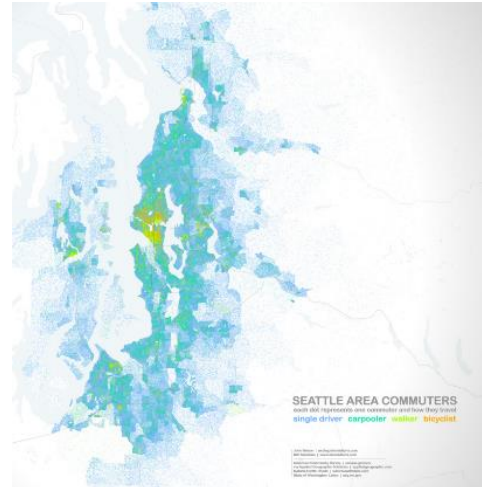
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Regional and Intergovernmental Coordination

- *Set Regional and Local Growth Targets*
- *Urban Growth Areas*
- *Regional Transportation Planning*
- *Housing Affordability*
- *Economic Development*
- *Essential Public Facilities*



*New Legislation:
Tribal Coordination*

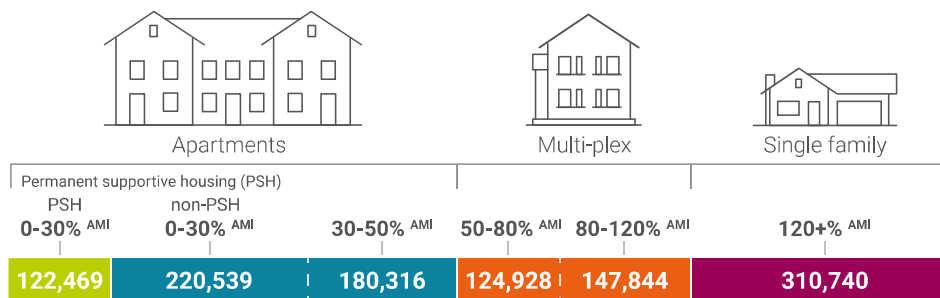


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Future housing needs broken down by area median income (AMI) groups



1.1 Million new homes will be needed in the next 20 years

In addition, there will also need to be:

91,357 Emergency housing beds (temporary housing)

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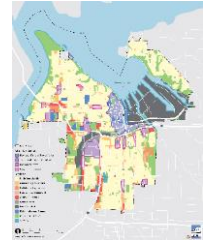
What is in a comprehensive plan?

County-wide planning policies

- Comprehensive plans
 - Land use
 - Housing
 - Capital facilities
 - Utilities
 - Rural (for counties)
 - Transportation

RCW 36.70A.070

Future Land Use Map



- Goals and policies
- Inventories
- Analysis and conclusions
- Strategies and commitments

How this works with the New Housing Element Requirements

- Goals and Policies
- Housing Needs Analysis
- Regional Target Setting
- Land Capacity Analysis
- Adequate Provision
- Undo policies that result in exclusion or racially disparate impacts.



New Legislation: Climate Element

Greenhouse Gas Reduction



Climate Impact Resilience



Environmental Justice



Implementation and Consistency

- **Comprehensive Plan** is internally and externally consistent
- **Capital Improvement Plans (CIP)** must be consistent with the comprehensive plan.
- **Development regulations** must be consistent with and implement the comprehensive plan.



Development regulations

Traditional zoning

Critical area regulations

Subdivision regulations

Public works standards

Design standards

Other regulations



New Legislation: Middle Housing & ADU

“Middle housing” means buildings that are **compatible in scale, form, and character with single-family houses** and contain two or more attached, stacked, or clustered homes.

Duplex



Fourplex



Courtyard Apartments



Cottage Housing



Townhomes

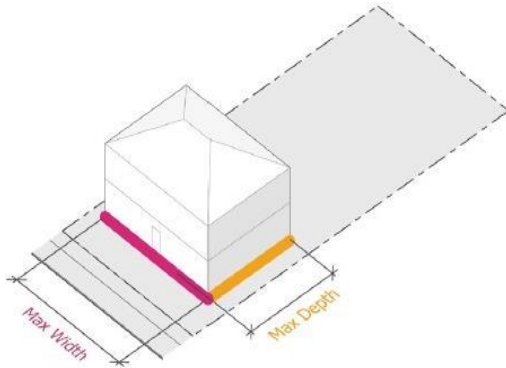


ADU



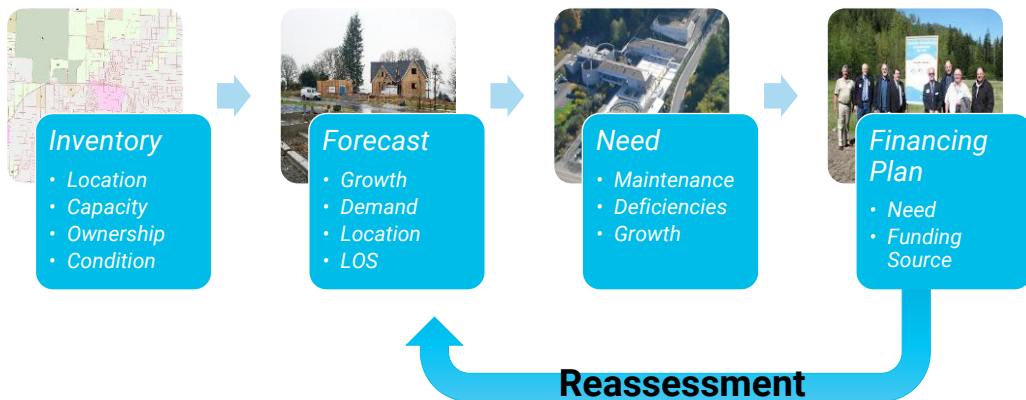
Design standards to achieve “house-scale”

Regulate building width and depth to get “house-scale” buildings



Example: house-scale Fourplex

Capital Facilities and Transportation



Questions?



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Then a 5-Minute Break!

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A SHORTCOURSE

ON LOCAL PLANNING

Roles for an Effective Public Process

AWC Conference

Spokane, WA

Sarah Fox, AICP

VANCOUVER CITY COUNCIL & GMS CLIMATE PROGRAM MANAGER

JUNE 2023



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Overview

- *Roles of participants*
- *How does your role contribute to planning decisions?*
- *Typical legislative process*
- *Public participation and hearings*

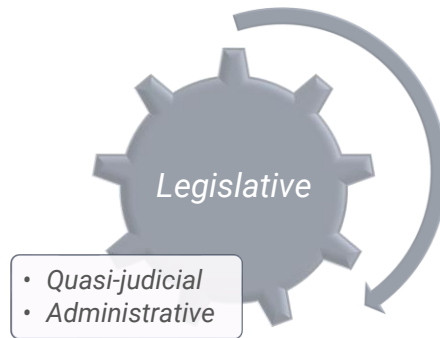


Planning involves many participants

- *Elected officials*
- *Appointed*
- *Staff*
- *Public*
- *Hearings Examiner*
- *Other appointed bodies*



Land Use Planning Decisions



Roles: Elected Officials

Decision makers

- *Adopt comprehensive plan policies, and regulations*
- *Make final decisions on budget for operations, infrastructure, and funding programs*
- *Communicate vision*

Appointments

- *Select commissioners and board volunteers*
- *Be intentional about balance*

Roles: Planning Commissioner

- *Policy advisor*
- *Quasi-judicial Decisions (in some cases)*



Roles: Hearings Examiner

Typically involved in Quasi-Judicial activities.

- *Professional contracted to make land use permit recommendations or decisions*
- *Allows local legislative or advisory bodies concentrate on policy-making*
- *Reduces local government liability exposure through more consistent and legally defensible quasi-judicial decisions.*

Roles: Staff



Duty: Elected Officials & Commission

- *Respect the Commission's Role*
- *Take the time to explain "why" when agree or disagree*
- *Provide periodic two-way feedback to the Planning Commission*



Tips: Elected Officials

- *Do your homework*
- *If quasi-judicial hearing, **do not discuss** the item*
- *Give appropriate deference to staff's areas of expertise*
- *Be familiar with approval criteria and applicable codes.*



Tips: Elected Officials

- *Keep the workload priorities and schedule expectations in alignment with the resources available.*
- *If unhappy with staff or the Commission --- do not publicly reprimand*
- *Welcome public contributions*



Duty: Planning Commissioner

- *Do your homework*
- *Focus on the decision criteria*
- *Gracefully accept that the elected members will not always agree commission's recommendations*
- **It can be rough!** *Don't take public testimony personally*



Tips: Commission Chair

- *Annual work plan*
- *Run the meeting well*
- *Enforce rules of procedure*
- *Ensure that everyone contributes*
- *Treat people fairly and don't make exceptions*



All Roles: Public Participation and Hearings

General Public

- *Long-term residents*
- *Students*
- *Community groups*
- *Neighborhoods*

Special Interests

Business

Developers

*Environmental
advocates*

Tips: Managing Public Hearings

- *May require sign in*
- *May establish time limits*
- *May ask for testimony not to be repetitive*
- *May arrange the order of speakers*



Tips: Managing Public Hearings

- *Be helpful with the process*
- *Be respectful and patient*
- *Ask clarifying questions*
- *Assist staff (use of microphone, providing names)*



Discussion, Evaluation & Deliberation



**"Of course we can make fast decisions ...
once we have considered the 4872 factors."**

Discussion, Evaluation & Deliberation

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, rely on the record and testimony*
- *Motion to approve or disapprove should instruct the staff to prepare draft findings and conclusions documenting the reasons.*

The Record of Decision

Decision must be based on findings
supporting the reasons for approval or disapproval of the proposal.

Rely on:

- *Application and supporting documentation*
- *Staff report with **relevant facts, local policies, and decision criteria** needed to make the decision*



Any questions or wisdom to share?

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Open Government Laws in Washington State

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Relevant Open Government Statutes

- Open Public Meetings Act (“OPMA”) (1971)
RCW 42.30
- Public Records Act (“PRA”) (1972 initiative)
RCW 42.56
- Preservation and Destruction of Public Records
RCW 40.14
- Open Government Trainings Act (2014)
RCW 42.30.205
RCW 42.56.150

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Open Government Trainings Act

RCW 42.30.205 requires

- every member of a “governing body”
- to take a training on the OPMA
- within 90 days of assuming the office
- and every four years thereafter

RCW 42.56.150 requires

- every local elected official
- to take training on the PRA
- and records retention statute (RCW 40.14)
- within 90 days of assuming office
- and every four years thereafter

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Open Government

- OPMA passed in 1971
- This OPMA preamble (RCW 42.30.010) clearly articulates the rationale behind our open government laws:

“The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their 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 that they may maintain control over the instruments that they have created.”

“This chapter shall be **liberally construed** and its exemptions **narrowly construed** to promote this public policy and to [ensure] that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.”

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Open Public Meetings Act (“OPMA”)

- Important terms:
 - “Public agency”
 - “Governing body”
 - “Meeting”
 - “Action”
- >> as defined in RCW 42.30.020.
- Don’t rely on the normal English definitions of these terms!
- The OPMA violates almost every rule of plain language legal writing.

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OPMA: Public Agency

- OPMA only applies to a “public agency.”
- “**Public agency**” means:
 - (a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature. This does not include a comprehensive cancer center participating in a collaborative arrangement as defined in RCW 28B.10.930 that is operated in conformance with RCW 28B.10.930;
 - (b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;
 - (c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;
 - (d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

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OPMA: Governing Body

- OPMA only applies to the “governing body” (broadly defined) of a public agency
- “**Governing Body**” means:
 - a multimember board
 - or—
 - any committee thereof when it
 - acts on behalf of the governing body;
 - conducts hearings; or
 - takes testimony or public comment
- Includes, e.g.:
 - City Council
 - Planning Commission
 - Lodging Tax Advisory Committee
- Does NOT include:
 - courts
 - Legislature
 - single-member executives
 - staff meetings
 - private organizations

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OPMA: Meetings

- “**Meeting**” means
 - a meeting where “action” is taken
 - includes **retreat**, conference, workshop, **study session**, etc.
 - physical presence not required
 - can occur via email, telephone, or serially
- A meeting does not occur in the absence of a quorum (except see committee exception)
- Traveling together (without discussion of agency business) is not a meeting.
- “**Regular meeting**” means recurring meetings held in accordance with an adopted schedule.
- “**Special meeting**” means any other meeting.

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OPMA: Action

- “**Action**” means:
 - the transaction of the official business of a public agency
 - by a governing body
 - including but not limited to
 - **receipt of public testimony**,
 - deliberations,
 - **discussions**,
 - considerations,
 - reviews,
 - evaluations, and
 - final actions.
- “**Final action**” means:
 - a collective positive or negative decision,
 - or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a
 - motion,
 - proposal,
 - resolution,
 - order, or
 - ordinance.

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OPMA: putting it all together...

Quorum of
Governing Body

—or—

a Committee of the
governing body when it:

- acts on behalf of the governing body;
- conducts hearings;
- takes testimony or public comment



“Action”

which includes discussion,
deliberations,
taking public comment,
or final action



Meeting



must be NOTICED & OPEN

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OPMA: Public Notice

Regular meetings require:

- Post agenda online 24-hours in advance (exceptions for small agencies)

Special meetings require:

- Written notice
- Including agenda
- 24-hours in advance
- Distributed to
 - Members of the governing body
 - Local newspapers, radio, and TV with a request on file
 - Posted on the agency's website
 - Posted at the agency's main location AND the meeting site
- Final action is limited to topics on the agenda
- Exceptions for emergency special meetings

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OPMA: Meetings Must be Open

- Generally, meetings must be open to the public: the public must be allowed to attend a meeting, except as provided under the OPMA for a declared emergency.
- **Remote meetings** or **remote participation** is allowed.
- **Secret ballots** are prohibited.
- Cannot put conditions on the public's attendance, such as requiring sign in.
- Unless there's an exception, any action taken at a meeting that is not open is **null and void**.
- **New in 2022:** any **regular** meeting at which "final action" is taken must allow public comment, either orally or in writing.

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OPMA: Executive Sessions

- "Executive session" is a closed session where the public is excluded.
- Allowed only for the purposes listed in RCW 42.30.110, which are narrowly construed.
 - Not allowed for "litigation" nor "personnel" nor "real estate" broadly.
- Must state the (1) purpose of the executive session, and (2) the time it will end before entering executive session. (Can extend the time, but don't come back early.)
- No final action (no voting) may be taken in executive session.
- Remember, **you** are responsible for your compliance with these rules. Don't rely exclusively on staff—they are not subject to the OPMA.

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OPMA: Closed Meetings

- The following meetings are **exempt** under RCW 42.30.140:
 - Certain licensing activities
 - Quasi-judicial decisions between named parties
 - Matters governed by the Administrative Procedure Act
 - Certain collective bargaining activities
- These exceptions are not executive sessions, so the executive session rules do not apply.

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OPMA: Cautions

- Site visits
- Email/texting among a quorum or more
- Serial meetingsAfter-meeting hangs

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OPMA: Serial Meetings

- **Serial meeting:** when a quorum has a series of smaller meetings or communications that results in a quorum collectively taking action, even if a quorum is never part of any single communication.
- Don't reply-to-all to a message sent to a quorum or more of the group
- Email/texting among a quorum or more
- Serial meetings: communication among a quorum or more, even if it not at the same time or in the same thread
- Requires a "collective intent to meet"
- Polling: not allowed!

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OPMA: Violations

- Any member of the public may sue to enforce the OPMA
- Decision is voided
- Plaintiffs may be awarded costs and attorneys fees
- \$500 civil penalty against each member of the board that knowingly violates the OPMA
- \$1000 penalty for subsequent violations
- Simple attendance is a violation

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Public Records Act (“PRA”)

The “Public Disclosure Act” passed in 1972 by voter initiative with 72% of the vote; included campaign financing rules and what is now referred to as the Public Records Act.

Overview of the PRA:

- Records must be disclosed unless exempt
- Interpreted in favor of disclosure
- Exemptions narrowly construed
- Applies to **state** and **local agencies** but not courts

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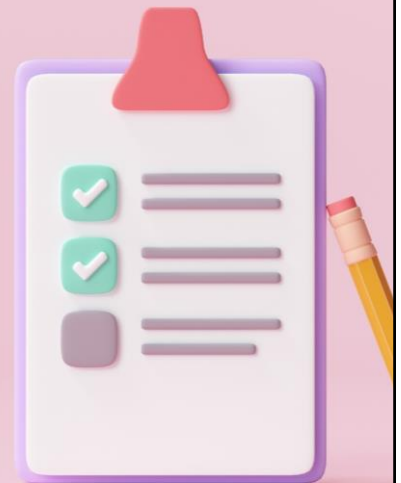


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PRA: Requirements

- Agencies must appoint a **public records officer**
- Agencies must adopt **procedural rules**
 - to provide “fullest assistance”
 - most timely possible action on requests
- Agency must publish a fee schedule for copy or mailing costs (no fees for searching, reviewing, redacting)

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What is a public record?

- Any writing relating to the conduct of government
- Prepared, used, owned, or retained
- Regardless of form or characteristics, including:
 - email (official or personal accounts)
 - text message
 - audio/video recording
 - map
 - metadata
 - social media posts



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PRA: Records Requests

- Any person may submit a request
- Using an agency's form is encouraged, but is not required
- Requests must be for **identifiable records**
 - A request for all records is not a request for identifiable records
 - A request for information is not a request for records
 - An agency has no duty to create records—but sometimes it's a good idea

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PRA: Responses

- Agency must respond in 5 days by
 - Acknowledging receipt + reasonable estimate of time to respond
 - Fulfilling the request
 - Seeking clarification + reasonable estimate of time for response if request is not clarified
 - Denying the request + written explanation of reasons for denial

PRA: Adequate Search

- Public agency must perform an **adequate search**
- **Reasonably** calculated to find responsive documents
- Can require employee or official to search their personal devices
- Agency should document its search
 - Locations
 - Search terms used
 - Personnel consulted

PRA: Delivery

- Make available during business hours
- Provide copies by mail or pickup
- Provide electronic records
 - including by pointing to records on the agency's website
 - agencies are encouraged to provide records online

PRA: Broad Requests

- Requests may not be considered “overly broad” solely because they are broad
- Agency may explain the scope of the request and suggest clarification
- Agency may provide responsive records in batches
- Agency may require a deposit (not greater than 10%) for the total cost of responsive records
- Agency may charge for each batch of records; if a batch is not paid for, agency doesn't have to continue response

PRA: be reasonable!

- Estimates for time to respond must be reasonable
- Search must be “adequate”—read: reasonable

PRA: Exemptions

- More than 700 exemptions exist in state law, e.g.:
 - *limited* attorney-client privilege
 - employment records
 - records of pending investigations
- If an agency withholds or redacts a record, agency must cite to an exemption and explain why
- Use an exemption log (format not prescribed) identifying
 - Identification of record
 - statutory authority for exemption
 - explanation of how exemption applies

PRA: Fees

- Inspection of records is free
- Use statutory default fee schedule OR
- Create schedule based on actual cost
 - Fees for copies, including actual cost of staff time for copying/scanning
 - Actual costs for mailing
- No fees allowed for agency's searching, reviewing, redacting

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PRA: Violations

- Requestor may sue for **denial** OR **delay**
- Court can impose civil penalties up to \$100 per **day** per **record** plus **attorneys fees** and **costs**
- Court will consider **mitigating** or **aggravating** factors in determining the penalty
- Intentionally concealing a record required to be released is a violation of the state Ethics in Public Service Act (RCW 42.52.050).
- Willful destruction or alteration of a public record is a class C felony (RCW 40.16.010).

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Records Retention (RCW 40.14)

- Records must be retained per the Local Government Record Retention Schedule from the Washington State Archives.
- After retention period has expired, records should either be:
 - Transferred** to state archives to protect state history, e.g.:
 - 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, e.g.:
 - calendars (2 years)
 - citizen complaints (3 years)
 - contracts (6 years after completion)
 - foreclosures (10 years after resolution)

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Questions?

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