

Chapter 1.

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Chapter 1.

Legal and Practical Objectives of Planning

A. The Planning Model in Washington

Washington state does not define the term land use “planning” in any of its many planning statutes. Courts have described planning in the broad sense as,

*the evolvement of an over-all program or design of the present and future physical development of the total area and services of the existing or contemplated municipality.*¹

The planning process in a community exercises the police power of a municipal corporation, that is, the power of duly elected officials to regulate the health, safety, and other interests of a community.

Planning is normally accomplished through (1) a citizens’ advisory body known as a “planning commission;” (2) ‘often one or more planning staff who assist the planning commission; and (3) the

elected council or commission of the municipality. Citizen participation is encouraged through workshops, public meetings and special citizen committees.

Planning is a process in which community values, needs, goals, and objectives are expressed, typically through a comprehensive land use plan. The goals and objectives are then implemented through regulatory ordinances. These are known collectively as “official controls,” which include zoning codes, subdivision codes, building and health codes, environmental codes, and others that make up the regulating framework of the community.

Planning activity is divided into two categories: legislative and administrative actions.

“Legislative actions” articulate values and standards, designate rules, or create maps that are likely to affect all or a significant part of the population. Examples of legislative actions include comprehensive planning, functional plans such as for sewer or water, and development regulations, including zoning and critical areas ordinances.² Legislative actions are always taken by city councils or county commissions and must be expressed in documents officially adopted by the governing body of the particular jurisdiction. Legislative actions express the community’s plans and policies and create the rules by which the community is governed.

“Administrative actions” enforce or administer the community’s plans, policies, and regulations on a case-by-case, site-specific basis. Administrative actions include decisions approving plats or site plans for buildings, issuing enforcement letters or actions, or rezoning specific parcels to further the objectives of adopted plans and ordinances. Administrative actions apply adopted rules or standards to particular properties or situations. They normally consider specific rights or requests of a particular property owner, or group of property owners or users. Administrative actions, typically made at the staff level, also include decisions to issue building permits or health permits, or to administer the non-hearing sections of the zoning code.

When an administrative action requires a hearing and a decision based on the record, it is considered to be “quasi-judicial.” Quasi-judicial actions include approving plats, shoreline permits, special use

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permits, and related actions. Quasi-judicial actions may be taken by hearing examiners, planning commissions, city councils, and county commissions.

This chapter presents an outline of the process, introduces the basic planning model in Washington, and places it into context.

B. The Constitutional Basis for Planning

The constitutional basis for planning is provided in the police power provisions of the Washington State Constitution:

*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.*³

Courts in Washington have long acknowledged the validity of planning as a police power, in that

*... zoning ordinances are constitutional in principle as a valid exercise of the police power, and will be upheld if there is a substantial relation to the public health, safety, morals, or general welfare.*⁴

When a municipality acts with due regard for proper procedures and considerations, the courts will defer to the municipal actions taken. At the policy level, the actions are presumed to be correct.

C. The Statutory Basis for Planning

There are three statutory enabling acts for planning at the local level: the Planning Commission Act⁵ (cities and counties); the Optional Municipal Code;⁶ and the Planning Enabling Act.⁷ Communities may also operate under a charter model, which provides a different planning structure. Each of

PRACTICE TIP: The community should reference the statutory basis it uses for planning (e.g. the County of Whitehall adopts Chapter 36.70 RCW as the basis of County planning). This designation will help newcomers understand the rules governing the process, and remind “old hands” that they should check statutory details periodically to assure that proper procedures are followed.

If a county or city is adopting a comprehensive plan or development regulations under the GMA, the adopting ordinance should specifically reference Chapter 36.70A RCW. This will help the county or city establish GMA compliance.

these chapters in the Revised Code of Washington (RCW) imposes significant obligations on parties involved in land use planning. People involved in the process must understand the provisions of each and must know under which chapter a given municipality operates.⁸

The state’s Growth Management Act (GMA),⁹ and its implementing amendment,¹⁰ do not change the method or manner of planning in a local community. They merely specify the elements that must be planned and additional criteria to be followed, regardless of the local community’s statutory model.

1. The Planning Commission Act ¹¹

The Planning Commission Act permits a city or county to engage in planning by creating a city or county planning commission.¹² Once a planning commission has been appointed, it must recommend adoption of land use regulations and implement a “comprehensive plan” for the physical and generally advantageous development of the municipality.¹³ This means that before any regulatory land use rules are adopted, city and county councils must submit them to the planning commission. Not doing so could render the action or enactment void for failure to follow proper procedure.

The Growth Management Act¹⁴ adds this requirement: all counties and cities that are required to fully plan must adopt a comprehensive plan with more specified components.¹⁵ This reverses a long-standing policy that the “comprehensiveness” requirement could be satisfied merely by enacting a basic, community-wide plan.¹⁶

For counties not fully planning under the GMA, the Planning Commission Act¹⁷ is still the basic planning model. However, some jurisdictions not fully planning under the GMA have incorporated certain components of the GMA’s requirements into their plans. For example, some cities have adopted a version of an urban growth area.

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PRACTICE TIP: All communities choosing to or required to act through a comprehensive plan, should use the plan daily to reinforce all phases of community action. The best way to assure such consistency is to require any official action that enables or enforces the comprehensive plan to state why the action is consistent with the plan. Such expression will be given great, if not determinative, weight in subsequent reviews. More importantly, this pattern of conduct will give life to the comprehensive plan and weave the document into the fabric of daily life in the community.

2. The Optional Municipal Code¹⁸

The Optional Municipal Code provides the same general authority to engage in planning as the Planning Commission Act. However, it does require greater detail in the elements and format of the comprehensive plan. To engage in planning and zoning under the Optional Municipal Code, a city which governs under this code may create a planning agency (a planning commission together with a planning staff) to prepare:

*a comprehensive plan for anticipating and influencing the orderly and coordinated development of land and building uses of the code city and its environs. The comprehensive plan may be prepared as a whole or in successive parts.*¹⁹

The city council must then specifically consider and adopt or reject the comprehensive plan.²⁰ From and after the date of approval by the city council,

*the comprehensive plan, its parts and modifications thereof, shall serve as a basic source of reference for future legislative and administrative action; ...*²¹

Finally, after adopting a comprehensive plan, the legislative body,

*... may implement or give effect to the comprehensive plan or parts thereof by ordinance or other action to such extent as the legislative body deems necessary or appropriate*²²

With the advent of growth management legislation, all implementing development regulations must be consistent with comprehensive plans.²³ This means that all official controls must be measured against the comprehensive plan to assure consistency; and all land use approvals, plats, site plans, and other development permits must be measured (either directly or through environmental review under the State Environmental Policy Act) for consistency with the adopted development regulations, or in the absence of applicable development regulations, the adopted comprehensive plan.²⁴

3. The Planning Enabling Act²⁵

The Planning Enabling Act, directed specifically at counties, is the most detailed of the planning enabling statutes. The Planning Enabling Act is more specific, procedurally detailed, and complex than the Planning Commission Act. It provides a specific statutory framework that integrates planning with zoning, platting, and other specific land use regulations.

While the Planning Enabling Act is an option for community planning, it requires a more detailed comprehensive plan. Once a county elects to create a planning agency under this Act, the agency must prepare a comprehensive plan for the

*orderly physical development of the county... [including] any land outside its boundaries which, in the judgment of the planning agency, relates to planning for the county.*²⁶

The Supreme Court has left no doubt that under the Planning Enabling Act, the comprehensive plan is a document to be reckoned with.²⁷ The court said

*preparation of a comprehensive plan is the beginning and indispensable precursor to a county zoning law... There is nothing casual, or perfunctory, about a certified comprehensive plan as the statutes require it to set forth a number of specific elements..., and it serves as a guide to the later development and adoption of official zoning controls.*²⁸

As the indispensable precursor to a valid local planning program, a well-ordered comprehensive plan is now incorporated by statute into all planning dictated by the Growth Management Act (GMA).²⁹ It applies to all cities and counties, whether they have elected or are required to develop a comprehensive plan under the GMA.

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4. The Growth Management Act

The Legislature adopted the Growth Management Act in 1990 in response to concerns that:

*uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by the residents of this state.*³⁰

The GMA provides the tools to counties and cities to manage and direct growth to urban areas where public facilities and services can be provided most efficiently, to protect rural character, to protect critical areas and to conserve natural resource lands.

The GMA is the Legislature's expression of a statewide interest in local planning decisions. It provides a more detailed policy framework than the Planning Enabling Act. The GMA includes 14 goals and a number of requirements for local comprehensive plans and development regulations.

All counties and all cities of the state are required to designate and protect critical areas and to designate natural resource lands.³¹ Faster growing counties and cities are required to fully plan under the GMA by meeting all of the goals and requirements. Currently 29 counties and their cities have been mandated or have chosen to fully plan under the GMA. (See Chapter 3 for the goals and requirements of the GMA.)

Regional coordination between counties and cities is emphasized in the GMA. Counties fully planning under the GMA are required to adopt county-wide planning policies to guide comprehensive plan development. The policies must include guidance for designation of urban growth areas (UGAs) outside of which urban development will not occur. Counties work collaboratively with cities to allocate projected population for the next 20 years. UGAs are designated based upon the need to accommodate population projections.

County and city comprehensive plans are required to include specific elements, or chapters, to

address land use, housing, capital facilities, utilities, transportation, rural lands (for counties), and shorelines.³² Development regulations must be consistent with and implement the comprehensive plan.³³

The state's interest is expressed in the goals and requirements of the GMA, but local jurisdictions must determine how they will meet those goals and requirements through the local planning process:

5. The Shoreline Management Act

Washington established itself as a leader in managing development of shorelines by enacting the Shoreline Management Act of 1971 (SMA). The SMA regulates development of shorelines of the state and shorelands associated with these shorelines. Shorelines of the state include all waters of the state (including marine waters) and their underlying lands, except streams with a mean annual flow of less than 20 cubic feet per second and lakes less than 20 acres in area. Shorelands are those areas landward for 200 feet from the ordinary high water mark, floodways, and contiguous floodplains within 200 feet, and all associated wetlands. The SMA places an emphasis on protecting shoreline ecology and preserving the public access to and use of shorelines. The SMA prohibits development that is inconsistent with the Act's policies or with local shoreline master programs (SMPs).

The SMA requires that local governments adopt SMPs, which tailor the state policies to their particular circumstances, enunciate local policy goals, designate the different shoreline environments within the jurisdiction, and spell out specific uses for those environments (like zoning codes). In effect, the SMA is a land use statute for shorelines and their associated shorelands. In 1995, the Legislature required local jurisdictions to integrate their SMPs with their comprehensive plans and development regulations. The goals and policies of the SMA are now the 14th goal of the GMA. SMP policies are an element of the comprehensive plan and the implementing regulations are part of the jurisdiction's development regulations. The SMA and its integration with the GMA will be discussed further in chapters 3 and 7.

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6. The Subdivision Act

As far back as 1969, the Legislature found that division of land:

*is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties throughout the state.*³⁴

The requirements of Chapter 58.17 RCW were enacted to govern platting and subdivisions. Local governments must adopt subdivision regulations that provide procedures and standards for approval of land divisions.

The importance of subdivision regulations to planning, including implementation of comprehensive plans, is recognized in the GMA. Subdivision ordinances are included in the definition of development regulations under the GMA.³⁵ Accordingly, an additional section was added to the subdivision statute when the GMA was adopted in 1990. In deciding whether to approve a subdivision application, local governments are required to make written findings determining:

*(a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.*³⁶

7. The State Environmental Policy Act

The State Environmental Policy Act (SEPA) was enacted in 1971 to provide state and local agencies with the authority to consider and mitigate the environmental impacts of their decisions. Although SEPA was adopted prior to other planning laws, it is still an important aspect of land use planning because it applies to all agency decisions unless they are categorically exempt. SEPA is intended

to provide information to agencies, applicants, and the public to encourage the development of environmentally sound proposals. The environmental review process involves the identification and evaluation of probable environmental impacts, the exploration of reasonable alternatives that would mitigate adverse impacts, and the development of mitigation measures to reduce those impacts.

Every step of the planning process from adoption of countywide planning policies, comprehensive plans, and development regulations to project review requires environmental analysis. Whether a county or city is fully planning under GMA or not, it should be examining the environmental impacts of its planning decisions. Environmental information is essential to making good planning decisions.

Recent amendments to the GMA and SEPA now require that the environmental review and permit review processes be better integrated at the project level. This will be discussed further in chapters 3 and 6. However, it is important to note that the Legislature has expressly stated that the primary role of SEPA review is to focus on the gaps and overlaps that may exist in applicable laws and requirements related to a proposed action. SEPA is not intended to act as a substitute for other land use planning and environmental requirements.³⁷

8. Charter Form of Government

State laws allow cities and counties to adopt “home rule,” using a charter to specify the offices and processes for making governmental decisions.³⁸ A detailed review of charters is beyond the scope of this manual; therefore, no specific model is identified. However, several points should be noted for any community contemplating or using a charter form of government:

- Broad legislative actions are vested with the policy-making body of the community.
- Administrative actions typically are vested with the executive body of the community.
- The charter should discuss the planning process sufficiently so that enabling legislation will mirror the responsibilities for creating, modifying, and administering the community’s planning activities.

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- Shelton v. Bellevue, 73 Wn.2d 28, 35, 435 P.2d 949 (1968).
- See e.g., Harris v. Pierce County, 84 Wn App. 222, 928 P.2d 1111 (1996) (the County Council's adoption of a recreational trail plan was held to be a legislative function as opposed to a quasi-judicial function).
- Washington State Constitution, Art. XI, Sec. 11.
- McNaughton v. Boeing, 68 Wn.2d 659, 662, 414 P.2d 778 (1966). Planning through constitutional powers provides a basis for validating land use actions processed outside the specified statutory planning process. Nelson v. Seattle, 64 Wn.2d 862, 395 P.2d 82 (1964); Barrie v. Kitsap County, (1980).
- Chapter 35.63 RCW.
- Chapter 35A.63 RCW.
- Chapter 36.70 RCW.
- Chrobuck v. Snohomish County, 78 Wn.2d 858, 480 P.2d 489 (1971).
- ESHB 2929 (1990) (principally Chapter 36.70A RCW).
- RESHB 1025 (1991).
- Chapter 35.63 RCW.
- RCW 35.63.020.
- RCW 35.63.090.
- Chapter 36.70A RCW.
- RCW 36.70A.070.
- Shelton v. Bellevue, 73 Wn.2d at 39.
- Chapter 35.63 RCW.
- Chapter 35A.63 RCW.
- RCW 35A.63.060.
- RCW 35A.63.072.
- RCW 35A.63.080.
- RCW 35A.63. 100.
- RCW 36.70A.120
- RCW 36.70B.040
- Chapter 36.70 RCW.
- RCW 36.70.320.
- Smith v. Skagit County, 75 Wn.2d 715, 453 P.2d 832 (1969).
- Smith, 75 Wn.2d at 738-739 (emphasis added).
- RCW 37.70A.010, .020, and .120.
- RCW 36.70A.010.
- RCW 36.70A.060 and 170.
- RCW 36.70A.070 and 36.70A.480.
- RCW 36.70A.040(3).
- RCW 58.17.010.
- RCW 36.70A.020(7).
- RCW 58.17.110.
- RCW 43.21C.240 and WAC 197-11-158.
- Washington State Constitution, Art. XI, Sec.