

Our mission is to maintain and improve the quality of life reflecting community expectations through a focus on public participation and employees-mayor-council teamwork.



NOTICE OF SPECIAL MEETING

of the
Anacortes City Council
and the
Anacortes Planning Commission

Tuesday, September 25, 2018
6:15 p.m. – 9:15 p.m.

Municipal Building Council Chambers
904 6th Street
Anacortes, Washington 98221

NOTICE IS HEREBY GIVEN that the Anacortes City Council will hold a special meeting on Tuesday, September 25, 2018 at 6:15 p.m. for the purpose of attending A Short Course on Local Planning sponsored by the Washington State Department of Commerce.

No public testimony will be received and no action will be taken.

Published: **September 19, 2018**

Distribution: **Anacortes City Council**
 Anacortes Planning Commission
 Media

If reasonable accommodation of a disability is needed please contact Cherri Kahns at 299-1950 at least 48 hours prior to this meeting.

A SHORTCOURSE



Department of Commerce

ON LOCAL PLANNING

A Short Course on Local Planning

September 25, 2018, 6:15 – 9:15 p.m.

Anacortes City Hall, Q Avenue and 6th Street, Anacortes, WA 98221

Hosted by the City of Anacortes

Agenda:

- 6:15– 6:30 WELCOME AND INTRODUCTIONS.....Commerce**
- 6:30 – 7:00 THE LEGAL BASIS OF PLANNING IN WASHINGTON.....Michael Walter, Attorney at Law**
The statutory basis of planning in Washington State, and early planning statutes.
Constitutional issues in land use planning.
- 7:00 - 7:30 COMPREHENSIVE PLANNING BASICS.....Valerie Smith, Planner**
What is planning, and why is it important? Overview of the Growth Management Act requirements for local planning. Ideas and tools for implementing and updating the comprehensive plan.
- 7:30 – 7:40 BREAK**
- 7:40 – 8:10 ROLES AND RESPONSIBILITIES.....Stacie Pratschner, Planner**
Roles and responsibilities in the planning process. Legislative vs quasi-judicial decisions, tips for encouraging public involvement, best practices for effective meetings.
- 8:10- 8:50 OPEN GOVERNMENT LAWSMichael Walter., Attorney at Law**
Open Public Meetings Act and Introduction to the Public Records Act. This training meets the requirements of RCW 42.30.205 requiring every member of a governing body to take Open Public Meetings Act training within 90 days of taking an official role, and every four years thereafter, as long as they remain in that role. Attendees will receive a certificate of training.
- 8:50-9:15 QUESTIONS AND ANSWERS.....All**



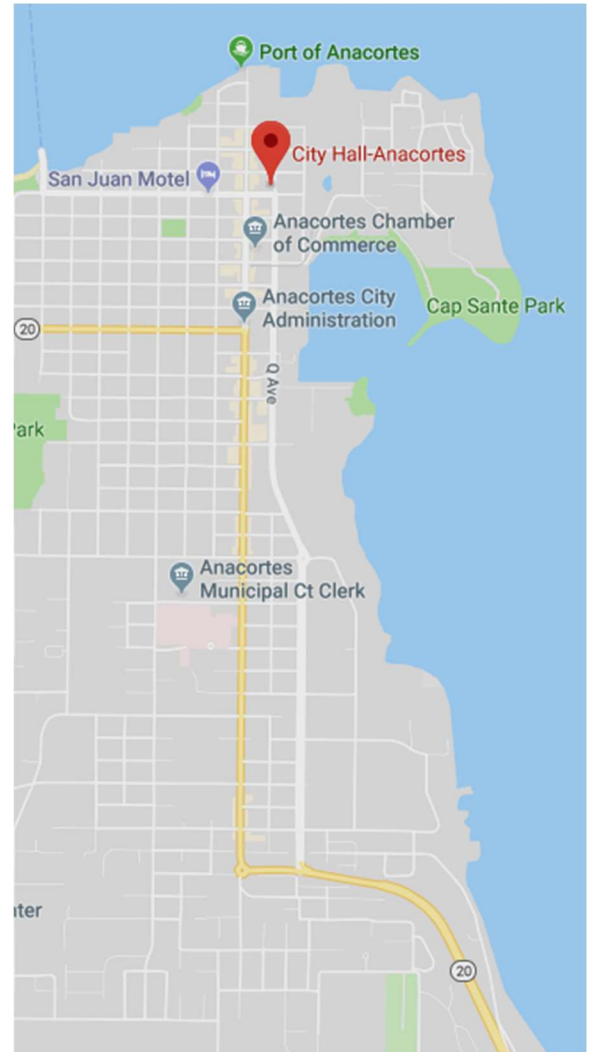
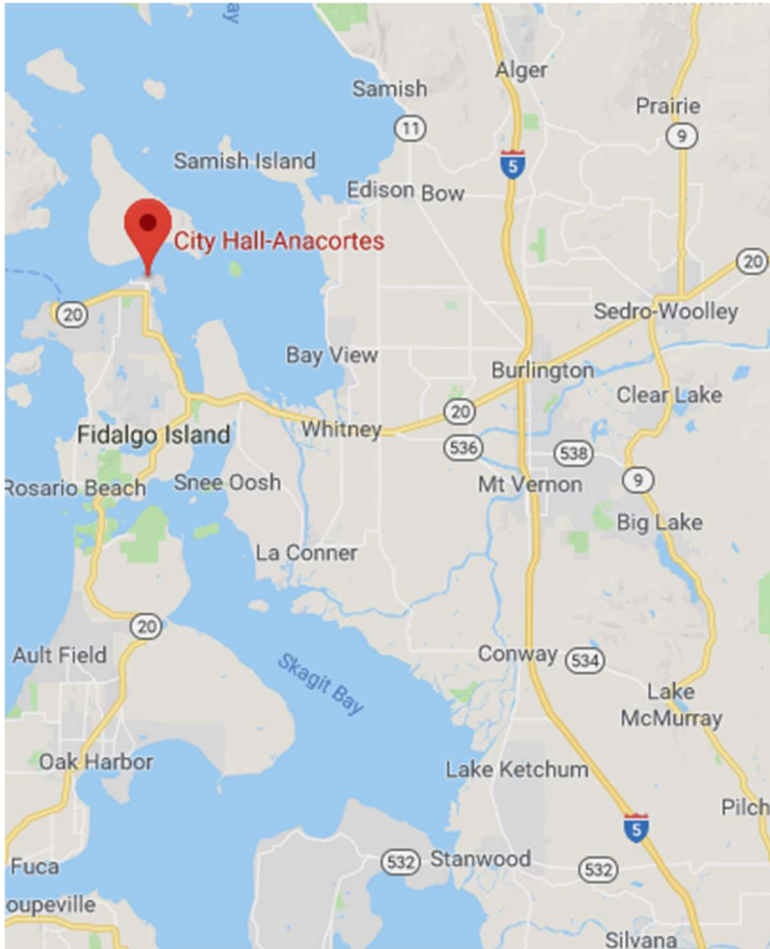
Planning Association
of Washington



American Planning Association
Washington Chapter



REGISTRATION: Please register by September 18, 2018, by sending an email with your name, organization and title (if applicable) and the location of the short course you wish to attend to shortcourse@commerce.wa.gov or by leaving the same information at 360 725-3064. Registration is not required, but helps for planning purposes; all will be welcome at the event. There is no cost to attend. **SEE ALL UPCOMING IN PERSON COURSES AND VIDEO OPTIONS ON THE SHORT COURSE WEB PAGE AT:** www.commerce.wa.gov/serving-communities/growth-management/short-course/



For AWC members, city elected officials will earn 3 CML credits in Community Planning and Development
For WSAC members, county elected officials will receive 2 core credits towards Certified Public Official Training
For WCIA members, attendance at the Short Course provides COMPACT training credit

For RMSA members, the Short Course meets the requirements of the land use advisory member standards
For WSBA members, viewing the video series provides 1 CLE Legal Credit, and 0.75 other credits (Activity # 1011672)

A Short Course on Local Planning: Training citizen planners since 1977

The Short Course is an opportunity for planning commissioners, local government staff, elected officials, and community members to learn about our state's legal framework for planning, comprehensive planning and community development processes, and public involvement in the planning process.

www.commerce.wa.gov/serving-communities/growth-management/ 360.725.3064

MODERATOR: Valerie Smith, Senior Planner, Washington State Department of Commerce
Valerie.Smith@commerce.wa.gov 360. 725.3062

PRESENTERS: Michael C. Walter, Attorney at Law, Keating Bucklin & McCormack,
mwalter@kbmlawyers.com 206.623.8861, x34

Stacie Pratschner, AICP, Senior Planner / Team Supervisor, Long Range Planning
Skagit County Planning & Development Services
Staciep@co.skagit.wa.us 360.416.1336

ADDITIONAL TRAINING AND EDUCATIONAL OPPORTUNITIES IN WASHINGTON

Department of Commerce, Growth Management Services <http://www.commerce.wa.gov/serving-communities/growth-management/>. See the Short Course Manual and Videos under the “Short Course on Local Planning” Key Topic.

Municipal Research and Services Center of Washington at www.mrsc.org: See [A Planner’s Pocket Reference](http://www.mrsc.org/subjects/planning/PocketRef.aspx) at. www.mrsc.org/subjects/planning/PocketRef.aspx, which includes glossaries, web links for land use, environment, housing, census, economics, transportation, technical tools, model codes, and land use law.

Washington State Office of the Attorney General Trainings on Open Government, Open Public Meetings Act and Public Records Act training at www.atq.wa.gov/OpenGovernmentTraining.aspx

OUR SHORT COURSE PARTNERS

Planning Association of Washington (PAW) is a statewide, grass-roots, non-profit incorporated in 1963, with the mission to “provide unbiased practical planning education to the citizens of Washington State”. PAW created the Short Course on Local Planning and is a Founding Partner. www.planningpaw.org Partner since 1980.

The Washington Cities Insurance Authority (WCIA) is a liability insurance risk pool which supports member risk management through education. WCIA encourages their members to attend the Short Course on Local Planning because it is recognized as a tool for reducing land-use liability. www.wciapool.org/ Partner since 2009.

Washington Chapter of the American Planning Association (WA-APA) www.washington-apa.org/ Partner since 2014.

Association of Washington Cities (AWC) and the **Risk Management Services Agency (RMSA)** www.awcnet.org/ and www.awcnet.org/PropertyLiability.aspx See **GMA Comp Plan Conversation Starter** videos . www.awcnet.org/ResourcesResearch/GMACompPlanConversationStarters.aspx Partner since 2015.

Hunt, Marcia

From: Stewart, Joann
Sent: Tuesday, September 25, 2018 8:22 AM
To: City Council; Cleland-McGrath, Christine; Doll, Andrea; Graf, Jeffrey; McNett, Jeremy; MacKenzie, Ward; Moffitt, Amber; Mount, Jeff
Cc: Measamer, Don; Grage, Libby; Hunt, Marcia
Subject: FW: REMINDER: Short course Tuesday, September 25th, 6:15 p.m. at Anacortes City Hall
Attachments: gms-sc-anacortes-handouts.pdf

From: Fritzel, Anne (COM) [mailto:anne.fritzel@commerce.wa.gov]
Sent: Monday, September 24, 2018 5:11 PM
To: Measamer, Don <don@cityofanacortes.org>; Smith, Valerie (COM) <valerie.smith@commerce.wa.gov>; Stacie Pratschner <Staciep@co.skagit.wa.us>; Michael C. Walter <MWalter@kbmlawyers.com>
Cc: Ojennus, Matthew (COM) <matthew.ojennus@commerce.wa.gov>
Subject: RE: REMINDER: Short course Tuesday, September 25th, 6:15 p.m. at Anacortes City Hall

Good evening, if you have not already printed the handouts for tomorrow's short course, please use these. There are minor changes. If you have printed already, there are a few minor changes.

=====

Subject: REMINDER: Short course Tuesday, September 25th, 6:15 p.m. at Anacortes City Hall

Thank you for registering for the Short course on Local Planning next Tuesday evening in Anacortes.

Tuesday, September 25, 2018, 6:15 – 9:15 p.m.
Anacortes City Hall, Q Avenue and 6th Street, Anacortes, WA 98221
Hosted by the City of Anacortes

If you registered others, please share this email with them.

There is still plenty of space for you to bring a colleague or friend to the training.

Hand Outs

To save resources, only the agenda, a certificate and a small booklet with key information will be provided as paper handouts at the training. **If you choose to have printed a copy of the PowerPoint presentations, I have attached them to this email for you to print.** If you have trouble printing, please let me know and I will print a copy for you.

Other Resources on our Short Course Web page

These handouts will also be posted on the [Short Course Web page](#) for six months in the "Box" on our web page under "Anacortes". Also on this web page are resources for your use including:

- A full set of videos for the Short course

- Our more detailed Short Course manual, which includes a special “New to the Planning Commission”
- Special topic short course videos.

Travel safely, and enjoy the course!

Best
Anne

Anne Fritzel, Senior Planner, Growth Management Services
Anne.Fritzel@commerce.wa.gov 360.725.3064 (desk) 360.259.5216 (cell)

Visit the Short Course web page for a full listing of upcoming short courses, download the handouts, the resource manual, or view the course on video. <http://www.commerce.wa.gov/serving-communities/growth-management/short-course/>

**SHORT COURSE ON
LOCAL PLANNING**

**THE LEGAL BASIS OF
PLANNING IN
WASHINGTON STATE**

MICHAEL C. WALTER
Keating, Bucklin & McCormack, Inc., P.S.
(206) 623-8861
mwalter@kbmlawyers.com

**GOOD LAND USE PLANNING
IS A GOOD THING!**

*"By far the greatest
and most
admirable form of
wisdom is that
needed to plan and
beautify cities and
human
communities."*

-- Socrates



June 14, 2018

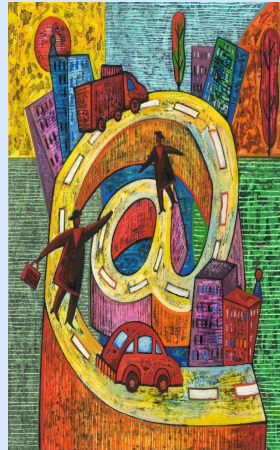
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WHAT IS LAND USE PLANNING?

"... 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."

-- Shelton v. Bellevue
73 Wn. 2d. 28 (1968)



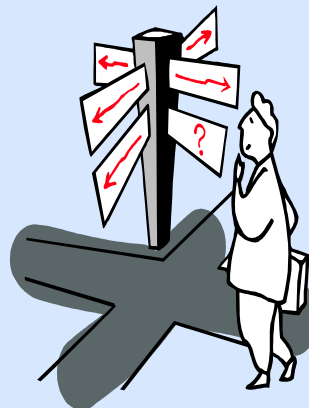
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UNDERSTANDING PLANNING LAW AND PROCESS

- ☐ Legal framework of planning
- ☐ Council roles in land use and planning decisions
- ☐ Constitutional protections
- ☐ Other legal protections and claims
- ☐ Land use mistakes – So what?



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The planning framework: sources of law

- ❖ Constitutions (federal & state)
- ❖ Statutes (federal & state)
- ❖ City codes, ordinances & resolutions
- ❖ Court decisions
- ❖ Administrative regulations
- ❖ Board, agency and commission decisions
- ❖ Comprehensive plan & updates

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Constitutional basis for planning

Planning is recognized as a legitimate exercise of the police power (*i.e.*, power to protect public health, safety and welfare):

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.

– Washington State Constitution
(Article 11, Section 11)

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Statutory basis for planning – **Key State laws**

- Planning Commission Act (RCW ch. 35.63; RCW ch. 35.63A)
- Planning Enabling Act (RCW Ch. 36.70)
- Growth Management Act (RCW ch. 36.70A)
- Subdivision Act (RCW ch. 58.17)
- Shoreline Management Act (RCW ch. 90.58)
- State Environmental Policy Act (RCW ch. 43.21C)
- Optional Municipal Code (RCW ch. 35A.63)
- Other regulatory statutes – *e.g.* RCW ch. 19.27 (building codes)

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Statutory basis for planning— **Sample Federal laws**

- Clean Water Act (and National Pollution Discharge System)
 - Local stormwater permits
 - Low impact development regulations
 - Enforced and applied through State DOE
- Endangered Species Act (protection of threatened and endangered wildlife, etc.)
- National Environmental Policy Act (NEPA) (national environmental policy act and regulations applied to federal law projects)
 - SEPA is patterned after NEPA
- Federal Emergency Management Agency (FEMA) (flood controls and regulations)

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City Code and ordinances as basis for planning

Select planning related code titles:

- *Sample* - Title 17 (zoning)
- *Sample* - Title 18 (land division)
- *Sample* - Title 19 (environmental protection)
- *Sample* - Title 20 (administration of land development regulations) (*e.g.*, Ch. 20.04 = comprehensive planning)

Related land use, permitting, regulatory parts of code:

- *Sample* - Title 6 (health and safety zoning)
- *Sample* - Title 12 (streets and sidewalks)
- *Sample* - Title 13 (water, sewer, stormwater)
- *Sample* - Title 16 (buildings and construction)
- Ordinances -- not codified
- Resolutions – less formal than code or ordinances

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Judicial decisions as basis for planning

- Thousands of State and Federal court decisions interpreting and applying statutory planning rules
- U.S. Supreme Court = highest court; puts limits on planning and land use regulatory authority, balances private rights
- Ninth Circuit Court of Appeals (intermediate federal appellate court)
- Washington State Supreme Court (highest in State)
- Washington State COA (intermediate state appellate court)
- *Euclid v. Ambler Realty*, 272 U.S. 365 (1926): Zoning ordinance classifying use, height, and area restrictions are reasonable extension of police powers; “rational basis” for regulation

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Administrative law as basis for planning

Select administrative laws:

- WAC 197-11 (implements SEPA)
- WAC 135-196 (implements GMA)
- Federal regulations, *e.g.* implementing and supplementing:
 - The Clean Water Act
 - NEPA
 - FEMA
 - Fair Housing Act and Rehabilitation Act

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Board, agency and commission decisions as basis for planning

- Federal agencies (*i.e.*, FCC, FTC, etc.)
- Regional boards or commissions (*i.e.*, Columbia river Gorge Commission, interlocal agencies)
- State agencies, boards or commissions (*i.e.*, GMHB, PCHB, SMHB, etc.)

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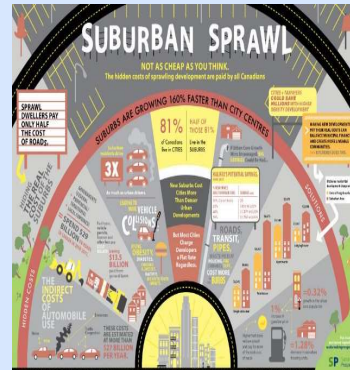
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THE GROWTH MANAGEMENT ACT

"It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning."

-- RCW 36.70A.010 (1990)



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The Growth Management Act ("GMA")

- Source: RCW ch. 36.70A
- Adopted in 1990 in response to concerns about unprecedented and uncontrolled growth, and risks to environment, etc.; amended several times
- Emphasizes:
 - Limiting sprawl
 - Protecting critical areas
 - Conserving resource lands
- Faster growing counties and cities in them must "fully plan" under GMA
- GMA constantly changing – keep up with the law!

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THE SUBDIVISION ACT

"The City legislative body. . . shall determine whether the public interest will be served by the sub-division and dedication."

-- RCW 58.17.110 (1969)



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The Subdivision (Platting) Act

- Source: RCW ch. 58.17
- Adopted in 1969
- Governs most divisions of land, with exceptions
- Applies statewide; all cities
- **Goal:** help provide for uniform administration of division of land, through defined process, to address bulk, scale, height, open spaces and other elements
- Two-step quasi-judicial process for major subdivisions; shorter and streamlined administrative process for smaller (five or fewer lots) subdivisions

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THE SHORELINE MANAGEMENT ACT

"It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses."

-- RCW 90.58.010 (1995)



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The Shoreline Management Act

- Source: RCW ch. 90.58
- Adopted in 1971; citizen initiative
- Requires planning and regulatory overview of actions involving the shorelines of the state.
- Shorelines of the state:
 - Marine shorelines
 - Rivers
 - Large lakes
 - Associated wetlands
 - Flood zones
- Typical regulatory authority = 200-feet of OHWM
- Requirements:
 - Agencies with shorelines must adopt SMP, with permitted uses, policies, regulations etc.
 - DOE must approve all SMP's, some permits, etc.

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THE STATE ENVIRONMENTAL POLICY ACT

*"... encourage
productive and
enjoyable harmony
between humankind
and the environment
... prevent or
eliminate damage to
the environment and
biosphere, ...
stimulate the health
and welfare of
human beings ..."*

— RCW 43.21C.010 (2009)



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The State Environmental Policy Act

- Source: RCW ch. 43.21C; adopted in 1971
- Governs environmental review of most L.U. "actions"
- Requires review of impacts that a plan, regulation or development project may have upon natural and built environments
- Goal: Give decision-makers full information about potential impacts of a decision or action
- Applies to:
 - all comprehensive plans and amendments
 - New and amended development regulations
 - Most development projects
- Process overview:
 - Submittal of "environmental" (SEPA) checklist
 - I.D. responsible official
 - Threshold determination (DS, DNS, MDNS)
 - Review and scientific analysis of impacts and mitigation
 - Large/complex projects may need an EIS

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CONSTITUTIONAL PROTECTIONS

“nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

-- U.S. Constitution, 14th. Amend., Sec. 1



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Constitutional protections: Due Process -- procedural

- **Sources:**
 - 14th Amendment to the U.S. Constitution
 - Art. I, Sec. 3 of the Washington State Constitution
- **Procedural Due Process:** The right to know about proposed changes with the opportunity to be heard
- **Two key requirements:**
 - Notice of action (timely, understandable, etc.)
 - Opportunity to be heard and to respond before action taken or deprivation of property right (must be meaningful)
- **Void for Vagueness – a variant of due process:**
 - Regulations must be clear and specific enough to provide fair warning of what is being regulated, how regulation will be applied, etc.
 - Avoid arbitrary and capricious enforcement

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Constitutional protections: Due Process -- substantive

- Sources:
 - 14th Amendment to the U.S. Constitution
 - Art. I, Sec. 3 of the Washington State Constitution
- The rules must be clear, reasonable and appropriate, and have a nexus (connection) to the project impacts
- *Nexus:* A connection between problem identified, municipal interest, and regulated solution
 - Does the regulation seek to achieve a legitimate public purpose?
 - Are the means used reasonably necessary to the stated objective?
 - Is the regulation unduly burdensome on the land owner?
- **Can you answer “yes” to these four questions?**
 - Is the regulation for a legitimate public purpose?
 - Is the regulation appropriate to accomplish the purpose?
 - Is the regulation reasonable to meet the purpose?
 - Is the regulation easy to apply at the permit level?

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Constitutional protections: Equal protection

- Sources:
 - 14th Amendment to the U.S. Constitution
 - Art. I, Sec. 3 of the Washington State Constitution
- *“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws”*
- Laws must be applied equally to all – both people and corporations

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Constitutional protections: **Takings & Inverse Condemnation**

- ❖ Federal: Regulatory taking (5th. Amend.)
- ❖ State: Inverse condemnation (Art. I, Sec. 16)
- ❖ Not take private property for public use
- ❖ No set formula; State and Federal are different
- ❖ Physical Takings
 - ❖ Appropriation of land/property
- ❖ Regulatory Takings
 - ❖ Deprivation of all economic use
- ❖ Physical Takings
 - ❖ Appropriation of land/property
- ❖ Exactions and Dedications
 - ❖ Nexus and proportionality
- ❖ Reasonable Use Exceptions
 - ❖ E.g., Critical areas

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Constitutional protections: **Other constitutional protections**

- Freedom of speech
 - 1st. Amendment to the U.S. Constitution
 - Art. I, Sec. 5, Washington State Constitution
- Freedom of expression
 - 1st. Amendment to the U.S. Constitution
 - Art. I, Sec. 5, Washington State Constitution
- Freedom of religion
 - 1st. Amendment to the U.S. Constitution
 - Art. I, Sec.11, Washington State Constitution

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OTHER LEGAL THEORIES, CLAIMS AND PROTECTIONS

- Vested rights
- “Arbitrary and capricious”
- Moratoria
- Impact fees
- 42 U.S.C. Sec. 1983
- Other statutory protections



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VESTED RIGHTS

Vesting fixes the rules that will govern a land use application or project. Its purpose is to provide for certainty and allow property owners to know in advance what rules will apply to a project.



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Vested rights: Elements and rules

Elements:

- Written (not oral) application
- Application must be consistent with existing zoning
- Application must be “complete”
 - Subdivisions/short plats/building permits = “fully” complete; other permits/applications = “substantially” complete

Application:

- Building permits, subdivisions (full and short plats) and development agreements
- Applications deemed complete 28 days after submittal. RCW 36.70B.070
- Must advise of missing information within 28 days of submittal; otherwise deemed vested

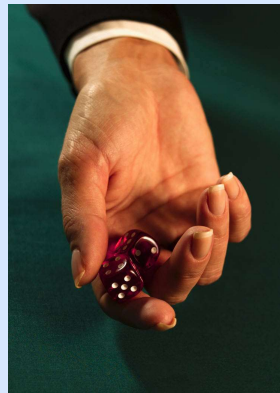
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ARBITRARY & CAPRICIOUS DECISION-MAKING

“A decision which is made willfully and unreasonably, without consideration and in disregard of the facts or circumstances.”



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Arbitrary & Capricious: Results

- **Decision is INVALID**
- **May establish basis for damages**
- **Potential personal liability**
- **Time, cost and embarrassment of re-doing process and decision**
- **Erodes public confidence in City and process**

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Arbitrary & Capricious: Examples

- Failing to make findings and conclusions
- Ignoring/not applying the law
- Applying the wrong law
- No evidence to support decision
- Ignoring evidence
- Imposing standards not allowed by code
- Waiving standards or requirements
- Ignoring city attorney advice
- Making Q.J. decisions based on political agenda
- Making decisions based on # of proponents or opponents
- Applying legislative policies, goals, or “visioning” when deciding Q.J. and administrative app’s.
- QJ decisions based on community desires, displeasure, or public sentiment or complaints

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MORATORIA

Generally recognized technique to "... preserve the status quo so that new plans and regulations will not be rendered moot by intervening development."

-- Matson v. Clark County Board of Commissioners (1995)



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Moratoria: What is it?

- Temporary limitation on development; a "freeze" on submission of development applications, done without notice or hearings to prevent vesting
- Generally recognized technique to "... preserve the status quo so that new plans and regulations will not be rendered moot by intervening development." *Matson v. Clark County Board of Commissioners* (1995)
- Gives government breathing room to plan, correct problems, deal with emergencies, etc.
- Valid zoning tools
- Moratoria do not violate the vested rights doctrine
- "... an essential tool of successful development."
- Typically adopted by ordinance

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Moratoria: Source of law

- **Three statutes:**
 - RCW 35.63.200 – Planning Enabling Act
 - RCW 35A.63.220 – Non charter code cities
 - RCW 36.70A.390 – GMA
- Case law – Washington
- Case law – Supreme Court and Ninth Circuit and federal district courts

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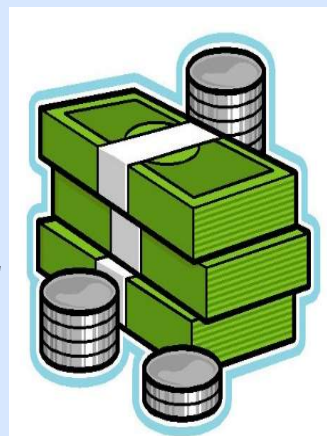
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IMPACT FEES

"No ... municipal corporation shall impose any tax, fee, or charge ... on the construction or reconstruction of ... buildings, or on any other ... space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land."

– RCW 82.02.020



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Impact fees: Overview

- **Source of law:** RCW 82.20.020
- Generally prohibits “any tax, fee, or charge” on the construction of buildings or development, subdivision, classification, or reclassification of land
- **Select exceptions:**
 - 82.02.050 allows GMA planning cities and counties to impose impact fees.
 - “voluntary agreements” that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat.

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42 U.S.C. SECTION. 1983

“It is abundantly clear that one reason [§ 1983] was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance, or otherwise, state laws might not be enforced and claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by state agencies.”

– Monroe v. Pape, 365 U.S. 167, 180 (1961)



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42 U.S.C. section 1983

- 42 U.S.C. Sec. 1983 (civil rights)
- Remedy for federal constitutional/ statutory violations by local gov.
- Key predicate federal violations:
 - 1st. Amendment (speech, expression, religion)
 - 5th. Amendment taking
 - 14th. Amendment substantive due process
 - 14th. Amendment procedural due process
 - 14th. Amendment equal protection
 - Federal statutes (FFHA, RILUPA, ADA, etc.)
- Show: (1) deprivation of federal right; (2) under color of law
- Damages and attorneys' fees; possible punitive

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Other statutory protections/claims ...

- ❖ RCW ch. 64.40
- ❖ *Religious Land Use and Institutionalized Persons Act*
- ❖ *Americans with Disabilities Act*
- ❖ *Fair Housing Act*
- ❖ *Rehabilitation Act*
- ❖ RCW ch. 49.60



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LAND USE MISTAKES -- SO WHAT?

Exposure to the City

- Invalidate City's Decision
- Money Damages Against the City
- Attorney Fees and Costs Imposed
- Bind the City to unintended result

Personal Exposure

- Named as a Defendant
- Witness at Trial and witness Against Employer (City)
- Possible Un-Insured Personal Claims

Expensive

- Document Intensive, time-consuming legal discovery
- Vigorously Litigated
- Potentially Big \$\$\$ at Stake – and attorneys' fees and costs
- Uses Valuable Officer and Personnel Time

Politically Damaging

- Emotional, personalized, politically motivated
- Bad P.R. for City

State-Wide Ramifications

- Make bad law for other cities, counties, state, etc.

Undermines Public Confidence in Government

- Perception of incompetence
- Perception of Political "Agenda"

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SOME PARTING THOUGHTS ...

- Keep abreast of the law
- Follow the law
- Enact and follow clear rules of process and procedure
- Be fair; no bias or conflicts
- Be independent
- Avoid conflicts of interest & AOF issues
- Act professionally
- Support your decision with good reasons based on code
- Follow legal counsel advice!



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A SHORTCOURSE

ON LOCAL PLANNING

Topics:

- Why plan?
- Comprehensive planning
- Implementing your plan
- Updating your plan

Comprehensive Planning under the Growth Management Act

 Department of Commerce

Valerie Smith, Senior Planner
Growth Management Services
Washington State Department of Commerce

We strengthen communities

The Department of Commerce touches every aspect of community and economic development. We work with local governments, businesses and civic leaders to strengthen communities so all residents may thrive and prosper.








Planning Infrastructure Community Facilities Housing Safety / Crime Victims Business Assistance

 Department of Commerce

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

3

Manage Public Expectations



"This affects my neighborhood and my home. I should have a say in what happens."

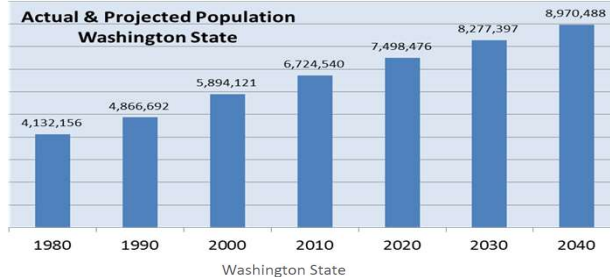
"I need to know what I can do and when I can get my permit"



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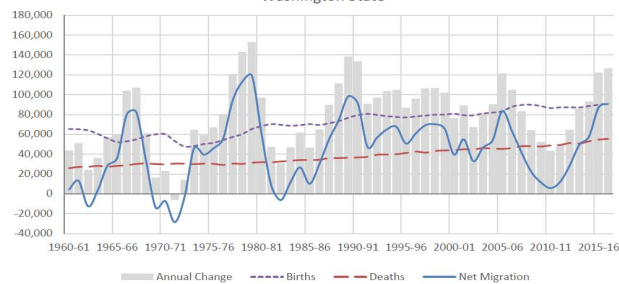
Plan to Accommodate our Future Population

Between 1990 and 2010, our state's population grew from 4.1 to 6.7 million people. We are expected to reach 9 million by 2040. (OFM)



Components of Population Change 1960 - 2017

www.ofm.wa.gov



Why a Growth Management Act (GMA)?

Between 1990 and 2010, our state's population grew from 4.1 to 6.7 million people. We are expected to reach 9 million by 2040. (OFM)



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

RCW 36.70A

14 GMA Goals

RCW 36.70A.020

- Encourage **compact urban growth**
- **Reduce sprawl**
- Encourage coordinated, **multimodal transportation**
- Encourage **affordable housing**
- 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**

7

The Land
Speaks First

Fully or Partially
Planning?

Countywide
Planning Policies

Local Comprehensive
Plan and Regulations

The Land Speaks First



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
- Aquifer recharge areas
- Fish and wildlife habitat conservation areas
- Wetlands

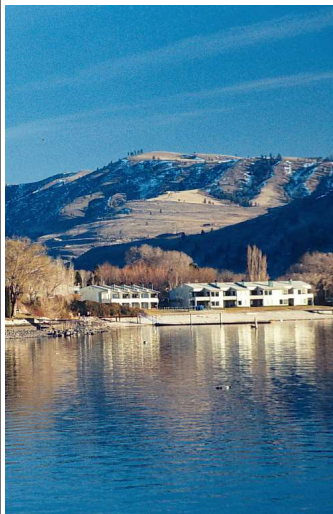
RCW 36.70A.172

Fully or Partially Planning?

**Faster
Growing
Counties
Must Do
More**



Countywide Planning Policies

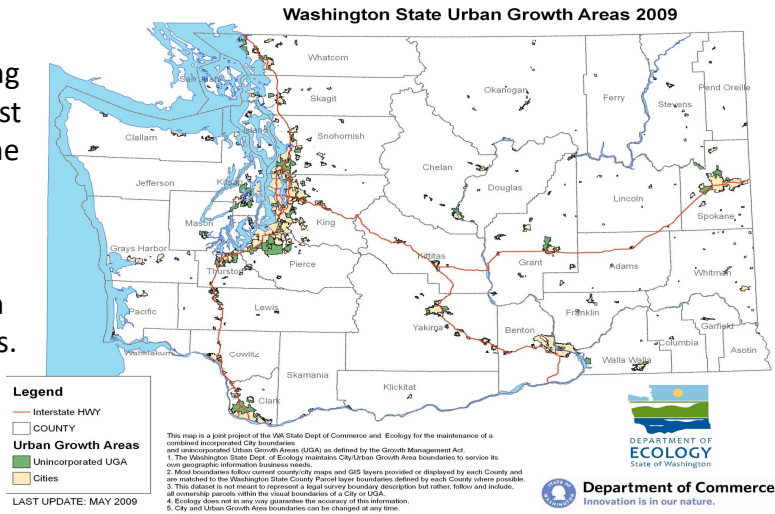


Regional framework to:

- 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 2040.

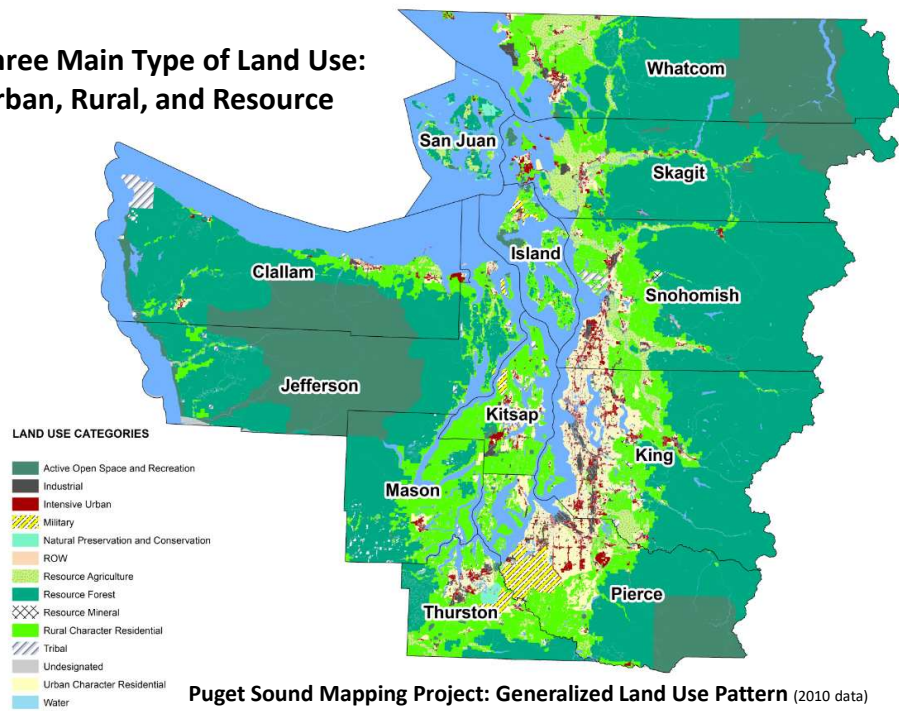
Washington's Urban Growth Areas

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



11

Three Main Type of Land Use: Urban, Rural, and Resource



Allocating population – Designating UGAs

Urban areas to contain most of new growth

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

Rural areas to maintain rural character

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



BENTON COUNTY
LAND USE MAP 4.2



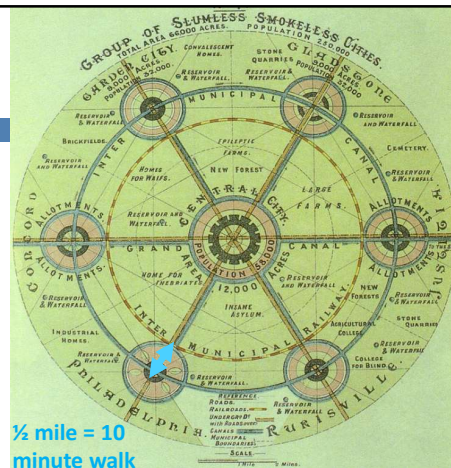
What is “good planning”?

Rural areas:

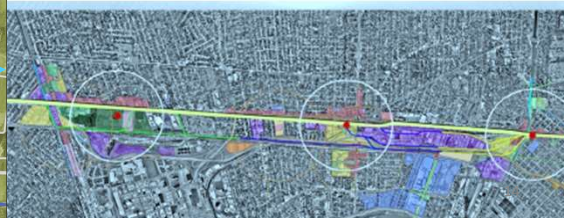
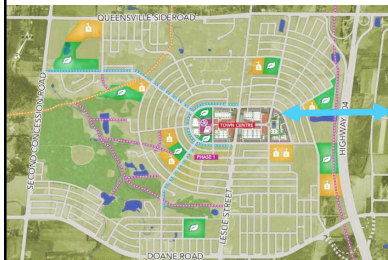
- Low-density development
- Rural service levels
- Agriculture/Forestry

Urban areas:

- The community (or neighborhood) is walkable
- Multimodal transportation is supported
- Housing is affordable



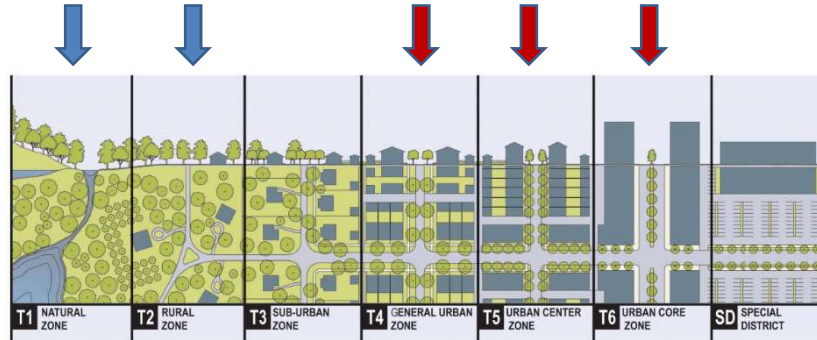
½ mile = 10
minute walk
Garden City by Ebenezer Howard (1920s)



What is “good planning”?

Under the GMA, land is to be designated natural resource, rural, or urban.

- Cost-effective sewer, water and stormwater systems serve urban areas.
- Rural areas have fewer services.
- The transportation system supports the land use plan.



A version of the original Transect diagram, with six successional zones from nature to urban core, with special district. By DPZ.

New Urbanists Andres Duany and Elizabeth Plater Zyberk

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How does your community work for people?

- Are uses mixed so people walk or bike to work?
- Is there a store and parks within walking distance of homes?
- Can kids walk to school?
- Can teenagers and other non-drivers get around independently?
- Are there housing options for all economic segments of the community?



Photo Credit, Randall Arendt, “Rural by Design”

Required Elements of the GMA Comprehensive Plan

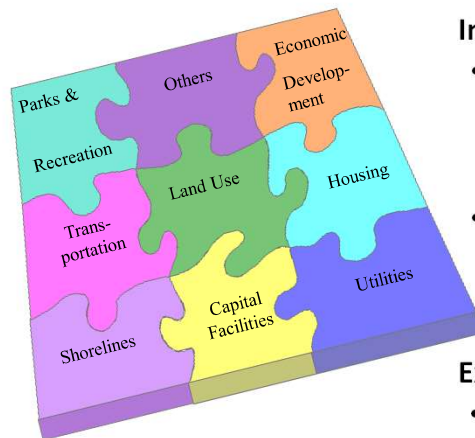


- **Land Use:** Land uses, stormwater planning, ground water, physical activity
- **Transportation:** Inventory, assessment of current and future needs, bicycle and pedestrian component
- **Housing:** Identifies the character of residential areas, Inventories existing and projected housing needs and types, Identifies sufficient land for all types of housing
- **Utilities:** Inventory, assessment of current and future needs, coordination between providers and land development.
- **Capital Facilities:** Inventory, assessment of current and future needs, coordination of planning affordability analysis of serving the land use plan.
- **Rural** (counties only): Define and protect rural character.

RCW 36.70A.070 and WAC 365-196

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The Plan Must Be Coordinated and Consistent



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)

External consistency

- Countywide planning policies
- Adjacent jurisdictions

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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

Plan Updates and Appeals

- Can be amended only once per year
- Must be updated every 8 years
- Appealable within 60 days to a regional Growth Management Hearings Board

www.gmhb.wa.gov

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Implementing your Comprehensive Plan

Community Vision



Comprehensive plan goals and policies



Implementation strategies:

- Development regulations
- Infrastructure spending priorities



- Every permitted project
 - Every spending decision
- Is consistent with the Vision

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



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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.

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Capital Facilities: What can we afford?



Level of Service: Local expectation for a facility as development occurs.

- Required for transportation facilities.

Concurrency programs ensure that transportation and other facilities keep pace with growth.

- If a new development would decrease system level of service, the development must be denied, or the levels of service must be reassessed.

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

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Other programs can implement comprehensive plan goals



- Interlocal agreements
- Planned action (Upfront environmental review of a sub-area)
- Streamlined development process for specific types of development
- Incentives such as tax exemptions for community benefits such as Open Space or Multifamily Housing
- Impact fees
- Transfer of development rights.
- Volunteer programs

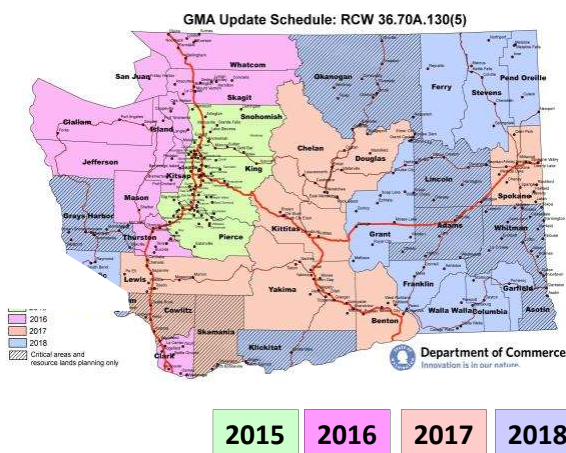
23

Grant and Loan Programs Requiring Update Completion:

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

Updating your Comprehensive Plan:

Updates are due every eight years, by June 30th





A SHORTCOURSE

 Department of Commerce

ON LOCAL PLANNING

September 25, 2018
7:40 to 8:10

Hosted by the City of
Anacortes

**Roles in Planning and
Effective Public Processes**

Stacie Pratschner, AICP, RPA
Senior Planner / Team Supervisor


Skagit County Planning & Development Services

Presentation Outline

- ☐ I. Roles in the Planning Process
Participants in Planning
- ☐ II. Land Use Planning Decisions
Long Range and Current Planning
- ☐ III. Effective Planning Processes
Productive Commissions and Meetings

I. Planning Involves a Range of Participants

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

3

I.1. Elected Officials

Mayor – Council

Council – Manager

Commission



- ☐ Leaders and decision makers
- ☐ Communicate the strategic vision and mission
- ☐ Funding and operations
- ☐ Appoint Planning Commissioners

4

I.2. Planning Commission

- RCW 35.63.080 and 36.70.040:
 - Assist the Planning Department in carrying out it's duties;
 - Preparation and execution of the Comprehensive Plan; and
 - Recommendations for adoption to elected officials.



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I.3. Planning Staff

- ☐ Legislation and policy development:
- ☐ Review of permits; and
- ☐ Code enforcement.



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I.4. Hearing Examiner

- Typically involved in quasi-judicial activities.
 - Appeals, conditional use permits, planned unit developments, preliminary subdivisions, variances
 - 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.

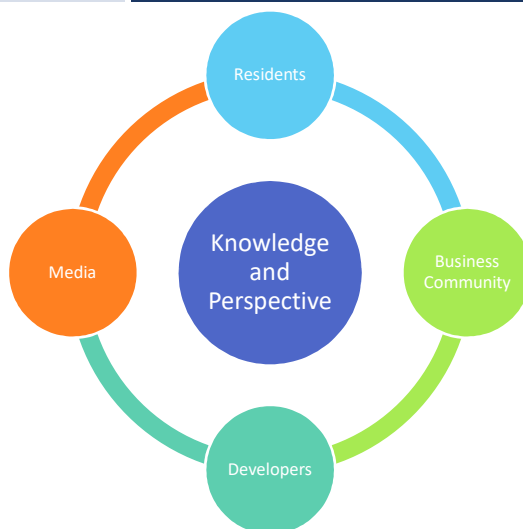
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I.5. Other Advisory Groups

- Understand & support comprehensive plan goals and strategies
- Focus on key projects
- Solicit/develop funding for implementation
- Communicate with their members and others in the community

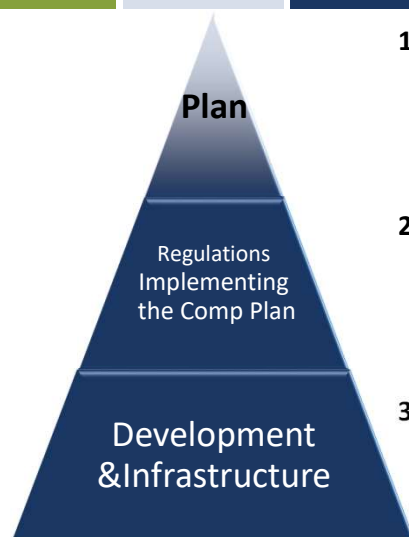
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I.6. General Public



9

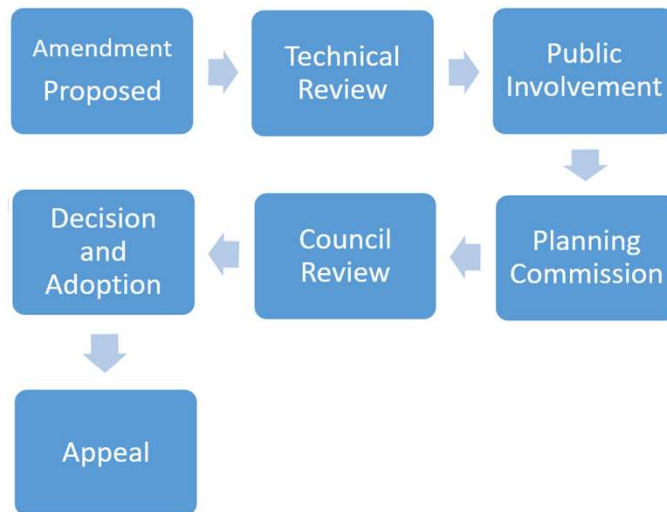
II. Land Use Planning Decisions



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)

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II.1. Typical Steps in the Legislative Process



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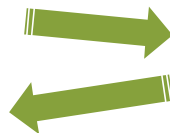
II.2. Typical Steps in the Project Review Process (RCW 36.70B)

Administrative Decision by staff

- Pre-application meeting
- Complete application must be submitted (vesting).
- Local review (may include opportunity for public comment)
- Decision required within tight timelines.
- Local appeal under Land Use Petition Act (LUPA, RCW 36.70C)

Quasi-Judicial Decision by Planning Commission, Review Board or Hearings Examiner

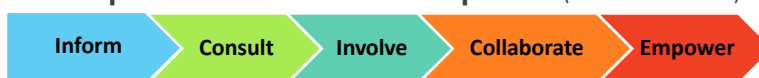
- One Open Record Hearing
- One Closed Record Appeal



12

III. Tips for Effective Planning Processes

The Spectrum of Public Participation (RCW 36.70A.140)



“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.”

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III.1. Public Participation for Individuals

GOAL: Effective public participation promotes a transparent, inclusive, and fair decision-making process.

OBJECTIVES:

- Public involvement should be as early as possible in the process as soon as value judgements become salient.
- Public participants should have access to the appropriate resources in order to make a meaningful contribution to decision-making.

ACTIONS: Stay informed; respectful; and remember that fundamental choices are made at the time of planning, not permitting.

14

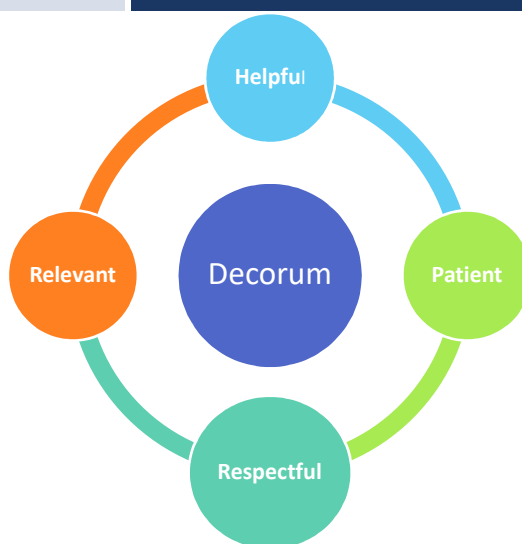
III.2 Tips for Managing Public Hearings

- ❑ Sign-up sheets
 - ✓ Name, address, contact information
 - ✓ Agenda item
- ❑ Time limits
 - ✓ Consistent
 - ✓ Encourage a spokesperson
- ❑ Order the speakers
 - ✓ Topic
 - ✓ Group



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III.3. When Listening at Public Hearings



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III.4. 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, though argument and comment may be allowed.
- Motion to approve or disapprove should instruct the staff to prepare draft findings and conclusions documenting the reasons.
- Discussion to be presented at the next regular meeting for final approval and passage by board.

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III.5. 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

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III.6. Effective Planning Commission Meetings

Staff	Planning Commission Chairperson and Members
Develop an annual work plan	Enforce rules of procedure
Ensure a quorum	Fair and equal
Make reports available in advance	Address all issues
Ensure adequate PA system and chairs	Keep the meeting moving
Ensure graphics are visible	Attend and participate
Welcome public participation	
Be prepared for discussion	
Avoid jargon	
Decorum	
Long term goals	
Don't take anything personally	

19

Resources

Brown, Greg and Sean Yeong Wei Chin
2013 Assessing the Effectiveness of Public Participation in Neighbourhood Planning. In *Planning Practice and Research*. Volume 28:5 (563-588).

Macfarlane, Ann G. and Andrew L. Estep
2013 *Mastering Council Meetings: A Guidebook for Elected Officials and Local Governments*. Jurassic Parliament: Seattle, WA.

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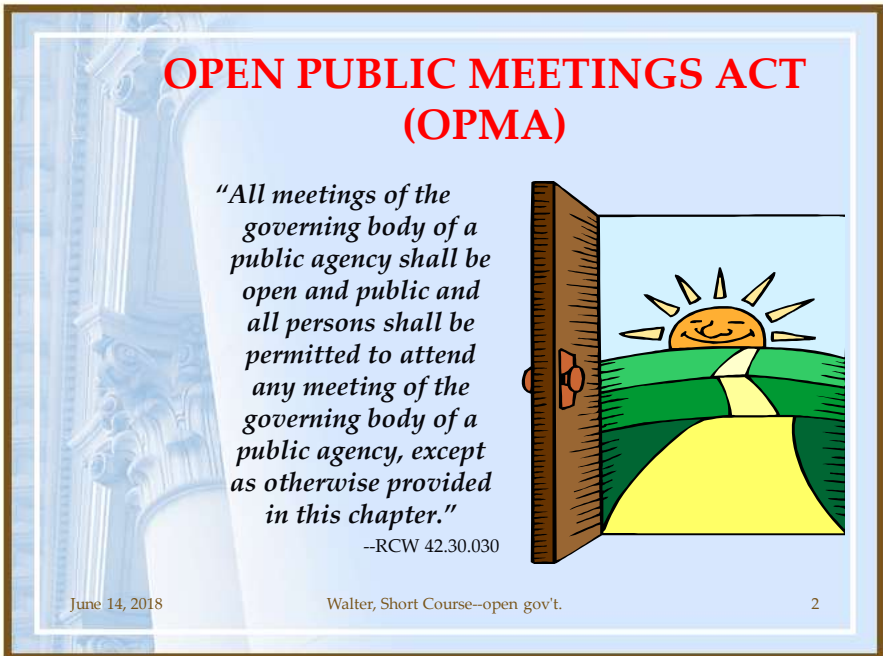


**SHORT COURSE ON
LOCAL PLANNING**

OPEN GOVERNMENT:

- **OPEN MEETINGS ACT**
- **PUBLIC RECORDS ACT**
- **APPEARANCE OF FAIRNESS**

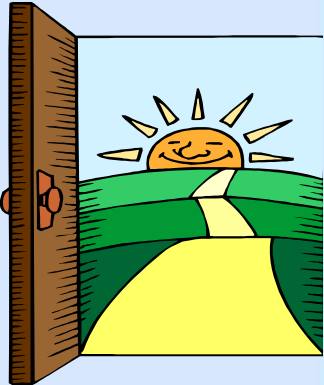
MICHAEL C. WALTER
Keating, Bucklin & McCormack, Inc., P.S.
(206) 623-8861
mwalter@kbmlawyers.com



**OPEN PUBLIC MEETINGS ACT
(OPMA)**

"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, except as otherwise provided in this chapter."

—RCW 42.30.030



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2

OPMA: History and purpose

- Fallout from Watergate and loss of public trust
- All “meetings” presumed open to public
- Permit public to observe steps in decision-making; no backroom dealings
- Ensure that actions and deliberations of government be taken “openly”
- Ensure that public remains informed, has confidence in decision-making
- Case law established in 1969; codified in 1982 (Ch. 42.30 RCW)
- Applies to “meetings” of all levels of State and local government

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OPMA: General rules

- **Presumption:** ALL meetings of governing body of public agencies must be open to the public (except for certain exceptions in OPMA, RCW 42.30.030 and .110)
- “Meetings” = gathering of governing body of a public agency at which action is taken
 - Public hearings, land use plans, ordinances, resolutions, legislative matters
 - Recommendations to others
 - Does not apply to “quasi-judicial” proceedings (42.30.140(2))
- “Action” = transaction of official business by majority of decision-makers
 - Public testimony, deliberations, debate, discussions, reviews, evaluations, considerations, etc.
 - Liberally construed
- Meetings can include discussions by phone or e-mail or text or instant messaging!

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OPMA: Application

APPLIES TO:

- ❖ City Council
- ❖ Planning Commission
- ❖ Civil Service Commission
- ❖ Board of Adjustment
- ❖ Other planning or zoning boards, etc.
- ❖ Parks Boards
- ❖ Library Boards
- ❖ Council Committees
- ❖ Arts Boards or Commissions
- ❖ Advisory boards, committees, commissions, etc.

NOT APPLY TO:

- ❖ Purely advisory committees
- ❖ Agency staff, individuals, etc.

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OPMA: What's required

- If a city council, planning commission, etc., "meeting" =
 - A quorum + action taken
- If a board, commission, committee or other agency is "meeting" =
 - Holding a hearing, or
 - Taking comment, or
 - Considering proposals, recommendations, or
 - Making decisions or recommendations

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OPMA: What's required, *cont.*

- **Notice** (regular, special, or cancellation)
 - Advertise as to time, place, and agenda items
 - Special: 24-hour notice to governing body, media on file, website, posted at main entrance
- **Agenda** – the special meeting issue
- **Public attendance** must be allowed unless executive session
- **Record minutes**

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OPMA: What's required, *cont.*

- All "final action" of a governing body **MUST** be taken in open session
- Settlement agreements or settlement of litigation **MUST** be approved in open session
- Secret ballots are **PROHIBITED**
- Must allow public to video or audio record; but may impose rules to keep orderly, avoid disruption, etc.

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OPMA: Exemptions

- RCW 42.30.110 = lists exemptions
- Key exemption = executive sessions
- Other exemptions:
 - Licenses, permits or certificates re: business, occupation or profession
 - Matters of national security
 - Publicly bid contracts
 - Evaluate qualifications of elected officials
 - Disciplinary proceedings
 - Meetings of quasi-judicial bodies
 - Matters governed by APA (RCW ch. 34.05)
 - Collective bargaining/labor negotiations

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OPMA: Executive session

- "Executive Session" = " ... any meeting of a deliberative assembly, or a portion of a meeting, at which the proceedings are secret." (*Roberts Rules of Order*, 10th. Ed., 2000)
- No executive session authorized just because an attorney is present
- Only for topics listed in the OPMA. Ex's.:
 - Personnel -- complaints, etc.
 - Potential or actual litigation
 - Certain real estate transactions
 - Agency enforcement actions
- Potential litigation =
 - Specifically threatened where city is party or likely to be party or city reasonably believes litigation may be commenced

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10

OPMA: Regular meetings (RCW 42.30.070)

Definition

Held in accordance with schedule fixed by code, ordinance, resolution, bylaw, etc.

Notice & Agenda

- Agendas must be on website at least 24 hrs. in advance of meeting (unless no website or agency has fewer than 10 f.t. employees)
- Follow your code/ordinance/bylaws for details
- Must establish procedure for notifying public of upcoming council meeting and other upcoming hearings, etc. (e.g. RCW 35A. 12.160; RCW 35.22.288; RCW 35.23.221; RCW 35.27.300)

Emergencies

- Can be held at site other than regular meeting site
- Notice requirements under OPMA are suspended

Business allowed

No restrictions; any type of business

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OPMA: Special meetings (RCW 42.30.080)

Definition

Anything other than regular meeting. May be called by presiding officer or majority of members of governing body

Notice & Agenda

- Follow your code/ordinance/bylaws for specifics
- Must specify date, time and place of SM and business etc.
- **Personal notice** - 24 hrs. before meeting to each member of governing body; and member of news media (with notice on file)
- **Website notice** - 24 hrs. in advance of meeting (unless no website, or less than 10 FTE employees, or no website mgr. etc.)
- **Notice at agency's principal location** - Prominently display at principal location and meeting site

Emergencies

- Generally, SM notice requirements must be followed; but ...
- Not required if meeting needed to deal with emergency involving injury or damage to persons or property, etc.

Business allowed

Final disposition can't be taken on any matter not listed in SM notice

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OPMA: Electronic media and meetings

Email exchanges can constitute a meeting

- Majority of members of the governing body through email exchange, even just discussing business
- Serial or rolling emails can = a meeting if members collectively intend to met and conduct agency business
- Parties cc'd count as quorum

Phone calls and VMs can constitute a meeting

- Majority of members of the governing body through phone calls or VM exchange
- Telephone tree (roll call members) can = a meeting if members collectively intend to met and conduct business
- Must specify date, time and place of SM and business etc.

Use of social Media can constitute a meeting

- Majority of members of the governing body through social media like Facebook page, Twitter, Instagram, etc. can = a meeting if members collectively intend to met and conduct business

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— Staff emails OK, so long as no two-way communication amongst governing body

OPMA: Other types of meetings

Other "meetings"

- ❖ Site visits
- ❖ Social gatherings
- ❖ Retreats
- ❖ Seminars
- ❖ Unplanned group events

General rules

- ❖ Site visits
- ❖ If in doubt, notice the event as a regular meeting
- ❖ Staff emails are OK as long as no two-way communication governing body members
- ❖ Question: Is there a collective intent of quorum to meet and transact the body's official business? If yes, a meeting

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14

OPMA: Control of meeting

- **Presumption:** Anyone can attend a meeting under the OPMA
- Reasonable rules of conduct can be set
 - Establish in advance of meeting
- Public comment period is not required
 - But usually a good idea
- Cameras and tape recorders are permitted unless unduly disruptive
- Does not require signing in or other conditions on attendance
- Does not require speakers to be sworn in

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15

OPMA: Unruly attendees

- Encourage attendance; don't put up roadblocks to attendance
- City/agency can control conduct of attendees and meeting (RCW 42.30.050)
- Can require speakers to I.D. selves
- Options to deal with disruptive/disorderly attendees:
 - Recess meeting
 - Adjourn meeting
 - Expel attendees
 - Adjourn to new location

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OPMA: Ramifications & remedies

- Invalidation of action taken (actions are null and void)
- Knowing violation = \$500 fine for each member, for the first violation (\$1,000 for subsequent violations)
- Agency liability: Other party's costs and attorney's fees paid by the agency
- Embarrassment, stigma, media inquiries, etc.
- Loss of public trust

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BIG Rules for OPMA compliance

- Read the OPMA; follow it!
- General rule: Meetings open to the public
- Give proper and timely notice of all meetings
- Avoid/disclose conflicts of interest
- No secret ballots or settlements
- Act professionally
- Give proper notice of continuances and/or changes of location
- Adopt and follow procedural rules
- Keep control of the meeting!
- If in doubt, get city attorney advice

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PUBLIC RECORDS ACT ("PRA")

"... 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"

—RCW 42.56.500(3)



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PRA: Purpose and history

- Outgrowth of Watergate and loss of public trust
- Part of State's "sunshine laws"
- Adopted by initiative in 1972
- Codification: RCW Ch. 42.56
- PRA is *"a strongly worded mandate for broad disclosure of public records."* (*Hearst Corp. v. Hoppe*, 90 Wn.2d 123 (1978))
- Goals:
 - All writings of government relating to government functions presumed to be public and available to view and copy
 - Provide openness and honesty
 - Maintain integrity of government
 - Make government accountable

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PRA: What is a “public record”?

- Any “writing” containing information relating to governmental functions, prepared, owned, used, or retained by any agency
- EXAMPLES:
 - Printed documents
 - Handwritten notes
 - Electronic documents and data
 - E-mail and voicemail
 - Photographs, audio/video recordings, etc.
 - Metadata
 - Web pages, blog posts
 - Text messages
 - Tweets, Facebook and social media posts
- Doesn't matter the physical form or characteristic

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PRA: Presumptions and exemptions

- Presumptions: All writings or documents containing information relating to government activities or functions are public and must be disclosed upon proper PRA request
- Exemption rules:
 - Strictly limited and construed by courts
 - Statutes I.D. exempt. RCW 42.56.230-.480 and others
 - Cannot withhold based on claim of “embarrassment to agency or employee, or on I.D. of requestor
 - No specific exemption for “privacy” (balancing test)
 - If part of page or document is disclosable and part exempt, then may have to redact exempt parts
 - Must explain exemption or redaction
 - Seek legal counsel if at all in doubt
 - Do an “exemption” log where necessary

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PRA: Select exemption examples

- See RCW 42.56.230 - .480 for partial list
- Personal info. re students in public schools
- Personal info. where disclosure violates right of privacy (balancing test)
- Certain taxpayer info.
- Intelligence and investigative records compiled by law enforcement, investigative agencies, etc.
- Certain real estate appraisals and documents for selection of site or re: sale or lease of property
- Records of archeological sites
- Financial info. re: bidders on certain state contracts
- Applications for public employment (names, resumes, etc.)
- Credit and debit card numbers and dates
- Attorney client privileged communication
- Records related to controversy involving agency but which are not available under pre-trial discovery

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PRA: Requirements

- Retain
 - Check with your PRA official
 - Retention schedules vary – jurisdiction, agency, document, etc. – some six (6) years
 - Primary (original) records – created or received
 - Secondary (copies/duplicates) – OK to discard
 - Information on personal computers
 - Handheld devices
 - Use agency-provided device to access and create agency related records
 - Beware of texts and e-mails – are subject to PRA
- Respond
 - In writing
 - Five (5)-day acknowledgement/response
- Disclose
 - Must be “identifiable” public documents
 - Can do bulk disclosure or in phases or groups
 - Make good paper trail of what produced and when
 - If in doubt – seek legal advice

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BIG Rules for PRA compliance

- Read the PRA (RCW ch. 42.56); follow it!
- Check/follow retention schedule for all documents
- General rule: **All writings containing information relating to government activities or functions are public and must be disclosed upon proper PRA request**
- Exemptions are limited by statute, and strictly construed in favor of disclosure
- Assume writings relating to work for or involving agency on personal computers and handhelds ARE subject to PRA
- Assume every document (writing) you create will be a public document subject to disclosure and that all will see it
- If in doubt, get agency attorney advice

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E-MAILS, TEXTS, INSTANT MESSAGING & SOCIAL MEDIA

- If PRA request, likely have to disclose
 - May be exempt if A-C privilege exists
- If litigation filed, may be discoverable even without PRA request
- Rolling or serial communications – e-mails, texts, instant messaging, etc. -- may be subject to OPMA
 - *Eugster v. City of Spokane*, 110 Wn. App. 212 (2002) (Council exchanging e-mails where action taken)
 - *Wood v. Battle Ground School Dist.*, 107 Wn. App. 550 (2001) (e-mails subject to OPMA)
- Watch what you write! Defamatory statements (libel/slander) may give rise to personal civil liability.
- May prove existence of a “duty” or act as binding representation, etc.

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APPEARANCE OF FAIRNESS DOCTRINE ("AOF")

"Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people."

-- Henry Clay (speech, 1829)



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AOF: Purpose and history

- Outgrowth of Watergate and loss of public trust
- Fear of biased decision-makers
- Fear of bribery and self-interest
- Origins: common law (1969 court case)
- Codification: RCW Ch. 42.36
- Purpose and goals:
 - Impartial decision-making
 - Preserve integrity of quasi-judicial/administrative system
 - Provide fairness to parties
 - Prevent bias, partial, antagonistic decision-making

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AOF: What is it; what are the rules?

- Statutory requirement for all *quasi-judicial* meetings, hearings and decisions
- Hearing & decision must (1) be fair in fact; and (2) appear fair to others
- Test: *"Would a reasonable person, apprised of the totality of a member's personal interest or involvement be reasonably justified in thinking that the involvement might affect the member's judgment?"*

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AOF: What does it apply to?

- **Only *quasi-judicial* hearings & decisions**
 - specific parties, property or application
 - hearing or other action
 - determine rights, duties or privileges
- **Examples of actions/decisions:**
 - Plats (short & full)
 - All permits
 - Site specific rezones
 - Variances, SUP's, CUP's, MUP's, etc.
 - Other development applications
- **Examples of decision-makers:**
 - City Councilmembers
 - Board of Adjustment members
 - Planning Commission (if make QJ decisions)
 - Hearing Examiners
 - Permit staff
 - Other boards and commissions

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AOF: Prohibited acts

1. Personal interest:

- Business relationships
- Social relationships
- Marital relationships
- Conflicts of interest, financial interest, benefit, proximity to project, etc.
- Membership and organizations
- Personal benefit/detriment, or \$\$\$

2. Prejudgment of issues:

- Ex-parte CMU with proponent/ opponent

3. Partiality:

- Hostile, rude, antagonistic comments/acts
- Bias for or against applicant

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AOF: No "ex parte" contacts

- The Rule: No ex parte contacts with opponents or proponents during pendency of quasi-judicial action (RCW 42.36.060)
- Applies even where no formal application submitted, if knowledge of potential plans, etc.
- Exceptions to liability:
 - Disclose substance
 - Allow parties to offer rebuttal
 - Comment letters OK if in record and opportunity to respond

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AOF: Disclosure and waiver

- **BIG RULE**: If in doubt = **DISCLOSE**
- Make disclosure at earliest opportunity, **ON THE RECORD**
- Disclose all important details
 - Who, what, when, where, etc.
 - Have pre-prepared disclosure statement
- If no objection at time of disclosure, later objections/challenges are **WAIVED**

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AOF: Consequences

- Invalidation; action is null and void
- Potential claims for damages:
 - To City
 - To individual violator
- May establish arbitrary and capricious decision
- Potential attorneys' fees
- Costs to city, embarrassment, loss of public confidence, etc.

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SOME PARTING THOUGHTS . . .

- Read/follow OPMA, PRA and AOF
- Keep abreast of the law; ask for and take training
- Have agency enact clear rules of process and procedure to ensure compliance with open gov't. requirements
- Know the type of action at issue (legislative, Q.J., administrative, etc.) to ensure proper application
- Be fair; no bias or conflicts
- Be independent
- Avoid conflicts of interest & AOF issues; disclose where necessary
- Act professionally
- Seek legal advice



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