What's the State got to do with it?

Planning enabling legislation and the planning process

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Resources:

The Standard City Planning Enabling Act, 1928.

Actually, the question is, *what's the Constitution got to do with it?* because that's where everything starts. Let's review the roles and responsibilities of the federal government, and then look at the relationship between state and local governments and what this means for planning.

The Federal system of government

All government is organized under the Constitution of the United States. That document establishes the three branches of the federal government: the executive branch (President and Vice President), the judicial branch (Supreme Court), and the legislative branch (Congress). The Constitution outlines the roles and responsibilities for each of these three branches, and provides checks and balances among the powers each is granted.

For example, the Constitution gives Congress the power to declare war, and to create and maintain the Army and Navy, and to enter into treaties. The President is identified in the Constitution as the Commander in Chief of the Army and Navy, and the Supreme Court is charged with hearing cases related to the Constitution, the laws of the United States and any treaties made. The U.S. Constitution also prohibits the states from entering into treaties, keeping troops, or engaging in war.

And then the Tenth Amendment to the United States Constitution says:

> ***The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.***

In other words, if the Constitution doesn't specifically assign a responsibility to one of the three branches of the federal government – or remove it as a power of state government (as in the example above) – then it automatically becomes a power or responsibility of state government.

Planning is not identified in the Constitution as a responsibility of the federal government. It is therefore the responsibility of state government.

The relationship between the state and local governments

States must decide whether to retain this power to do planning, or transfer some or all of their authority for planning to local governments. Transfer of authority is accomplished through the adoption of state enabling legislation, so named because it"enables" local governments to plan.

Each state planning enabling statute is different. A few states, for example, Vermont and Hawaii, choose to address planning issues at the state level and give localities little or no

authority to plan.

Other states, such as Oregon and Florida, authorize local planning through a highly structured system of plan development, review, adoption, and implementation. Local governments are required to engage in a variety of planning activities. Local plans must be consistent with the state's plan(s). Local plans need to address issues the state has deemed important (e.g., growth management), and they must contain all of the elements outlined by the state.

Many states require some form of planning at the local level, but give limited guidance with regard to the form or substance of the plan or the planning process. These states may institute requirements for public notice and public hearings, for example, but only recommend several types of background studies, or suggest areas of substantive content.

And a few states simply allow localities to plan and do not outline any specific requirements.

Judicial review and its relationship to local planning authority

The limits of local planning authority are established in the enabling statutes, but sometimes these boundaries are not defined as clearly as they need to be. Once in a while a question arises as to whether a particular local planning action is truly "enabled" by the statutes.

The issue is resolved by considering the language of the enabling statute, as well as the established relationship between state and local governments in that particular state. This relationship develops over time, and is documented in charters and statutes, as well as in court decisions. Two approaches to local government authority are recognized: the Dillon Rule, and Home Rule.

The Dillon Rule is named for a decision from Judge John Forrest Dillon in which he stated that municipal powers are limited to the following three types:

1. powers that are specifically stated in the state statutes or in the municipal charter
2. powers that are implied as part of specifically enumerated authority
3. powers that are indispensable and essential to the functioning of the municipality.

In a Dillon Rule state, the enabling legislation must specifically define what planning activities local governments are either required or allowed to do. Localities may undertake only what's in the statute and nothing more. If there's any doubt, the assumption is that the state has *not* transferred authority and the activity is not available to local government.

Home Rule offers more freedom with regard to local self-governance, but local government powers must still be authorized by state statute, by the state constitution, or through municipal charters.

In some "home rule" states, the grant of powers is extremely limited (and, in fact, very much resembles a Dillon Rule state). Other states adopt a very broad definition of home rule. They authorize local governments to take care of their own needs, unless some activity is specifically prohibited by the state. Many states fall somewhere in between. The level of local authority may vary by the size or type of locality (i.e., county, city, town, village, etc.).

What does this mean for planning in your community?

Before you can undertake any part of the planning process, you need to know (a) what the state requires of you, and (b) what the state allows you to do. This means you need to know

Resources:

Diane Lang (1991) "Dillon's Rule...and the Birth of Home Rule" In *The Municipal Reporter, December, 1991).*

"Local Government Authority--Home Rule & Dillon's Rule." National League of Cities,

Jesse Richardson. Dillon's Rule is From Mars, Home Rule is From Venus: Local Government Autonomy an the Rules of Statutory Constructuion. Devoe Moore-Collins Institute.

what's in your municipal charter and what's in the state enabling legislation.

Resources:

A Guide to State Land Use Enabling Legislation

Every state is different and therefore it is impossible to provide step-by-step instructions for locating what you need. Fortunately all states now offer their statutes on-line, so searching for the appropriate planning enabling statute is a bit easier. We've provided a table with links to each state's planning statutes to get you started.

In the majority of cases, planning is enabled along with all other municipal activities, in a chapter of the statutes related to municipal authority. This may be a single chapter covering all types of local governments, or the statutes may distinguish among counties, cities, towns, etc. In a few cases, comprehensive planning requirements can be found in chapters that seem unrelated. A good example is Florida, where the requirements for (both city and county) local government comprehensive planning can be found here:

Title XI: County Organization and Intergovernmental Relations
Chapter 163: Intergovernmental Programs
Part II: Growth Policy; County and Municipal Planning; Land Development Regulation
Section 3177: Required and optional elements of a comprehensive plan; studies and surveys

Other sections of this statute outline the process for plan development, adoption and approval.

Comprehensive planning is associated with intergovernmental relations due to the nature of growth management, which requires cooperation across jurisdictions, both locally (city and county) and regionally. Thus, although *city* planning requirements seem out of place in a *county* statute, the rationale for this in the broader context of growth management makes sense.

All of this means you should not be surprised if you find your state planning enabling legislation combined with statutes related to natural resources, or transportation and utilities, or agriculture, or something else that seems equally strange!

Things to look for and worry about as you begin to plan

Once you've located the statutes, you should be aware of a few key things that could impact your planning process and the content of your plan:

First, look for language that tells you whether an activity is required, allowed, or prohibited. Requirements are outlined using "shall," "must," or "will." "May" means you are allowed – but not required – to do something. Add the word "not" to any of the above terms, and the activity is prohibited.

The statutes will frequently include a list of items or actions that are either required or allowed. Because it is impossible to exhaust all possible options for the list, the statutes will say "including but not limited to" as a way to allow for a more extensive list. You should carefully review this language to understand how many items you are truly responsible for addressing.

Second, make sure you understand the relative specificity of a requirement. The statute may ask you to do a "demographic study," or it may require you to provide "population projections." The second is much more focused and specific.

Relative specificity may extend to the type of locality that is required to undertake a particular task (e.g., only counties are required to do a plan or to include specific substantive content in the plan). Some states will give permission to a few designated localities to do something (e.g., the City of Richmond, VA, is allowed to use any newspaper of general circulation for public notices).

Third, take advantage of any broad opportunities that are provided to you, particularly if you are in a Dillon Rule state or a home rule state that relies on limited grants of power. The Code of Virginia lays out very specific public notice and public hearing requirements, but also includes this section:

> ***Any locality may give, in addition to any specific notice required by law, notice by direct mail or any other means of any planning or zoning matter it deems appropriate.***

This one sentence gives local governments many additional options for citizen participation, as long as they also meet the specific requirements for legal ads, written notices, and public hearings.

Fourth, be aware that some states allow for extra-territorial planning, multi-jurisdictional planning, or other options that could be beneficial to you.

Fifth, make sure you know if there are any related administrative rules you need to follow. This is an additional layer of complexity, but very important. In some states, the statutes provide general guidance for developing a plan, but the administrative rules for the related state agencies outline submission deadlines and other requirements related to the comprehensive plan. In Florida, for example, the Division of Community Planning in the Department of Community Affairs has published the minimum criteria for state review of local comprehensive plans in Rule 9J-5 of the Florida Administrative Code.

So, what's the state got to do with it?

As you can see from the above discussion, the state has *everything* to do with planning, plans, and processes. Understanding your state – what it wants, what it allows, and why – before you begin will make for a more effective and legal local plan.