Public Participation Is on the Rise: A Review of the Changes in the Notice and Hearing Requirements for the Adoption and Amendment of General Plans and Rezonings Nationwide and in Recent Arizona Land Use Legislation

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Public Participation Is on the Rise: A Review of the Changes in the Notice and Hearing Requirements for the Adoption and Amendment of General Plans and Rezonings Nationwide and in Recent Arizona Land Use Legislation

ABSTRACT

The public's role in planning and zoning decisions traditionally has been limited to participation in a public hearing held a week or two after receiving notice of the proposed action. Although the receipt of notice and a public hearing meet due process requirements, they do not address the need for more public participation at the critical early stages of the proposed regulation. By the time the public has an opportunity to express concerns about the proposed plan amendment or rezoning, it is already in the final stages of consideration. Beginning with the adoption of the Oregon Planning Act of 1973, states have been
changing their planning and zoning statutes to include requirements that municipalities adopt procedures to encourage early and continuous public participation. The American Planning Association’s Growing Smart Legislative Guidebook continues this trend by emphasizing the need for public participation. This article is intended to give a broad overview of the state trend toward increasing public awareness and participation in planning and zoning processes and will examine in more detail recent changes in Arizona’s planning and zoning statutes.

I. INTRODUCTION

Professional planners, environmental groups, and local, state, and regional governments have for decades debated the public’s role in planning and zoning decisions. The traditional role of the public was limited to expressing concerns and objections at a public hearing held just prior to the adoption of a proposed regulation. In the early days of planning and zoning, landowners were given notice of a proposed regulation only a short time before the regulation’s adoption, a process (continuing in some states) that barely met minimum due process requirements.

Many states have begun to encourage a broader public role in the planning and zoning process. Planning and zoning enabling statutes continue to be amended to reflect the trend toward increasing public awareness and participation. Municipalities are increasingly being required to expand the scope of public involvement at the early stages of the drafting and consideration of a proposed regulation.

The purpose of this article is to discuss the status of the public’s role in planning and zoning decisions. Section II of this article discusses the history of notice and hearing requirements. Section III briefly discusses some of the changes states are making to their enabling statutes to provide additional procedures that encourage public participation earlier in the processes. Section IV focuses on the American Planning Association’s proposed model statutes, which suggest procedures that encourage increased public participation. Finally, section V presents a more detailed analysis of the changes in Arizona’s planning

1. Some states delegate zoning power to counties or other types of political subdivisions. For the purposes of this article, “municipalities” includes any political subdivision delegated zoning power by the state.

2. For the purposes of this article, a “regulation” includes the adoption or amendment of a general or comprehensive plan, the adoption or amendment of the text of a zoning ordinance, or a site specific rezoning/map amendment.
and zoning statutes, adopted during the past five years, which increase
public awareness and participation in all stages of the process.

II. HISTORICALLY, PUBLIC PARTICIPATION WAS LIMITED TO
NOTICE OF THE PLANNING OR ZONING PROPOSAL AND A
PUBLIC HEARING IN THE FINAL STAGES OF THE APPROVAL
PROCESS

When zoning ordinances were first established, municipalities
generally provided landowners with an opportunity to express their
views on proposed planning and zoning regulations. Traditionally, that
opportunity was guaranteed even if the municipality declared the
proposed regulation an emergency measure. But the effort to encourage
public participation, for the most part, ended there. The municipality's
failure to further encourage public participation in the process did not
affect the validity of the regulation as long as a municipality had
complied with the minimum required procedures prior to adopting a
planning or zoning regulation. The minimum procedures required under
most state enabling acts and the due process clauses of state and federal
constitutions are notice of the proposed regulation and an opportunity to
be heard.

Typically, affected landowners were given notice of the
proposed regulation and the time and location of the public hearing,
either by publication in a local newspaper, a mailing, or a posting of the
proposed change on the subject property. The public hearing provided
landowners who would be affected by the proposed regulation an
opportunity to protest and present arguments and testimony against the
adoption of the regulation. The opportunity to be heard, however,
usually occurred just before or simultaneously with the adoption of a

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3. The first comprehensive zoning ordinance was adopted by the city of New York in
1916 and was the model for other cities' zoning regulation. ROBERT M. ANDERSON,
AMERICAN LAW OF ZONING § 3.07 (3d ed. 1986) (citing Building Zone Ordinance, City of
New York (1916)). “At least 425 municipalities, comprising more than one-half of the urban
population of the country, had adopted zoning ordinances by 1926.” Id. at § 5.03 (citing A
Standard State Zoning Enabling Act III, Dep't of Commerce of the United States (1926)).

4. Landowners are typically afforded two opportunities to be heard at a public
hearing: once before the planning and zoning commission and once before the legislative
body.

5. “A municipality cannot avoid notice and hearing requirements by declaring that
the enactment is an emergency measure.” ANDERSON, supra note 3, § 4.11.

6. See id.

App. 1999) (Noyes, J., dissenting) (“Local residents cannot have meaningful input into such
decisions if they do not have time to hear about a proposed decision, gather the facts about
it, and then mobilize others to appeal to elected officials or the courts.”).
proposed regulation. Thus, landowners typically only had the opportunity to voice their concerns at the final stages of the process. The early planning and zoning processes failed to encourage public participation at the beginning stages, thus setting the groundwork for decades of minimal public participation in planning and zoning.

A. Prior to 19738 the Public's Role in the Zoning Process Was Limited but Evolving

1. Zoning Enabling Statutes and Due Process Considerations Provided the Groundwork for Public Participation

   a. The Mandatory Requirements in State Zoning Enabling Statutes Provided the Public with Procedural Rights

      Zoning is a legislative power residing in the states.9 Since states possess this power, in most instances, municipalities have no inherent power to enact or amend zoning regulations.10 Municipalities can only regulate zoning to the extent and in the manner prescribed by the state.11 To shift the responsibility to local authorities, states delegate zoning power to municipalities through state zoning enabling statutes.

      State zoning enabling statutes typically describe the procedures necessary to enact and amend zoning ordinances.12 By 1926, all states had enacted zoning enabling legislation, and each one relied, to some degree, on the U.S. Department of Commerce Standard State Zoning Enabling Act (the Zoning Enabling Act).13 The Zoning Enabling Act was developed by an advisory committee appointed by Secretary of Commerce Herbert Hoover prior to his presidency to meet the great demand for zoning legislation.14 The Zoning Enabling Act required, in part, that the public and parties-in-interest have an opportunity to be

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8. In 1973, Oregon adopted a new planning strategy known as the Oregon Planning Act of 1973 (the 1973 Act). The 1973 Act was the first to, among other things, create a State Citizen Involvement Advisory Committee and city and county citizen advisory committees "[t]o assure widespread citizen involvement in all phases of the planning process." OR. REV. STAT. § 197.160. Other states have since adopted statutes that prescribe a more aggressive public role in planning and zoning. See section IV infra.


10. Annotation, Validity and construction of statutory notice requirements prerequisite to adoption or amendment of zoning ordinance or regulation, 96 A.L.R.2d 449, 455, § 2 (1964).

11. Id.


13. ANDERSON, supra note 3, § 5.01.

heard and that proper notice be given of the hearing, both with respect to
the original regulation and any amendment.  

The procedural requirements mandated by state zoning enabling
statutes have usually been regarded as mandatory. When a
municipality attempts to enact or amend a zoning ordinance without
following the procedural requirements set forth in the statute, the
municipality's acts are generally found to be ultra vires, and the
resulting ordinance is invalid. For a regulation to be valid, the public
must receive notice in the manner and at the time prescribed by the state
statute, and such notice must be sufficient to "apprise the public of the
nature and scope of the regulation which was finally adopted." An
Arizona court, discussing a statutory requirement that notice be given in
a specific manner, has stated, "Such a rule is no mere 'legal technicality,'
rather it is a fundamental safeguard assuring each citizen that he will be
afforded due process of law."

b. The Courts Guaranteed the Public a Role in the Zoning
Process by Requiring Proposed Zoning Regulations to Comply with
Procedural Due Process

Even if a state statute does not require notice and a hearing prior
to the enactment of a zoning regulation, a municipality's failure to
provide notice and a hearing has been regarded as a denial of due
process of law. The U.S. Supreme Court and various state courts have

15. The Zoning Enabling Act provides the following:
Section 4. Method of Procedure—The legislative body of such
municipality shall provide for the manner in which such regulation and
restrictions and the boundaries of such districts shall be determined,
established, and enforced, and from time to time amended, supplemented,
or changed. However, no such regulation, restriction, or boundary shall
become effective until after a public hearing in relation thereto, at which
parties in interest and citizens shall have an opportunity to be heard. At
least 15 days' notice of the time and place of such hearing shall be
published in an official paper, or a paper of general circulation in such
municipalities.

16. Annotation, supra note 10, § 2; ANDERSON, supra note 3, §§ 4.03, 4.13; 1 ZIEGLER,
supra note 12; see Levitz v. State, 613 P.2d 1259, 1261 (Ariz. 1980) ("the statutory procedure
must be strictly pursued, and an ordinance enacted without substantial compliance with
the statutory requirements is void."); 1 ZIEGLER, supra note 12, § 12:10 ("Strict compliance
with technical notice requirements is not always required for the notice in question to be
held adequate.").

17. ANDERSON, supra note 3, § 4.03.

18. Id. § 4.11.

interpreted the due process clauses of the U.S. Constitution and the constitutions of several states, respectively, to require notice and a hearing before a governmental entity can deprive a person of an interest in property. Articulating the minimum procedures to comply with due process, the U.S. Supreme Court stated,

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.

The courts' decisions, although guaranteeing the public its due process rights, helped solidify the public's limited role in planning and zoning decisions for decades. When states enacted their zoning enabling statutes, however, they did not establish procedures to encourage public participation beyond the minimum procedures set forth by the U.S. Supreme Court. The public was afforded the bare procedural necessities required by due process to protect its property interests.

Minimal as they are, the required procedures have provided landowners with an opportunity to voice objections to zoning regulations that affect their property interests, and to challenge a regulation adopted contrary to those procedures. In fact, the initial challenges to municipal zoning regulations were based upon the Due Process Clause of the Constitution and upon similar provisions in state constitutions. If a municipality attempted to circumvent the public's role, the courts continued to protect landowners' rights to participate in the process. The courts have found that, even if a state statute does not provide for notice and a hearing prior to the enactment of a zoning

20. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950) (the due process clause of the Fourteenth Amendment requires "at a minimum...that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing..."); Scott v. City of Indian Wells, 492 P.2d 1137, 1141-42 (Cal. 1972), quoting Boddie v. Connecticut, 401 U.S. 371, 379 (1971) ("Zoning does not deprive an adjacent landowner of his property, but it is clear that the individual's interest in his property is often affected by local land use controls, and the 'root requirement' of the due process clause is 'that an individual be given an opportunity for a hearing before he is deprived of any significant property interest...").


22. Mullane, 339 U.S. at 314 (internal citations omitted).

23. ANDERSON, supra note 3, § 3.08 ("The early state cases are collected and classified in Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 390-91 (1926).")
regulation, a regulation adopted without notice and a hearing may be held unconstitutional as contrary to the notice and hearing requirements required by procedural due process.24

2. The Minimum Procedural Requirements to Enact Zoning Regulations Are Notice of the Proposed Zoning Regulation and an Opportunity to Be Heard

a. Notice of the Proposed Action and the Time and Place of the Public Hearing Encouraged Public Participation, but Only During the Final Stages of the Zoning Process

i. The notice requirement was intended to inform the public of the pendency of the proposed zoning action

State statutes generally set forth certain minimum procedural requirements, including the time and manner in which notice of a zoning regulation is to be given. The purpose of the procedural requirements has been to provide notice that is "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."25 The notice is required to inform the public of the "essence and scope of the zoning regulation under consideration," and the power to enact the proposed regulation is limited by the stated purpose in the notice.26

b. Notice Was Generally Required to Be Given by Specific Means

i. Publication of notice in the local newspaper is the most common form of notice required

The typical statute directed municipalities to publish notice of the proposed zoning regulation and hearing in a newspaper of general circulation in the area to be affected by the proposed zoning regulation.27

24. 1 ZIEGLER, supra note 12, § 12:9; but see Holbrook, Inc. v. Clark County, 49 P.3d 142, 148-49 (Wash. App. 2002) (Area-wide zoning and comprehensive plan amendments are generally legislative actions not subject to due process requirements. But, when one person or relatively few people are exceptionally affected by a decision on individual grounds, then such persons may be entitled to basic due process rights.); Crispin v. Town of Scarborough, 736 A.2d 241, 247 (Me. 1999) ("[Z]oning is a legislative act...[and,] [g]enerally, members of the public are not entitled to protection under the Due Process Clause when their property rights are adversely affected by the legislative acts of government.").


27. Annotation, supra note 10, at 453. Courts generally hold that due process does not require personal notice to landowners or adjacent property owners, but that notice by publication is sufficient to satisfy the "reasonably calculated to apprise" due process standard for notice. 1 ZIEGLER, supra note 12, § 12:5. But, if personal notice is required by statute, failure to comply may result in the invalidation of the enacted ordinance. 1 ZIEGLER, supra note 12, § 12:7.
Although some states have required that the notice appear in the newspaper more than once,\textsuperscript{28} one publication may be sufficient if the statute does not require more.\textsuperscript{29} In addition, state statutes have generally prescribed the minimum number of days that notice is to be published before a hearing. The Zoning Enabling Act, for example, required that notice be published at least 15 days before the hearing on a proposed zoning regulation.\textsuperscript{30} This requirement is intended to give the public sufficient time to investigate the proposed regulation and its effect on the landowner, prepare a response, and present the response at the public hearing. Statutes, however, required municipalities to do little more to encourage public participation in the zoning process, particularly at the critical early stages of the regulation's creation.

ii. Requiring municipalities to mail notice to nearby property owners further encourages public participation

Statutes in some states require that municipalities mail notice to property owners who would be affected by the proposed zoning regulation.\textsuperscript{31} Even if a state statute only requires notice by publication, at least one court has held that, where the names and addresses of affected landowners are known, "due process mandates actual notice to the parties."\textsuperscript{32} Of course, actual notice, as opposed to constructive notice, becomes less and less practical as a greater number of properties fall within the affected area.\textsuperscript{33}

Courts have also assisted in other ways to encourage public participation in the zoning process. Several courts have found that, in some circumstances, a municipality is required to comply with the mailing requirements, even if the affected property owners live outside the municipality. If a zoning regulation affects property that lies outside the municipal boundary, and notice of a zoning regulation or amendment is required to be mailed to all landowners within a certain distance of the parcel under consideration, the courts determined that a municipality owed the same duty of notice to nonresidents within the affected area as it owed to its own residents.\textsuperscript{34} To hold otherwise, one court has stated, would "make a fetish out of invisible municipal

\textsuperscript{28} ANDERSON, supra note 3, § 4.14.
\textsuperscript{29} Annotation, supra note 10, at 458.
\textsuperscript{30} ANDERSON, supra note 3, § 4.12.
\textsuperscript{31} \textit{id.} § 4.13. Individual mailing to landowners is generally not required where a proposed zoning regulation would affect the entire municipality. \textit{id.}
\textsuperscript{32} \textit{id.}
\textsuperscript{33} In these instances the state may require that municipalities and/or applicants give notice by posting signs on the property affected by the proposed regulation. \textit{See ANDERSON, supra} note 3, § 4.13.
\textsuperscript{34} 1 ZIEGLER, supra note 12, § 12:28.
boundary lines and a mockery of the principles of zoning. 'Common sense and wise public policy...require an opportunity for property owners to be heard before ordinances which substantially affect their property rights are adopted'...."*8

c. Although the Public Was Guaranteed a Public Hearing, It Was Generally Held at the End of the Zoning Process

The zoning enabling statutes mandate not only a hearing, but a public hearing. 36 A public hearing, after the publication of timely notice, is "intended to afford a fair opportunity to every landowner to defend his interest and to expose the benefit or detriment of proposed land-use restrictions." 37 In addition to state enabling acts, another factor that has encouraged public hearings was the promulgation of "sunshine" laws, which also compel local legislative and administrative bodies to conduct their meetings, with few exceptions, in public. 38 There has been a concern, however, that although the public is traditionally guaranteed a public forum to express its views, by the time municipalities hold a public hearing, it is late in the process. The late timing of the public hearing has limited the public's ability to influence the regulation in its crucial early stage.

B. Although Planning Was Not Accepted as a Prerequisite to Zoning until after the 1960s, Public Participation Played a Larger Initial Role in Planning

1. Comprehensive/General Plans Provide a Guidebook for Development

Zoning ordinances were initially adopted without a formal comprehensive plan. 39 By 1928, the Department of Commerce advisory committee had developed a counterpart to the Standard State Zoning Enabling Act for municipal planning: the Standard City Planning

36. ANDERSON, supra note 3, § 4.17.
37. Id. § 4.02.
38. 1 ZIEGLER, supra note 12, § 12.38. Sunshine Laws do not, however, require that municipalities provide the public with an opportunity to comment at its meetings. Black v. Mecca Twp. Bd. of Trustees, 632 N.E.2d 923, 926 (Ohio App. 1993).
39. "When comprehensive zoning began, municipal planning was in a primitive state. Professional planners were few, and local planning departments were rare. Zoning ordinances were simple." ANDERSON, supra note 3, § 3.01. Prior to the formal development of comprehensive plans, private parties and the public controlled the use of land through the common law of nuisance and restrictive covenants. See discussion, ANDERSON, supra note 3, §§ 3.02-04.
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Enabling Act (the Planning Enabling Act). The Planning Enabling Act authorized the adoption and amendment of the comprehensive plan. Although it took some time for planning to become a prerequisite to zoning, today most states provide that zoning regulations must be in accordance with a comprehensive plan. A comprehensive plan is now generally considered a prerequisite of zoning and the “municipal roadmap.”

The public has typically played a somewhat greater role in the development and drafting of a community’s comprehensive plan. Since the comprehensive plan involves the development of goals for the community as a whole, as opposed to the application of zoning regulations to specific parcels of land, public involvement is essential in determining what needs and goals the plan should address. “Professional planners have reacted variously to citizen participation in the process, but there is wide agreement on the proposition that a plan cannot be effectively implemented unless there is an effective base of citizen participation in the planning process.”

The procedure for adopting a comprehensive plan has normally included public notice and a public hearing. The notice and hearing requirements have been used by municipalities to “gain information and to test public sentiment.” But the legislative body is not bound by

41. “While most modern planners would urge the development of a comprehensive plan as a prelude to zoning, legal authorities of the 1960’s continued to debate the utility of provisions which make adoption of a master plan a prerequisite of zoning.” ANDERSON, supra note 3, § 5.02.
42. Id. § 5.03. Section 3 of the Zoning Enabling Act, adopted in some form by all states, provides that zoning regulations “shall be made in accordance with a comprehensive plan.” Some states, however, omitted the comprehensive plan provision, while others used other terms to describe a comprehensive plan (e.g., well considered plan, master plan, general plan, etc.). Id. (citing ANDERSON & ROSWIG, PLANNING, ZONING, SUBDIVISION: A SUMMARY OF THE STATUTORY LAWS OF THE 50 STATES, 194, Chart No. 4 (1966)).
43. Id.
45. ANDERSON, supra note 3, § 23.05.
46. Id. § 23.13.
47. Id.
public opinion. The procedures followed by most jurisdictions have traditionally included provisions similar to those in Illinois. The applicable Illinois statute from 1961 states,

On and after the effective date of this amendatory act of 1961, an official comprehensive plan, or any amendment thereof, shall not be adopted by a municipality until notice and opportunity for public hearing have first been afforded in the manner herein provided. Upon submission of a comprehensive plan by the plan commission or a proposed amendment to an existing comprehensive plan, the corporate authorities shall schedule a public hearing thereon, either before the plan commission or the corporate authorities. Not less than 15 days’ notice of the proposed hearing, and the time and place thereof, shall be given by publication in a newspaper of general circulation in the county or counties in which the municipality and contiguous unincorporated territory are located. The hearing shall be informal, but all persons desiring to be heard in support or opposition to the comprehensive plan or amendment shall be afforded such opportunity, and may submit their statements, orally, in writing, or both.

Similar to the adoption of a zoning regulation, notice of the adoption or amendment of a comprehensive plan generally must be given in a local newspaper at least 15 days before the hearing, and the public must be given the opportunity to speak. As this suggests, public participation in the drafting and consideration of the municipality’s comprehensive plan has been similarly limited to the final stages of the planning process, although the public may have been involved to some degree in determining the issues and goals the plan should address.

Although planning and zoning regulations have constantly changed over time, little was done prior to 1973 to encourage more public participation in the adoption of the regulations. The courts upheld the public’s right to notice and a hearing, but states and municipalities failed in the early years to expand on the courts’ minimum requirements. In the past three decades, a trend has appeared among the states that encourages more public involvement.

48. Id. "Obviously, an exercise of the police power cannot be made to depend upon a count of noses, but, on the other hand, the very fact that a public hearing is required before the adoption or reconsideration of a master plan indicates that public sentiment on the proposal is not wholly irrelevant." Id. (citing Mettee v. County Comm’rs of Howard County, 129 A.2d 136, 140 (Md. 1957)).
49. Id.
50. Id. (citing ILL. COMP. STAT. ANN. § 11-12-7).
III. THE CURRENT TREND IS FOR STATES TO ADOPT STATUTES REQUIRING MORE PUBLIC PARTICIPATION IN THE PLANNING AND ZONING PROCESSES

The nation’s planning and zoning requirements have become much more complex since the Zoning Enabling Act and the Planning Enabling Act were drafted in the 1920s, and citizens expect to have more influence on local planning and zoning decisions. Since 1973, many states have adopted statutory provisions requiring municipalities to implement procedures that increase public awareness and participation in the planning and zoning processes. The first state to require municipalities to implement such procedures was Oregon. Oregon adopted the Oregon Planning Act of 1973, which established a statewide commission to (i) oversee the state planning responsibilities formerly vested in the governor and (ii) appoint a State Citizen Involvement Advisory Committee to ensure that municipalities develop "a program for citizen involvement in preparing, adopting and amending comprehensive plans and land use regulations."

During the next three decades, other states have followed the trend set by Oregon and adopted provisions that require municipalities to encourage public awareness and participation in the planning and zoning processes. While some of the following states specify procedures for municipalities to follow when adopting and amending comprehensive plans and zoning regulations, other states simply express the intent to encourage public participation at the state and municipal levels.

Colorado: "[T]he commission shall conduct public hearings...prior to final adoption of a master plan in order to encourage public participation in and awareness of the development of such plan and shall accept and consider oral and written public comments throughout the process of developing the plan."

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51. See generally OR. REV. STAT. §§ 197.005 et. seq.
52. 5 NORMAN WILLIAMS, JR. & JOHN M. TAYLOR, AMERICAN PLANNING LAW § 160.15 (1985); see generally OR. REV. STAT. §§ 197.030-197.070.
53. OR. REV. STAT. § 197.160.
54. This article is not an exhaustive review of the efforts of all states to encourage public participation but, instead, is intended to describe a trend toward encouraging an increase in public participation in the planning and zoning processes.
55. The list contains examples of state statutes that include public participation requirements. It is not intended to be an exhaustive list. States not included in this article may also have public participation requirements.
District of Columbia: "[T]he Mayor shall establish procedures for citizen involvement in the planning process..." 57

Florida: "It is the intent of the Legislature that the public participate in the comprehensive planning process to the fullest extent possible." Local governing bodies shall adopt procedures that "provide for broad dissemination of the proposals and alternatives, opportunity for written comments, public hearings..., provisions for open discussion, communications programs, information services, and consideration of and response to public comments." 58

Idaho: "As part of the planning process, a planning or zoning commission shall provide for citizen meetings, hearings, surveys, or other methods, to obtain advice on the planning process, plan, and implementation." 59

Maine: "The public shall be given an adequate opportunity to be heard in the preparation of a zoning ordinance." 60

Vermont: "At the outset of the planning process and throughout the process, planning commissions shall solicit the participation of local citizens and organizations by holding informal working sessions that suit the needs of local people." 61

Wisconsin: "The governing body of a local governmental unit shall adopt written procedures that are designed to foster public participation, including open discussion, communication programs, information services and public meetings for which advance notice has been provided, in every stage of the preparation of a comprehensive plan. The written procedures shall provide for wide distribution of proposed, alternative or amended elements of a comprehensive plan and shall provide an opportunity for written comments on the plan to be submitted by members of the public to the governing body and for the governing body to respond to such written comments." 62

Washington: "Each county and city...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

57. D.C. CODE ANN. § 1-204.23 (2002).
58. FLA. STAT. § 163.3181 (2002).
59. IDAHO CODE § 67-6507 (Michie 2002).
60. MAINE REV. STAT. ANN. tit. 30-A, § 4352 (West 1996).
implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.\textsuperscript{63}

Although the trend appears to be gaining momentum, some states continue to be content with providing citizens with the minimum due process requirements.\textsuperscript{64}

It is still too early to determine if the state mandates have actually achieved their goals of increasing public participation in the planning and zoning processes. The public, presumably, will need time to grow accustomed to the new procedures and not be discouraged by a municipality's failure to adhere to the public sentiment.\textsuperscript{65} The public, however, is not the only factor in determining whether there will continue to be an increase in early and continuous public participation. The sustainability of early and continuous public participation will depend largely on how municipalities implement the newly delegated power, and how strict the courts are in interpreting the requirements that municipalities adopt procedures that encourage public participation.\textsuperscript{66} Planning organizations have also embraced the change and at

\textsuperscript{63.} WASH. REV. CODE § 36.70A.140 (2002).

\textsuperscript{64.} See Citizen’s Awareness Now v. Marakis, 873 P.2d 1117, 1121 (Utah 1994) (“Utah law grants citizens the right to be informed of the current permitted uses of land and of proposed or actual governmental changes in those uses. They also have the right to comment on and, under certain circumstances, negate or affirm those changes via the referendum process. Further, if citizens are dissatisfied with the specific implementation of a zoning plan, they have the option of voting out the leaders who implemented it.”) (citing UTAH CODE ANN. § 10-9-303 and Wilson v. Manning, 657 P.2d 251, 253 (Utah 1982)).

\textsuperscript{65.} Although the public has been given a broader role in the planning process, “‘public participation’...does not equate to ‘citizens decide.’” City of Burien v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 53 P.3d 1028, 1035 (Wash. App. 2002).

\textsuperscript{66.} Some examples of court decisions interpreting the new procedural requirements include Raygor v. Bd. of County Comm’rs of the County of El Paso, 21 P.3d 432 (Colo. Ct. App. 2000) (board did not violate law requiring maximum public participation when it limited each of the 51 public speakers to 90 seconds in which to voice his or her opinion); Crispin v. Town of Scarborough, 736 A.2d 241, 249 (Me. 1999) (one-day notice prior to hearing to reconsider board’s decision to approve a contract zoning proposal was sufficient under the applicable statutes where there had been ample notice and opportunity to be heard at prior public hearings); St. Joe Paper Co. v. Dep’t of Cnty. Affairs, 657 So. 2d 27, 28 (Fla. Dist. Ct. App. 1995) (broad statement of legislative intent to encourage the fullest public participation in the comprehensive planning process does not confer standing on non “affected person” to intervene in proceeding that considered whether comprehensive plan conformed to statute); Das v. Osceola County, 685 So. 2d 990, 994 (Fla. Dist. Ct. App. 1997) (state statute directing local governmental unit to “provide real property owners with notice of all official actions which will regulate the use of their property” required local
least one, the American Planning Association, has drafted model statutes suggesting provisions that encourage increased public participation.

IV. THE AMERICAN PLANNING ASSOCIATION'S GROWING SMART LEGISLATIVE GUIDEBOOK INCLUDES MODEL STATUTORY PROVISIONS DESIGNED TO INCREASE PUBLIC PARTICIPATION

In 2002, after over a decade of research and two interim editions, the American Planning Association (APA) published the final edition of the Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change (APA Legislative Guidebook). The APA Legislative Guidebook was "intended as an update to and rethinking of the Standard City Planning and Zoning Enabling Acts" drafted in the 1920s. Prior to the release of the final edition, at least 13 states had considered the APA Legislative Guidebook's model statutes and incorporated language from the two interim editions into their statutes.

In an effort to encourage states to require that their local governments adopt measures to increase public participation in the planning and zoning processes, the APA included several provisions in its model statutes aimed at increasing local citizen involvement. Those provisions include:

1. Public participation in the adoption and amendment of a comprehensive plan
2. Public participation in the adoption or amendment of land development regulations
3. Periodic review, revisions and readoption of local comprehensive plans and land development regulations

A. The APA Legislative Guidebook Encourages Public Participation in the Adoption and Amendment of a Comprehensive Plan

One of the model statutes in the APA's Legislative Guidebook encourages public participation in the adoption and amendment of a government to give notice to property owners of proposed project to place pipeline underground).


68. Id. at xli.

municipality's general or comprehensive plan. Not only is "early and continuous public participation" a stated goal in the APA's model statute, other requirements within the model statute demonstrate the drafters' desire to ensure that the goal is achieved. For example, the model statute suggests municipalities give the public an opportunity to submit written comments on drafts of the plan or amendment and encourages municipalities to conduct surveys and interviews of the local residents and business owners. The APA's proposed statute encourages public access to the planning process at its earliest stages. The model statute also retains the requirements that have become commonplace in state statutes, including a public hearing preceded by notice.

70. APA GUIDEBOOK, supra note 67, § 7-401(1). Section 7-401(1) states, "The [legislative body of the local government or the local planning commission] shall adopt written procedures designed to provide early and continuous public participation in the preparation of the local comprehensive plan or successive elements or other amendments thereto."

71. Id. § 7-401(2). Section 7-401(2) states, The public participation procedures shall provide for the broad dissemination of proposals and alternatives for the local comprehensive plan or such part or other amendment in order to ensure a multidirectional flow of information among participants in advance of and during the preparation of plans. Examples of measures contained in such procedures may include, but shall not be limited to:

(a) surveys and interviews of the local government's residents and business owners, operators, and employees;
(b) communications programs and information services, such as public workshops and training, focus groups, newsletters, a speaker's bureau, radio and television broadcasts, and use of computer-accessible information networks;
(c) opportunity for written comments on drafts of the plan or such part or other amendment;
(d) appointment of a person to serve as a citizen participation coordinator for the planning process; and/or
(e) the creation of advisory task forces.

72. See id. § 7-401(3). The municipality is also required to send notice to "any neighborhood planning council established pursuant to Section 7-109" and "any neighborhood or community organization recognized by the legislative body pursuant to Section 7-110." Id. According to the APA model, a "neighborhood planning council" is established by ordinance upon receipt by the legislative body of a petition signed by at least ten percent of the registered voters in a neighborhood. The main functions of a neighborhood planning council are to hold public workshops or meetings and develop, propose, review and comment on any measures that may affect the designated neighborhood. See id. § 7-109. Also, a "neighborhood or community organization" may be recognized by the legislative body by ordinance upon receipt of an application from the organization showing its proposed boundaries, the names and addresses of its officers and directors, and the address for receipt of notices. The organization must have at least 50 members, represent more than half of the persons 18 years of age or older residing within its boundaries, and at least 50 percent of the area of the land within the boundaries of the organization must be developed for residential use. Id. § 7-110.
B. The APA Legislative Guidebook Also Encourages Public Participation in the Adoption or Amendment of Land Development Regulations

A second APA model statute encourages public participation by requiring local governments to adopt a citizen review process for the adoption or amendment of land development regulations, including rezonings. It also requires generally the same notice and hearing procedures as required for the adoption and amendment of the comprehensive plan. The model statute encourages the participation of neighborhood and community organizations and proposes mailing personal notices to landowners who would be subject to the proposed regulation, but only when the regulation applies to "discrete and identifiable [i.e., less than 100] lots or parcels of land." The model statute encourages periodic review, revision, and readoption of general plans to ensure that the local government's land development regulations continue to be an effective planning tool. The model statute includes a recommendation that municipalities review their comprehensive plan at least every five years and revise or adopt a new comprehensive plan every ten years. Revision and readoption of the comprehensive plan should be performed in accordance with the same procedural requirements applicable to the adoption of a comprehensive plan and the adoption or amendment of zoning regulations.

C. The APA Legislative Guidebook Proposes Periodic Review, Revision, and Readoption of a Local Government's General Plan Every Ten Years

V. CASE STUDY: RECENT ARIZONA LAND USE LEGISLATION DEMONSTRATES ONE STATE'S ACTIONS TO FURTHER THE GOAL OF INCREASING PUBLIC PARTICIPATION IN PLANNING AND ZONING PROCESSES

Beginning in 1998, Arizona joined several states in an effort to increase public participation in all aspects of planning and zoning.
Many of the public participation provisions in Arizona's recent land use legislation (known as Growing Smarter) were modeled after similar concepts in the APA Legislative Guidebook.

A. The Prior Law in Arizona, Like Many Other States, Did Not Encourage Public Participation Until Late in the Planning and Zoning Processes

Prior to 1998, Arizona's planning statutes only required municipalities to provide a limited opportunity for public comment on a proposed general plan. Municipalities were instructed to hold at least one public hearing before adopting or amending a general plan. Notice of the time and place of the public hearing was required to be published by the municipality in a newspaper of general circulation in the municipality or, if no such publication was available, posted in ten public places throughout the municipality. If a municipality had a planning commission, the planning commission was also required to "hold at least one public hearing before approving a general plan or any amendment to such plan." Citizens in municipalities with larger populations were afforded additional opportunities for public comment. "[P]lanning commissions in municipalities having populations over twenty-five thousand persons [were required] to hold two or more public hearings at different locations within the municipality to promote citizen participation."

The Arizona planning statutes also required similar notice and hearing requirements for an ordinance that would change property from one zone to another. Such proposed rezonings required the planning commission and, if requested by a member of the public or governing body, the governing body of a municipality to hold a public hearing. Notice of the public hearing was required in substantially the same manner noted above for a public hearing on a general plan, by publication and/or posting. Additional notice requirements were required under certain circumstances for rezonings, including notice to the affected property owner, all owners within 300 feet of the property to comply with the provisions of Arizona's new planning statutes (known as the Growing Smarter Act and Growing Smarter Plus) by December 31, 2003. Other communities were required to comply with the Growing Smarter provisions by December 31, 2002. 2002 Ariz. Sess. Laws 148, § 9.

79. Arizona generally uses the term "general" plan rather than "comprehensive" plan.
81. ARIZ. REV. STAT. § 9-461.06.D (1997). This notice requirement was also added to the statutory provisions applicable to counties in 2002. See ARIZ. REV. STAT. § 11-806 (2002).
82. ARIZ. REV. STAT. § 9-461.06.D (1997).
be rezoned, and other interested officials and citizens, as well as by newspaper display ad.  

B. Growing Smarter Began to Encourage Public Participation at Earlier Stages in the Planning and Zoning Processes

In 1998, the Arizona legislature adopted what was known as the Growing Smarter Act. A major component of the new statutes was a requirement that municipalities increase the role local citizens play in the adoption, readoption, and amendment of general plans. Among the changes to the state’s planning statutes were requirements that  

(i) municipalities increase public participation in the planning process

Arizona Revised Statute section 9-461.06.B requires that

The legislative body shall:

1. “Adopt written procedures to provide effective, early and continuous public participation in the development and major amendment of general plans from all geographic, ethnic and economic areas of the municipality”

2. Consult and advise with “public officials and agencies...property owners and citizens generally to secure maximum coordination of plans and to indicate properly located sites for all public purposes on the general plan.”

86. For example, the city of Tucson, Arizona, has adopted procedures that require applicants proposing changes to the general plan to offer “to meet at a specified time and place to discuss the proposed project with the adjacent property owners and the neighborhood associations that are on record with the City for the area in which the project is proposed.” City of Tucson Land Use Code § 5.4.5.2 (1995). Applications must include “verification of a neighborhood meeting.” Id. § 5.4.5.3.A. Another city, Eloy, Arizona, has adopted several strategies to ensure public participation is achieved, including (i) encouraging and supporting the creation and organization of other citizen committees and neighborhood associations to provide ongoing input to the adoption and future amendment process of the general plan, (ii) conducting surveys from time to time to augment the results of public meetings, (iii) publishing a newsletter to disseminate planning information and increasing the availability of and access to planning documents, (iv) providing clearer guidelines and opportunities for citizen comments during city council and planning commission meetings, (v) conducting as many meetings as possible during the times of peak residency, and (vi) supplementing formal public hearings with community meetings and workshops prior to public hearings. City of Eloy Resolution No. 00-845 (2000).
Citizens of municipalities have the right to refer the adoption or readoption of the general plan, or amendment thereto, to a vote of the electorate.  

Municipalities adopt new locally created citizen participation programs to adopt a new plan or readopt the prior general plan every ten years.

C. Growing Smarter Plus Expanded the Scope of Public Participation

Growing Smarter Plus was adopted by the Arizona legislature in 2000. The 2000 statutes built upon some of the public participation concepts in the 1998 Growing Smarter Act by, in part, requiring municipalities to create plans to further enhance citizen review and involvement in both the planning and zoning processes. Under Growing Smarter Plus,

(i) larger cities, as well as small, fast growing cities, are required to submit new community plans to voters for ratification.

Arizona Revised Statute section 9-461.06.L requires that the governing body of a city or town having a population of more than two thousand five hundred persons but not less than ten thousand persons and whose population growth rate exceeded an average of two per cent per year for the ten year period before the more recent United States decennial census, and any city or town having a population of ten thousand or more persons, shall submit each new general plan adopted pursuant to subsection J of this section to the voters for ratification at ... [an election held] pursuant to section 16-204.

(ii) municipalities are required to implement a citizen review process to be applied to the rezoning of property.


89. For example, some cities and counties in Arizona, including the city of Scottsdale, Coconino County, Yavapai County, and Cochise County, require that applicants for zoning amendments either conduct a neighborhood meeting or describe some other means to provide potentially affected citizens with an opportunity to express any concerns at the beginning of the process and file a report either with their application or at some time prior to notice of the first public hearing detailing the results of their citizen review efforts. See Scottsdale City Code § 1.305.C (2002); Coconino County Zoning Ordinance § 20.2-2, 20.2-3 (2002); Yavapai County Zoning Ordinance § 124 (2002); Cochise County Zoning Regulations § 2203 (1999).
Arizona Revised Statute section 9-462.03 and its statutory counterpart for counties, Arizona Revised Statute section 11-829, were amended to include the following:

The legislative body shall adopt by ordinance, for each rezoning application that requires a public hearing, a citizen review process that includes components that identify the procedure through which

1. Adjacent landowners and other potentially affected citizens will be notified of the application.

2. The municipality/county will inform adjacent landowners and other potentially affected citizens of the substance of the proposed rezoning.

3. Adjacent landowners and other potentially affected citizens will be provided an opportunity to express any issues or concerns that they may have with the proposed rezoning before the public hearing.

D. Even after the Adoption of Growing Smarter Plus, Arizona Has Continued to Revise and Improve the Public’s Role in the Planning and Zoning Processes

Growing Smarter and Growing Smarter Plus provide Arizona citizens with more opportunities to comment on local growth management measures. Currently, municipalities in Arizona are required to adopt measures that ensure public participation for the adoption, readoption, or amendment of general or comprehensive plans, and for the rezoning of property. In the three years since the adoption of Growing Smarter Plus, Arizona’s statutes have been tweaked to

(i) clarify that the citizen review process adopted by the governing body applies to all rezoning and specific plan applications, \(^90\)

(ii) provide more time for review and comment on proposed general or comprehensive plans, or major amendments thereto, \(^91\)

(iii) require that the general plan adopted by the municipality be submitted to the voters at the next regularly scheduled municipal election or special election scheduled at least one hundred twenty days after adoption. \(^92\)

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91. Ariz. Rev. Stat. §§ 9-461.06.C, 11-806.H (2002) now require the proposed plan or amendment be submitted for comment to specified agencies and individuals at least 60 days before issuing notice of the public hearing before the planning commission, instead of 60 days before adoption.
VI. CONCLUSION

While states continue to revise their planning and zoning statutes to encourage early and continuous public participation in the planning and zoning process, the effectiveness of these statutory changes will depend on municipalities being able to design and implement procedures that will truly achieve that goal. The public participation statutes are most often general in their wording, leaving to municipalities the task of creating specific procedures. These procedures must be workable and must direct the efforts of both planners and developers to ensure that meaningful public participation is achieved. It will not take long for the public to decide if its voice is being heard, or if the new procedures are merely eyewash. As more and more states enact statutes encouraging more public participation, and as municipalities continue to implement these statutes, one can hope that early and continuous public participation will become a habit.