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Town Plan Commission Sample Ordinance & Notes

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July 2001

Town Plan Commission Sample Ordinance & Notes

The Town Board of the Town of _____, _____ County, Wisconsin, does ordain as follows:

Section 1. Title

This ordinance is entitled the “Town of _____ Plan Commission Ordinance.”

Section 2. Purpose

The purpose of this ordinance is to establish a Town of _____ Plan Commission and set forth its organization, powers and duties, to further the health, safety, welfare and wise use of resources for the benefit of current and future residents of the Town and affected neighboring jurisdictions, through the adoption and implementation of comprehensive planning with significant citizen involvement.

Section 3. Authority; Establishment (7-Member)

The Town Board of the Town of _____, having been authorized by the Town meeting under sec. 60.10(2)(c), Wis. Stats., to exercise village powers, hereby exercises village powers under sec. 60.22(3), Wis. Stats., and establishes a seven (7) member Plan Commission under secs. 61.35 and 62.23, Wis. Stats. The Plan Commission shall be considered the “Town Planning Agency” under secs. 236.02(13) and 236.45, Wis. Stats., which authorize, but do not require, Town adoption of a subdivision or other land division ordinance.

Alternative Section

Section 3. Authority; Establishment (5-Member)

The Town Board of the Town of _____ has been authorized by the Town meeting under sec. 60.11(2)(c), Wis. Stats., to exercise village powers and the Town has a population of less than 2,500, according to the most recent regular or special federal census, sec. 990.01 (29), Wis. Stats. The Town Board hereby exercises village powers under sec. 60.22(3), Wis. Stats., and establishes a five (5) member Plan Commission under secs. 60.62(4), 61.35 and 62.23, Wis. Stats. The Plan Commission shall be considered the “Town Planning Agency” under secs. 236.02(13) and 236.45, Wis. Stats., which authorize, but do not require, Town adoption of a subdivision or other land division ordinance.

Section 4. Membership (7-Member)

The Plan Commission consists of one (1) member of the Town Board, who may be the Town Board Chairperson, and six (6) citizen members, who are not otherwise Town officials, and who shall be persons of recognized experience and qualifications.

Alternative Section

Section 4. Membership (5-Member)

The Plan Commission consists of one (1) member of the Town Board, who may be the Town Board Chairperson, and four (4) citizen members, who are not otherwise Town officials, and who shall be persons of recognized experience and qualifications.

Section 5. Appointments

The Town Board Chairperson shall appoint the members of the Plan Commission and designate a Plan Commission Chairperson during the month of April to fill any expiring term. The Town Board Chairperson may appoint himself or herself or another Town Board member to the Plan Commission and may designate himself or herself, the other Town Board member, or a citizen member as Chairperson of the Plan Commission. [All appointments are subject to the advisory approval of the Town Board.] In a year in which any Town Board member is elected at the spring election, any appointment or designation by the Town Board Chairperson shall be made after the election and qualification of the Town Board members elected. Any citizen appointed to the Plan Commission shall take and file the oath of office within five (5) days of notice of appointment, as provided under secs. 19.01 and 60.31, Wis. Stats.

Section 6. Terms of Office (With Citizen Member Terms Staggered)

The term of office for the Plan Commission Chairperson and each Commission member shall be for a period of 3 years, ending on April 30, or until a successor is appointed and qualified, except:

(1) Initial Terms. (7-member) If the initial appointments to the Plan Commission are made during April, the citizen members shall be appointed for staggered terms as follows: two (2) persons for a term that expires in one (1) year; two (2) persons for a term that expires in two (2) years; and two (2) persons for a term that expires in three (3) years. If the initial appointments are made after April, the first citizens appointed to the Plan Commission shall be appointed for staggered terms as follows: two (2) persons for a term that expires one (1) year from the previous April 30; two (2) persons for a term that expires two (2) years from the previous April 30; and two (2) persons for a term that expires three (3) years from the previous April 30.

Alternative Subsection (1)

(1) Initial Terms. (5-member) The citizen members initially appointed to the Plan Commission shall be appointed for staggered terms.

(2) Town Board Member or Chairperson. The Plan Commission member who is a Town Board member or Town Board Chairperson, including a person designated the Plan Commission Chairperson, shall serve for a period of two (2) years, as allowed under sec. 66.0501(2), Wis. Stats., concurrent with his or her term on the Town Board, except an initial appointment made after April 30 shall be for a term that expires two (2) years from the previous April 30.

Alternative Section

Section 6. Terms of Office (With Citizen Member Terms Not Staggered)

The term of office for the Plan Commission Chairperson and each Commission member shall be for a period of 3 years, ending on April 30, or until a successor is appointed and qualified. However, the Plan Commission Chairperson or member who is a Town Board Chairperson or Town Board member shall serve on the Commission for a period of two (2) years, as allowed under sec. 66.0501(2), Wis. Stats., concurrent with his or her term on the Town Board. An initial appointment of such Town Board Chairperson

or Town Board member made after April 30 shall be for a term that expires two (2) years from the previous April 30.

Section 7. Vacancies

A person who is appointed to fill a vacancy on the Plan Commission shall serve for the remainder of the term.

Section 8. Compensation; Expenses

The Town Board of the Town of _____ hereby sets a per diem allowance of ____ per meeting for citizen and Town Board members of the Plan Commission, as allowed under sec. 66.0501(2), Wis. Stats. In addition, the Town Board may reimburse reasonable costs and expenses, as allowed under sec. 60.321, Wis. Stats.

Section 9. Experts & Staff

The Plan Commission may, under sec. 62.23(1), Wis. Stats., recommend to the Town Board the employment of experts and staff, and may review and recommend to the approval authority proposed payments under any contract with an expert.

Section 10. Rules; Records

The Plan Commission, under sec. 62.23(2), Wis. Stats., may adopt rules for the transaction of its business, subject to Town ordinances, and shall keep a record of its resolutions, transactions, findings and determinations, which shall be a public record under secs. 19.21-19.39, Wis. Stats.

Section 11. Chairperson & Officers

(1) Chairperson. The Plan Commission Chairperson shall be appointed and serve a term as provided in sections 5 and 6 of this ordinance. The Chairperson shall, subject to Town ordinances and Commission rules:

- (a) provide leadership to the Commission;
- (b) set Commission meeting and hearing dates;
- (c) provide notice of Commission meetings and hearings and set their agendas, personally or by his or her designee;
- (d) preside at Commission meetings and hearings; and
- (e) ensure that the laws are followed.

(2) Vice Chairperson. The Plan Commission may elect, by open vote or secret ballot under sec. 19.88(1), Wis. Stats., a Vice Chairperson to act in the place of the Chairperson when the Chairperson is absent or incapacitated for any cause.

(3) Secretary. The Plan Commission shall elect, by open vote or secret ballot under sec. 19.88(1), Wis. Stats., one of its members to serve as Secretary, or, with the approval of the Town Board, designate the Town Clerk or other Town officer or employee as Secretary.

Section 12. Commission Members as Local Public Officials

All members of the Plan Commission shall faithfully discharge their official duties to the best of their abilities, as provided in the oath of office, sec. 19.01, Wis. Stats., in accordance with, but not limited to, the provisions of the Wisconsin Statutes on:

Public Records, secs. 19.21-19.39; Code of Ethics for Local Government Officials, secs. 19.42, 19.58 & 19.59; Open Meetings, secs. 19.81-19.89; Misconduct in Office, sec. 946.12; and Private Interests in Public Contracts, sec. 946.13. Commission members shall further perform their duties in a fair and rational manner and avoid arbitrary actions.

Section 13. General & Miscellaneous Powers

The Plan Commission, under sec. 62.23(4), Wis. Stats., shall have the power:

- (1) Necessary to enable it to perform its functions and promote Town planning.
- (2) To make reports and recommendations relating to the plan and development of the Town to the Town Board, other public bodies, citizens, public utilities and organizations.
- (3) To recommend to the Town Board programs for public improvements and the financing of such improvements.
- (4) To receive from public officials, within a reasonable time, requested available information required for the Commission to do its work.
- (5) For itself, its members and employees, in the performance of their duties, to enter upon land, make examinations and surveys, and place and maintain necessary monuments and marks thereon. However, entry shall not be made upon private land, except to the extent that the private land is held open to the general public, without the permission of the landowner or tenant. If such permission has been refused, entry shall be made under the authority of an inspection warrant issued for cause under sec. 66.0119, Wis. Stats., or other court-issued warrant.

Section 14. Town Comprehensive Planning: General Authority & Requirements

(1) The Plan Commission shall make and adopt a comprehensive plan under secs. 62.23 and 66.1001, Wis. Stats., which contains the elements specified in sec. 66.1001(2), Wis. Stats, and follows the procedures in sec. 66.1001(4), Wis. Stats.

(2) The Plan Commission shall make and adopt the comprehensive plan within the time period directed by the Town Board, but not later than a time sufficient to allow the Town Board to review the plan and pass an ordinance adopting it to take effect on or before January 1, 2010, so that the Town comprehensive plan is in effect by the date on which any Town program or action affecting land use must be consistent with the Town comprehensive plan under sec. 66.1001(3), Wis. Stats.

(3) In this section the requirement to “make” the plan means that the Plan Commission shall ensure that the plan is prepared, and oversee and coordinate the preparation of the plan, whether the work is performed for the Town by the Plan Commission, Town staff, another unit of government, the regional planning commission, a consultant, citizens, an advisory committee, or any other person, group or organization.

Alternative Section

Section 14. Town Master Planning & Comprehensive Planning: General Authority & Requirements

(1) The Plan Commission, under sec. 62.23(2), Wis. Stats., shall, except as provided in sub. (2) of this section, make and adopt the Town master plan, with accompanying maps, plats, charts and descriptive and explanatory matter, which shall

include the nine (9) elements specified under the comprehensive planning law, sec. 66.1001(2), Wis. Stats.

(2) In lieu of the adoption of a master plan under sub. (1) of this section, the Plan Commission may make and adopt a comprehensive plan under secs. 62.23 and 66.1001, Wis. Stats., which contains the elements specified in sec. 66.1001(2), Wis. Stats, and follows the procedures in sec. 66.1001(4), Wis. Stats.

(3) Regardless of whether the Town has a master plan under sub. (1) of this section, or is developing one, the Plan Commission shall make and adopt a comprehensive plan under sub. (2) of this section and the comprehensive planning law, sec. 66.1001, Wis. Stats., within the time period directed by the Town Board, but not later than a time sufficient to allow the Town Board to review the plan and pass an ordinance adopting it to take effect on or before January 1, 2010, so that the Town comprehensive plan is in effect by the date on which any Town program or action affecting land use must be consistent with the Town comprehensive plan under sec. 66.1001(3), Wis. Stats.

(4) In this section the requirement to “make” the plan means that the Plan Commission shall ensure that the plan is prepared, and oversee and coordinate the preparation of the plan, whether the work is performed for the Town by the Plan Commission, Town staff, another unit of government, the regional planning commission, a consultant, citizens, an advisory committee, or any other person, group or organization.

Section 15. Procedure for Plan Commission Adoption & Recommendation of a Town Comprehensive Plan or Amendment

The Plan Commission, in order to ensure that the requirements of sec. 66.1001(4), Wis. Stats, are met, shall proceed as follows.

(1) Public participation verification. Prior to beginning work on a comprehensive plan, the Plan Commission shall verify that the Town Board has adopted written procedures designed to foster public participation in every stage of preparation of the comprehensive plan. These written procedures shall include open discussion, communication programs, information services and noticed public meetings. These written procedures shall further provide for wide distribution of proposed, alternative or amended elements of a comprehensive plan and shall provide an opportunity for written comments to be submitted by members of the public to the Town Board and for the Town Board to respond to such written comments.

(2) Resolution. The Plan Commission, under sec. 66.1001(4)(b), Wis. Stats., shall recommend its proposed comprehensive plan or amendment to the Town Board by adopting a resolution by a majority vote of the entire Plan Commission. The vote shall be recorded in the minutes of the Plan Commission. The resolution shall refer to maps and other descriptive materials that relate to one or more elements of the comprehensive plan. The resolution adopting a comprehensive plan shall further recite that the requirements of the comprehensive planning law have been met, under sec. 66.1001, Wis. Stats., namely that:

- (a) the Town Board adopted written procedures to foster public participation and that such procedures allowed public participation at each stage of preparing the comprehensive plan;
- (b) the plan contains the nine (9) specified elements and meets the requirements of those elements;

- (c) the (specified) maps and (specified) other descriptive materials relate to the plan;
 - (d) the plan has been adopted by a majority vote of the entire Plan Commission, which the clerk or secretary is directed to record in the minutes; and
 - (e) the Plan Commission clerk or secretary is directed to send a copy of the comprehensive plan adopted by the Commission to the governmental units specified in sec. 66.1001(4), Wis. Stats., and sub. (3) of this section.
- (3) Transmittal. One copy of the comprehensive plan or amendment adopted by the Plan Commission for recommendation to the Town Board shall be sent to:
- (a) Every governmental body that is located in whole or in part within the boundaries of the Town, including any school district, Town sanitary district, public inland lake protection and rehabilitation district or other special district.
 - (b) The clerk of every city, village, town, county and regional planning commission that is adjacent to the Town.
 - (c) The Wisconsin Land Council.
 - (d) After September 1, 2003, the Department of Administration.
 - (e) The regional planning commission in which the Town is located.
 - (f) The public library that serves the area in which the Town is located.

Section 16. Plan Implementation & Administration

(1) Ordinance development. If directed by resolution or motion of the Town Board, the Plan Commission shall prepare the following:

- (a) Zoning. A proposed Town zoning ordinance under village powers, secs. 60.22(3), 61.35 and 62.23(7), Wis. Stats., a Town construction site erosion control and stormwater management zoning ordinance under sec. 60.627(6), Wis. Stats., a Town exclusive agricultural zoning ordinance under subch. V of ch. 91, Wis. Stats., and any other zoning ordinance within the Town's authority.
- (b) Official map. A proposed official map ordinance under sec. 62.23 (6), Wis. Stats.
- (c) Subdivisions. A proposed Town subdivision or other land division ordinance under sec. 236.45, Wis. Stats.
- (d) Other. Any other ordinance specified by the Town Board (*Note: e.g., historic preservation, design review, site plan review*).

(2) Ordinance amendment. The Plan Commission, on its own motion, or at the direction of the Town Board by its resolution or motion, may prepare proposed amendments to the Town's ordinances relating to comprehensive planning and land use.

(3) Non-regulatory programs. The Plan Commission, on its own motion, or at the direction of the Town Board by resolution or motion, may propose non-regulatory programs to implement the comprehensive plan, including programs relating to topics such as education, economic development and tourism promotion, preservation of natural resources through the acquisition of land or conservation easements, and capital improvement planning.

(4) Program administration. The Plan Commission shall, pursuant to Town

ordinances, have the following powers.

- (a) Zoning conditional use permits. The zoning administrator shall refer applications for [conditional use][special exception] permits [*Note: these terms are synonyms; use the term in your Town zoning ordinances*] under Town zoning to the Plan Commission for review and recommendation to the Town Board as provided under section ____ of the Town zoning ordinances.
- (b) Subdivision review. Proposed plats under ch. 236, Wis. Stats, [and proposed subdivisions or other land divisions under the Town subdivision ordinance under sec. 236.45, Wis. Stats. and section ____ of the Town ordinances] shall be referred to the Plan Commission for review and recommendation to the Town Board.
- (c) Other ____ (specify).

(5) Consistency. Any ordinance, amendment or program proposed by the Plan Commission, and any Plan Commission approval, recommendation for approval or other action under Town ordinances or programs that implement the Town's comprehensive plan under secs. 62.23 and 66.1001, Wis. Stats, shall be consistent with that plan as of January 1, 2010. If any such Plan Commission action would not be consistent with the comprehensive plan, the Plan Commission shall use this as information to consider in updating the comprehensive plan.

Section 17. Referrals to the Plan Commission

(1) Required referrals under sec. 62.23(5), Wis. Stats. The following shall be referred to the Plan Commission for report:

- (a) The location and architectural design of any public building.
- (b) The location of any statue or other memorial.
- (c) The location, acceptance, extension, alteration, vacation, abandonment, change of use, sale, acquisition of land for or lease of land for any
 - (i) street, alley or other public way;
 - (ii) park or playground;
 - (iii) airport;
 - (iv) area for parking vehicles; or
 - (v) other memorial or public grounds.
- (d) The location, extension, abandonment or authorization for any publicly or privately owned public utility.
- (e) All plats under the Town's jurisdiction under ch. 236, Wis. Stats., including divisions under a Town subdivision or other land division ordinance adopted under sec. 236.45, Wis. Stats.
- (f) The location, character and extent or acquisition, leasing or sale of lands for
 - (i) public or semi-public housing;
 - (ii) slum clearance;
 - (iii) relief of congestion; or
 - (iv) vacation camps for children.
- (g) The amendment or repeal of any ordinance adopted under sec. 62.23, Wis. Stats., including ordinances relating to: the Town Plan Commission; the

Town master plan or the Town comprehensive plan under sec. 66.1001, Wis. Stats.; a Town official map; and Town zoning under village powers.

(2) Required referrals under sections of the Wisconsin Statutes other than sec. 62.23(5), Wis. Stats. The following shall be referred to the Plan Commission for report:

- (a) An application for initial licensure of a child welfare agency or group home under sec. 48.68(3), Wis. Stats.
- (b) An application for initial licensure of a community-based residential facility under sec. 50.03(4), Wis. Stats.
- (c) Proposed designation of a street, road or public way, or any part thereof, wholly within the jurisdiction of the Town, as a pedestrian mall under sec. 66.0905, Wis. Stats.
- (d) Matters relating to the establishment or termination of an architectural conservancy district under sec 66.1007, Wis. Stats.
- (e) Matters relating to the establishment of a reinvestment neighborhood required to be referred under sec. 66.1107, Wis. Stats.
- (f) Matters relating to the establishment or termination of a business improvement district required to be referred under sec, 66.1109, Wis. Stats.
- (g) A proposed housing project under sec. 66.1211(3), Wis. Stats.
- (h) Matters relating to urban redevelopment and renewal in the Town required to be referred under subch. XIII of ch. 66, Wis. Stats.
- (i) The adoption or amendment of a Town subdivision or other land division ordinance under sec. 236.45(4), Wis. Stats.
- (j) Any other matter required by the Wisconsin Statutes to be referred to the Plan Commission.

(3) Required referrals under this ordinance. In addition to referrals required by the Wisconsin Statutes, the following matters shall be referred to the Plan Commission for report:

- (a) Any proposal, under sec. 59.69, Wis. Stats., for the town to approve general county zoning so that it takes effect in the town, or to remain under general county zoning.
- (b) Proposed regulations or amendments relating to historic preservation under sec. 60.64, Wis. Stats.
- (c) A proposed driveway access ordinance or amendment.
- (d) A proposed Town official map ordinance under sec. 62.23(6), Wis. Stats., or any other proposed Town ordinance under sec. 62.23, Wis. Stats., not specifically required by the Wisconsin Statutes to be referred to the commission.
- (e) A proposed Town zoning ordinance or amendment adopted under authority separate from or supplemental to sec. 62.23, Wis. Stats., including a Town construction site erosion control and stormwater management zoning ordinance under sec. 60.627(6), Wis Stats., and a Town exclusive agricultural zoning ordinance under subch. V of ch. 91, Wis. Stats.
- (f) An application for a [conditional use][special exception] [Note: these terms are synonyms; use the term in your Town zoning ordinances] permit

under the Town zoning ordinance [*Note: Assuming that the Town Board, rather than the Plan Commission, grants these permits under sec. 62.23(7)(e) 1, Wis. Stats. and the Town's ordinances*].

- (g) A proposed site plan [*Note: Assuming that the Town Board has final authority, and that such review is not already covered by Town zoning or subdivision ordinances*].
- (h) A proposed extraterritorial zoning ordinance or a proposed amendment to an existing ordinance under sec. 62.23(7a), Wis. Stats.
- (i) A proposed boundary change pursuant to an approved cooperative plan agreement under sec. 66.0307, Wis. Stats., or a proposed boundary agreement under sec. 66.0225, Wis. Stats., or other authority.
- (j) A proposed zoning ordinance or amendment pursuant to an agreement in an approved cooperative plan under sec. 66.0307(7m), Wis. Stats.
- (k) Any proposed plan, element of a plan or amendment to such plan or element developed by the regional planning commission and sent to the Town for review or adoption.
- (l) Any proposed contract, for the provision of information, or the preparation of a comprehensive plan, an element of a plan or an implementation measure, between the Town and the regional planning commission, under sec. 66.0309, Wis. Stats., another unit of government, a consultant or any other person or organization.
- (m) A proposed ordinance, regulation or plan, or amendment to the foregoing, relating to a mobile home park under sec. 66.0435, Wis. Stats.
- (n) A proposed agreement, or proposed modification to such agreement, to establish an airport affected area, under sec. 66.1009, Wis. Stats.
- (o) A proposed town airport zoning ordinance under sec. 114.136(2), Wis. Stats.
- (p) A proposal to create environmental remediation tax incremental financing in the town under sec. 66.1106, Wis. Stats.
- (q) A proposed county agricultural preservation plan or amendment, under subch. IV of ch. 91, Wis. Stats., referred by the county to the Town, or proposed Town agricultural preservation plan or amendment.
- (r) Other (specify).
- (s) Any other matter required by any Town ordinance or Town Board resolution or motion to be referred to the Plan Commission.

(4) Discretionary referrals. The Town Board, or other town officer or body with final approval authority or referral authorization under the Town ordinances, may refer any of the following to the Plan Commission for report:

- (a) A proposed county development plan or comprehensive plan, proposed element of such a plan, or proposed amendment to such plan.
- (b) A proposed county zoning ordinance or amendment.
- (c) A proposed county subdivision or other land division ordinance under sec. 236.45, Wis. Stats., or amendment.
- (d) An appeal or permit application under the county zoning ordinance to the county zoning board of adjustment, county planning body or other county body.

- (e) A proposed intergovernmental cooperation agreement, under sec. 66.0301, Wis Stats., or other statute, affecting land use, or a municipal revenue sharing agreement under sec. 66.0305, Wis. Stats.
- (f) A proposed plat or other land division under the county subdivision or other land division ordinance under sec. 236.45, Wis. Stats.
- (g) A proposed county plan, under sec. 236.46, Wis. Stats., or the proposed amendment or repeal of the ordinance adopting such plan, for a system of town arterial thoroughfares and minor streets, and the platting of lots surrounded by them.
- (h) Any other matter deemed advisable for referral to the Plan Commission for report.

(5) Referral period. No final action may be taken by the Town Board or any other officer or body with final authority on a matter referred to the Plan Commission until the Commission has made its report, or thirty (30) days, or such longer period as stipulated by the Town Board, has passed since referral. The thirty (30) day period for referrals required by the Wisconsin Statutes may be shortened only if so authorized by statute. The thirty (30) day referral period, for matters subject to required or discretionary referral under the Town's ordinances, but not required to be referred under the Wisconsin Statutes, may be made subject by the Town Board to a referral period shorter or longer than the thirty (30) day referral period if deemed advisable.

Section 18. Effective Date

Following passage by the Town Board, this ordinance shall take effect the day after the date of publication or posting as provided by sec. 60.80, Wis. Stats.

ADOPTED this _____ day of _____, 20 ____.

_____ (Town Board Chairperson)

[Published / Posted] this _____ day of _____, 20 ____.

Attest: _____ (Town Clerk)

Notes

The Wisconsin legislature took a large step in encouraging planning in this state with the passage of the Comprehensive Planning and Smart Growth Law in October, 1999. The law encourages planning through grant programs and a Smart Growth Dividend Aid Program (to be developed), but more importantly through defining the components and procedures to develop a comprehensive plan, and establishing a consistency requirement which takes effect in 2010. Under this law, “any program or action of a local governmental unit that affects land use” must, by January 1, 2010, be consistent with the unit’s comprehensive plan. As a result of this consistency requirement, many Wisconsin towns will engage in comprehensive planning. The plan commission is key to comprehensive planning because it is the body, in a city, village or town with village powers, that prepares the comprehensive plan under secs. 62.23 and 66.1001, Wis. Stats.

Further information on the Comprehensive Planning & Smart Growth Law may be obtained from the UW-Extension Local Government Center (LGC) Fact Sheet # 15, which may be found on the LGC website: <http://www.uwex.edu/lgc>. (Click on “Publications and scroll down to the Fact Sheets.”) See also the website of the Office of Land Information Services (OLIS), in the Wisconsin Department of Administration. From the LGC site, click on “Growth Management” and scroll down to “Wisconsin.”

Further information on the town plan commission may also be found at the LGC website. See Fact Sheet #16.

Caution: Towns should be aware that setting up a town plan commission brings into play certain legal requirements. Specifically, once a commission is established, the statutes direct that a plan must be prepared. There is no time period specified in the law for preparation of the plan, but, as noted above, actions and programs affecting land use must be consistent with the comprehensive plan as of 2010. A potential pitfall is the requirement that certain actions must be referred to the plan commission for review. (See section 17 (1) & (2) of the sample ordinance and the discussion on p. 7 of Fact Sheet #16.) For example, before the town board can extend a street or buy land for a park, it must refer the matter to the plan commission. Failure to make the referral can result in a court voiding the action, as happened when a city failed to refer the sale of a playground to its commission. See Scanlon v. Menasha, 16 Wis. 2d 437(1962). Therefore, towns should be aware of the requirements of the law and should not set up a plan commission until they are ready for the plan commission law to take effect.

This sample ordinance is prepared for educational and informational purposes. Towns should use this as a starting point for developing their own ordinance. The sample contains various alternatives and is lengthy because it seeks to educate. A town needs to adapt the sample ordinance to its needs by, for example, removing references to plan commission review of town conditional use zoning permits if the town does not exercise its own zoning. Also, the town may wish to adopt a more concise ordinance by making more general references to referrals, rather than including the long lists in this sample.

Questions regarding town powers, ordinance provisions and changes in the law should be directed to town legal counsel or the Wisconsin Towns Association. This sample ordinance is not intended to constitute legal advice. Persons seeking to stay current with the law or to check statutory provisions may wish to use the updated

Wisconsin Statutes maintained by the state on the internet. To access the statutes, as well as legislative bills and acts, go to the LGC website (above), click on “Internet Resources” and then click on the “Wisconsin Statutes.” The on-line statutes contain a useful search function so that words, phrases and statutory citations may be searched. A search of “plan commission,” for example, will yield numerous relevant “hits.”

The following notes are organized by section of the sample ordinance.

Section 3. Authority; Establishment. This section refers to the necessary village powers a town must have to establish a plan commission. By obtaining and exercising village powers, the town has power under the village planning law, sec. 61.35, Wis. Stats., which in turn brings the town under the city planning law, sec. 62.23, Wis. Stats. This latter law authorizes a 7-member plan commission.

Alternative section 3 is based on sec. 60.62(4), Wis. Stats, which allows towns under 2,500 population to establish a 5-member commission. The authorization, if read narrowly, applies only to a town that has town zoning under village powers. While a town with a 5-member plan commission that does not have town zoning under village powers could conceivably be challenged in court, the acts of such a “de facto” commission would almost certainly not be deemed unauthorized or illegal merely for this reason.

The reference to sec. 990.01(29) is to the provision which specifies that population is determined by the federal census.

The subdivision chapter, ch. 236, Wis. Stats., allows towns to establish a subdivision or other land division ordinance more restrictive than ch. 236. The town plan commission meets the requirement in the cited statutes that there be a “town planning agency” to establish such an ordinance.

Section 4. Membership. Regarding membership, the law requires that a 7- member commission have at least three citizen members, who are not otherwise town officers, and a 5-member commission have at least one such citizen member. The town board chairperson and town board members, as well as other town officers and employees, may serve on the commission. Also, a 7-member commission can be increased to eight with the addition of the building inspector.

Planning can be very controversial and there are potential conflicts for town staff who serve on the commission. For this reason, the sample proposes that the plan commission consist of all citizen members except for one member of the town board, who may be the town board chairperson. This is so that citizens play a key role in planning the future of their town, while maintaining an important connection with the town board through the membership on the commission of the town board chairperson or town board member.

The statutes allow the town to provide for the composition of the plan commission by ordinance, so the town has flexibility in this regard. Sec. 62.23(1). However, it is safest to treat the requirement that there be at least three citizens on a 7-member commission (one on a 5-member commission) as a minimum requirement that cannot be altered by ordinance. Towns could, if desired, provide for more than one town board member and for other town officials to serve on the plan commission, as long as they meet the minimum citizen member requirement.

Section 5. Appointments. This section on appointments to the commission contains optional, recommended language, relating to town board advisory approval of all appointments, in brackets. The option of advisory town board approval is offered because it seems to make sense for the plan commission, which may be involved in a complex and controversial undertaking, to operate with as much town board backing and “buy in” as possible, especially given that, under the comprehensive planning law, sec. 66.1001(4), Wis. Stats., town board adoption is required for the town to have a comprehensive plan in place. Town board advisory approval seems further warranted because the town board chair may appoint himself or herself to the commission or as chairperson of the commission.

As mentioned above, the statutory authority takes the town into the city planning law in which the mayor appoints the members and the “presiding officer” of the commission (which this sample ordinance designates as the commission “chairperson”). This suggests that governing body confirmation does not take place. However, under city law, appointments by the mayor are subject to approval by the common council! Sec. 62.09(3)(e), Wis. Stats.

The question arises as to whether a town board has the authority to require town board approval in its ordinance. While the acts of appointees *required* to be confirmed by the town board (and so confirmed) would in all probability be deemed valid de facto acts (if otherwise lawful), it is conceivable that the necessity of town board approval could be challenged. Therefore, this sample includes optional, recommended language to encourage town board involvement and advisory approval in the appointment process. The town board will have to decide which appointment process (without town board approval, with town board approval, or with advisory approval) it feels most comfortable with.

Section 6. Terms of Office. As in the previous section, the law, if read strictly, may yield results that many would view as undesirable. Here, the law provides that commission members serve for three years. Having the terms of the plan commission members expire at the same time could prove disruptive and result in an abrupt loss of knowledge and continuity on the commission.

A previous reference to the staggering of terms was removed in the last legislative session, perhaps mistakenly, from sec. 62.23(1), the main provision on setting up a commission. However, the law allowing a town under 2,500 to switch from a 7-member to a 5-member commission provides for phasing in this change by operating with fewer members according to “whose terms expire soonest.” Sec. 60.62(4)(b). This reference to staggering supports the view that it is still allowed in the initial appointment of commission members.

Town boards will have to consider whether they are comfortable with staggering terms. While there is a possibility that such staggering might be challenged, the acts of a plan commission so constituted, even if staggering were ruled improper, would in all probability be viewed by a court as the acts of de facto members and would not be deemed illegal due to the staggering.

Regarding the term on the commission of the town board member, including the town board chairperson, sec. 66.0501(2), Wis. Stats., provides that the term of a

governing body member on a local board or commission does not have to be the same as the term specified in the appropriate statute. The sample ordinance sets a two year term, concurrent with the term of office on the town board. The ordinance could set a different term, such as one year.

Section 8. Compensation; Expenses. The town board does not have to provide compensation or expense reimbursement for commission members. This section is placed in the sample because service on the commission can be demanding and time-consuming. The town board member, under sec. 66.0501(2), Wis. Stats., who serves on a town board or commission, may not receive “additional compensation, except a per diem,” and that per diem may be received only if the other members of the commission may receive a per diem.

Section 11. Chairperson & Officers. This section is not based on any specific provision of the plan commission law, sec. 62.23, Wis. Stats. It provides a general statement of the duties of the chairperson. This section also provides for the selection of a vice-chairperson and commission secretary, and provides that they may be elected by secret ballot of the commission, under a provision of the open meetings law, sec. 19.88(1), that allows such ballot to select the officers of a governmental body.

Section 12. Commission Members as Local Public Officials. Plan commission members are considered public officials. This section contains a listing of important statutes applicable to local government officials that plan commission members must follow.

Section 13. General & Miscellaneous Powers. These powers come from sec. 62.23(4). Language is added to sub. (5) regarding entry on private lands to show that the commission and staff must respect private property rights. However, it is anticipated that obtaining a warrant to inspect property would seldom be necessary. A property owner seeking commission approval would have to cooperate in order for the commission to be able to approve the application or petition.

Section 14. Town Comprehensive [Master] Planning: General Authority & Requirements. This section and the alternative require the Plan Commission to develop a master plan or comprehensive plan. The first section 14 in the sample ordinance shown (rather than the alternative) is strongly recommended because this section requires preparation of a comprehensive plan that contains the elements and follows the procedures required in sec. 66.1001, the comprehensive planning law. These procedures, under sec. 66.1001(4), Wis. Stats, as indicated below in these Notes, require adoption at the outset of written procedures to encourage public participation at every stage, require the plan to be adopted as a whole, and contain requirements for both plan commission and governing body adoption of the plan, as well as the sharing of the plan with other government units. As stated above in the introductory comments to these Notes, towns that intend to engage in activities or programs affecting land use are required under sec. 66.1001 to have comprehensive plans in effect by January 1, 2010, because as of that date any town action or program affecting land use must be consistent with such plan.

The alternative section preserves the ability of a town to develop a master plan that merely includes the elements of the comprehensive plan. This is based on the language in sec. 62.23(2) and (3). This approach allows adoption of the plan in parts and does not cross-reference the procedural aspects of the comprehensive planning law, sec. 66.1001(4). Therefore, under this authority a town could adopt a master plan or parts of a master plan that just contains the elements listed under the comprehensive planning law, sec. 66.1001(2), apparently without following the procedural requirements in sec. 66.1001(4). Yet under this approach, consistency of town actions and programs under sec. 66.1001(3) is required as of January 1, 2010. This conflicts with the provisions of sec. 66.1001 which require a town and other local units of government to develop a comprehensive plan that not only contains the specified elements and is subject to the 2010 consistency requirement, but follows that statute's procedural requirements in sec. 66.1001(4) as well.

The best and safest way to harmonize this apparent conflict is to conclude that towns may engage in master planning under sec. 62.23 until 2010, but that as of that date they must have a comprehensive plan in place that meets ALL the requirements of sec. 66.1001, including the procedural requirements of sec. 66.1001(4). Because sec. 66.1001(4) requires adoption of public participation guidelines at the outset of the planning process and requires adoption of the comprehensive plan as a whole, the best practice is for a town beginning planning to follow sec. 66.1001 from the start. Therefore the first section 14 shown in the sample ordinance is highly preferred over the alternative section 14.

Section 15. Procedure for Plan Commission Adoption & Recommendation of a Town Comprehensive Plan or Amendment. This section contains requirements concerning the process for developing and adopting a comprehensive plan found in sec. 66.1001(4) (Procedures for Adopting Comprehensive Plans), Wis. Stats. Subsection (1) directs the commission to verify, before undertaking comprehensive planning, that the requirement for written public participation procedures has been followed, and sub. (2) directs the commission to recite that this and other statutory requirements have been met in its resolution.

Subsection (3) directs the commission to transmit its proposed plan as provided by statute and, for clarity, in sub. (3)(b), specifies the units that are defined as a "local government unit" under sec. 66.1001(1)(b), instead of using that general term.

Section 16. Plan Implementation & Administration. Towns will vary considerably in the ways that they will implement their plans. Some towns may be like villages and cities in their tax base and need to provide services, while others may have low population, a small tax base, and more limited planning needs. Also, there is a great deal of variety as to whether a town is in a county with general county zoning, and if so, whether the town is under such zoning, and whether the town has its own regulatory tools such as a town zoning ordinance, a town subdivision ordinance, official map, site plan review ordinance or historic preservation ordinance. This section also recognizes that implementation may be in non-regulatory programs as well. The town ordinances which implement such measures will likely include appropriate plan commission references. This section should be reviewed carefully by towns and adapted as necessary.

Section 17. Referrals to the Plan Commission. This section is divided into 4 subsections, covering referrals: (1) required by the provision in the plan commission law entitled “Matters Referred to City Plan Commission,” sec. 62.23(5), Wis. Stats; (2) required by other provisions of the Wisconsin Statutes; (3) required under the sample ordinance, but not required under the statutes; and (4) that are discretionary under the sample ordinance. It should be noted that sec. 62.23 is inconsistent in requiring plan commission involvement. For example, while a proposed zoning ordinance is developed by the plan commission, there is no mention of the plan commission preparing or even reviewing under a referral a proposed official map ordinance, although the amendment to an official map ordinance would have to be referred to the plan commission.

The referral section in the sample ordinance is lengthy and attempts to fill statutory gaps by, for example, requiring referral of a proposed official map ordinance to the commission. Towns need to decide which of the specified referrals, or additional referrals, they wish to list in their ordinance based on their needs. They may, for example, wish to provide more general references to what must be referred or switch items between subs. (3) and (4) which specify required and discretionary referrals to the commission under the ordinance.

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