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Updates to Town Plan Commission Sample Ordinance June 2008

Following are changes to the sample ordinance due to statutory changes made in recent legislative sessions. Deletions to the sample ordinance are stricken through and additions are underlined. Explanatory notes follow each updated section, and an additional note, at the end, is applicable only to towns with a military base or installation. The statutory changes are all included in the most recent printed version of the *Wisconsin Statutes*, as well as the on-line version.

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 shall appoint members of the Plan Commission, subject to confirmation by the Town Board, during the month of April, to fill any expiring term. The Town Board Chairperson shall also select the Chairperson of the Plan Commission. 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.

Note to Section 5; Confirmation of Appointments. As before, the town board chairperson appoints members to the town plan commission. However, as of April 11, 2006, these appointments are subject to confirmation by the town board. The town board chairperson also continues to select the plan commission chairperson but the recent legislation does not provide for town board confirmation. 2005 Wisconsin Act 207 made these changes to sec. 60.62(4), Wis. Stats., effective April 11, 2006.

Section 60.62(4) makes the new board confirmation and removal (see next item) provisions clearly applicable to towns under 2,500 with a 5-member commission and towns over that size with a 7-member commission. Sec. 60.62(4)(a) and (d). The applicability of these changes to a town under 2,500 with a 7-member commission is ambiguous, but the wording and legislative history support the interpretation that these changes are applicable to such a town and this update to the sample plan commission ordinance uses that interpretation.

Section 7. Vacancies and Removals

A person who is appointed to fill a vacancy on the Plan Commission shall serve for the remainder of the term. A member of the Plan Commission may be removed only by a majority vote of the Town Board.

Note to Section 7; Removals. It is not necessary to have a removal provision in the ordinance, although, of course, the statute must be followed regardless of whether the ordinance contains such provision. The law now contains a removal provision for town plan commissions, which provides that a member of the town plan commission may be removed by a majority vote of the town board. 2005 Wisconsin Act 207 made this change to sec. 60.62(4), Wis. Stats., effective April 11, 2006. (See also the last paragraph of the note under section 5 regarding the applicability of the confirmation and removal changes to all town plan commissions, regardless of size.)

Section 14. Town Comprehensive Planning: General Authority & Requirements

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(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~~ specified town actions must be consistent with the Town comprehensive plan under sec. 66.1001(3), Wis. Stats.

...

Note to Section 14; Narrowing of Consistency Requirement. The law formerly required numerous actions to be consistent with the comprehensive plan. The law has been narrowed so that the consistency requirement now applies just to official mapping under sec. 62.23(6), Wis. Stats., local subdivision ordinances under sec. 236.45 or sec. 236.46, Wis. Stats., and zoning ordinances. These changes to sec. 66.1001(3), Wis. Stats., were made by 2003 Wisconsin Act 233.

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.~~

...

(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~~ specified town actions must be consistent with the Town comprehensive plan under sec. 66.1001(3), Wis. Stats.

Note to Alternative Section 14; Elimination of Elements for Master Plan; Narrowing of Consistency Requirement. The statute formerly specified that a master plan under sec. 62.23(2), Wis. Stats., had to contain the comprehensive plan elements. This requirement was eliminated by 2005 Wisconsin Act 25, sec. 1238m. As mentioned in the note to Alternative Section 14 in the sample ordinance, towns should be adopting comprehensive plans rather than the out-dated master plans.

Regarding the change due to the narrowing of the consistency requirement, see the note to Section 14, above.

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.

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(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:

...

(d) After September 1, ~~2003~~ 2005, the Department of Administration.

...

Note to Section 15; Date Change. This change merely substitutes “2005” for “2003” in the provision requiring plans to be sent to the Department of Administration. This change was made by 2003 Wisconsin Act 33.

Section 16. Plan Implementation & Administration

...

(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. When the Plan Commission considers any action that is subject to the consistency requirement in sec. 66.1001(3), Wis. Stats., the action of the Plan Commission shall, as of January 1, 2010, be consistent with the Comprehensive Plan. 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.~~

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Note to Section 16; Consistency of Plan Commission Action. This change is made due to the narrowing of the consistency requirement; see the above note to Section 14.

Additional Note; Military Base or Installation. While there is no language on this in the sample ordinance, a town with such a facility must be aware of the requirements of 2005

Wisconsin Act 26. This act involves military bases or installations, with at least 200 assigned military personnel or that contain at least 2,000 acres, in local planning and zoning, and includes the designation of a base representative, if appointed by the base commander, as a non-voting member of the plan commission, as provided in sec. 62.23(1)(a), Wis. Stats. (Note that the act affects various other statutory provisions in addition to sec. 62.23(1)(a).)

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