

# A COMPREHENSIVE PLAN FOR THE CITY OF PORT WASHINGTON

## Chapter XIV

### IMPLEMENTATION ELEMENT

#### INTRODUCTION

The implementation element is the last of the nine elements of a comprehensive plan required by Section 66.1001 of the *Wisconsin Statutes*. Section 66.1001 (2) (h) of the *Statutes* requires this element to include a compilation of programs, in a specified sequence, to implement the recommendations set forth in the preceding eight elements. The *Statute* also requires this element to:

- Identify proposed changes to applicable zoning ordinances, subdivision ordinances, and official maps.
- Describe how each of the other eight elements of the comprehensive plan will be integrated and made consistent with other elements of the plan.
- Include a mechanism to measure the City of Port Washington's progress towards achieving the recommendations of the plan.
- Include a process for amending and updating the plan. The *Statutes* require that a comprehensive plan be updated no less than once every 10 years.

Section 66.1001 (4) of the *Statutes* sets forth the required procedure for adoption or amendment of a comprehensive plan, which includes:

- Adoption of a written public participation plan designed to foster public participation in the development of a comprehensive plan or a plan amendment.
- Approval of a recommended plan by a resolution approved by a majority of the full membership of the plan commission.
- Distribution of the draft plan for review and comment to:<sup>1</sup>
  - Every governmental body located in whole or in part within the City;
  - The clerk of each adjacent local government and the Ozaukee County Clerk;
  - The Wisconsin Department of Administration;
  - SEWRPC;
  - The public library serving the City.

The parties listed above must also be provided with a copy of the adopted comprehensive plan and a copy of the adopting ordinance.

- Adoption of the plan by an ordinance adopted by a majority of the full membership of the Common Council. Adoption of the plan by the Common Council must be preceded by at least one public hearing. A Class 1 notice of the hearing must be published at least 30 days before the hearing. Written notice must also be provided to persons who have applied for or been issued a permit for a nonmetallic mining reclamation plan, registered a nonmetallic mining site under Chapter NR 135 of the *Wisconsin Administrative Code*, or to owners or leaseholders of lands with nonmetallic resources who have requested notice of the hearing in writing. Other property owners who submitted a written request to the City must also be notified of the hearing.

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<sup>1</sup>The Wisconsin Department of Administration has stated that both draft and adopted plan reports may be distributed in digital format, provided a paper copy of the report is available for review at the public library serving the community and at the City Hall.

## **PART 1: PLAN REVIEW AND ADOPTION**

For any planning process, it is good practice to hold public informational meetings and hearings on recommended plans before their adoption. Such actions provide an additional opportunity to acquaint residents and landowners with the recommended plan and to solicit public reactions to the plan recommendations. The plan should then be modified to reflect any pertinent new information and to incorporate any sound and desirable new ideas advanced at these meetings. Accordingly, a public hearing will be held before the Common Council prior to adoption. The City will provide a public notice of the hearing in accordance with the requirements of the comprehensive planning law, and will distribute the draft plan report to all of the parties specified in the law.

An important step in plan implementation is the formal adoption of the recommended plan by the Common Council. Upon such adoption, the plan becomes the official guide to be used by City officials and staff in making development or redevelopment decisions. The plan should serve as the basis on which all development proposals, such as rezoning requests, subdivision plats, and certified survey maps, are reviewed. Only those zoning actions or land divisions that are consistent with the plan should be approved.

A public participation plan for development of this comprehensive plan was prepared in 2005, and adopted by the Common Council on March 1, 2005.

## **PART 2: PLAN AMENDMENT PROCEDURE**

Changes to long-range planning documents are inevitable. Although the *Planned Land Use Map 2035* (Map VIII-8) is often the focal point of comprehensive plans, plan amendments may include changes to the text or any of the maps included in this report. Text amendments may include:

- Changing, adding, or modifying a goal, objective, policy, or program in any of the element chapters in response to changing conditions or new information.
- Adding or changing the land use plan categories in the *Land Use Element* to provide for a category of development that is not incorporated into the current set of categories.
- Updating inventory information.

In addition to text amendments, the land use plan map may be amended to change the designation, and therefore the allowable uses, on a parcel or parcels of land. Other maps in the plan may be amended or updated to reflect updated information, such as updated floodplain mapping or inventories of natural resources or community facilities.

### **Rationale and Justification for Plan Amendment**

Adjustments to this plan should be made as required by changing conditions. Consequently, one of the important tasks of plan implementation is a periodic reevaluation to ensure the plan continues to properly reflect current conditions. It is recommended that a general plan reevaluation take place on an annual basis because the City will continue to evolve and change over the comprehensive plan design period. Periodic monitoring and updating of the plan will be an integral part of the plan because the City is a dynamic rather than static community.

A more comprehensive review of the plan is recommended every five years. It is recommended that the five-year comprehensive review utilize, to the extent practicable, an up-to-date data base. The City should consider an extension of the plan for an additional five years with every five-year update to continually accommodate 25 years of City growth. The State comprehensive planning law requires the City update the comprehensive plan at least once every 10 years.

Factors contributing to the possible need to amend this plan are due to the long-range nature of this type of document. These factors are set forth in this chapter to provide the necessary guidance in conducting a plan amendment. The important aspect of plan amendment, however, is that it should not be taken lightly. A plan amendment should be undertaken after careful study and by reason of one of the following factors:

**Projections and Forecasts:** Plans are based on projections or forecasts because plans deal with future situations. If projections or forecasts are in error, or require modification due to the emergence of new data, then this plan may need to be adjusted. The plan should be monitored based on the preparation of new projections or forecasts. Comparisons should then be made between what was projected or forecast and what is actually happening. If warranted and deemed necessary by the Common Council upon recommendation of the Plan Commission, this plan should be amended to accommodate the new projections or forecasts.

**Assumptions:** A number of assumptions have been made upon which this plan and its various elements are based. Assumptions may have to do with demographics, capital investment, or national policy. For example, during the late 1960s and early 1970s a dramatic shift in birth rates occurred. Any plans based on the assumption that the birth rate of the 1950s would continue were dramatically affected by the change in birth rates which actually occurred.

As stated earlier, the plan should be reviewed on an annual basis, which will afford an opportunity to reexamine the accuracy of any assumptions upon which this plan was based.

**Data Error:** An error in planning data differs from an assumption in that the faulty information is quantifiable. A new arterial street may be under construction and designed to meet certain specifications. A construction error, new Federal standards, or other factors may result in the street not being placed or functioning as planned. This, too, requires a plan reassessment and, perhaps, a plan amendment.

**New Issues:** Issues may evolve that were not critical or foreseen when this plan was initially developed. For example, community character is an issue that tends to stay in the background until it is almost too late to save it. New issues may require modification of plan goals, objectives, policies, or programs --or the creation of new plan goals, objectives, policies, or programs --to effectively deal with new issues. New factors affecting current issues can also present situations where this plan may have to be amended.

**Comprehensiveness:** The various elements of this plan are designed to guide future City actions and specific growth decisions. This plan recognizes, however, that some elements may benefit from more detailed study and analysis. For major issues that require greater analysis than offered by this plan, a plan amendment may be justified. The amendment may be authorized by the Plan Commission at any time.

**Data Updates/Emergence of New Data:** The maps, tables, and statistics upon which this plan is based are factual in nature but may change through time (for example, when new decennial Census data is released). Thus, a general annual review of this plan is necessary and, where deemed appropriate by the Common Council with recommendation(s) from the Plan Commission, amendments to this plan should be made to keep data current.

### **Plan Amendment Process**

It is critical to have and to follow guidelines when determining if an amendment to the plan is appropriate. All projections and assumptions should be reviewed in detail at meetings where City officials and citizens are provided information on new factors which might affect this plan. Officials and citizens should be asked to submit any additional concerns of their own. This plan should be revised in a manner similar to its original development, with citizen participation prior to any change. The comprehensive planning law requires that any plan amendment follow the same procedure as that followed for the adoption of this plan, including adoption of a public participation plan, a public hearing, approval of the plan amendment by a resolution of the Plan Commission, adoption of the amendment by an ordinance of the Common Council, and distribution of the plan amendment to the parties listed in Section 66.1001 (4) of the Statutes, including the Ozaukee County Planning and Parks Department. It is recommended that the City prepare and adopt a public participation plan to be used for all plan amendments.

### **Amendments to the City of Port Washington Planned Land Use Map**

The Common Council, upon recommendation of the Plan Commission, may consider (but is not obligated to approve) amendments to the *Planned Land Use Map* (Map VIII-8 in Chapter VIII). The Plan Commission and the Common Council in their review and consideration of proposed Plan amendments may examine the following

questions and issues (in addition to the six factors: projections, assumptions, data error, new issues, comprehensiveness, and data updates/emergence of new data) for approving a land use plan amendment:

- *Is the proposed amendment consistent with the vision, goals, objectives, policies, and programs of this plan?*
- *Will the proposed amendment benefit the City as a whole?*
- *Is the proposed amendment compatible with surrounding land uses?*
- *Are existing City facilities and services, including transportation facilities, adequate to serve the type of development associated with the amendment?*
- *If applicable, will the proposed amendment enhance economic development within the City?*

### **PART 3: RECOMMENDED PROGRAMS**

As previously noted, the comprehensive planning law requires the Implementation Element to include a compilation of programs, in a specified sequence, to implement the recommendations set forth in the other required plan elements. The City of Port Washington’s Citizen Advisory Committee reviewed the programs developed in the previous seven elements<sup>2</sup> and developed a priority ranking for their implementation. Recommended priorities for implementing programs are presented in Table XIV-1 as *High*, *Medium*, and *Low* priorities. It is intended that the high priorities be addressed in the early years of the planning program. After five years, the medium and low priorities should again be reviewed and re-prioritized based on changing conditions.

### **PART 4: CONSISTENCY BETWEEN THE CITY OF PORT WASHINGTON COMPREHENSIVE PLAN AND THE CITY OF PORT WASHINGTON ORDINANCES**

Section 66.1001 (3) of the *Statutes* requires that the following ordinances be consistent with a unit of government’s comprehensive plan by January 1, 2010:

- Official mapping established or amended under Section 62.23 (6) of the *Statutes*.
- County or local subdivision regulations under Section 236.45 or 236.46 of the *Statutes*.
- County zoning ordinances enacted or amended under Section 59.69 of the *Statutes*.
- City or village zoning ordinances enacted or amended under Section 62.23 (7) of the *Statutes*.
- Town zoning ordinances enacted or amended under Section 60.61 or 60.62 of the *Statutes*.
- Zoning of shorelands or wetlands in shorelands under Section 59.692 (for counties), 61.351 (for villages), or 62.231 (for cities) of the *Statutes*.

Beginning on January 1, 2010, local governments will need to use their comprehensive plan as a guide to be sure that implementation of local zoning, subdivision, and official mapping ordinances do not conflict with the recommendations of the comprehensive plan. If a conflict is found or would result from a proposed action, the local government has the option of amending its comprehensive plan; however, plan amendments should follow the guidelines presented in this chapter and not be made arbitrarily.

The *Statutes* do not provide any guidance about how to determine if land use ordinance decisions are consistent with a comprehensive plan. Specific guidance on how to apply the Statutory requirement for consistency will, unfortunately, likely be provided over time through court decisions in lawsuits challenging the implementation of comprehensive plans by County and local units of government after the consistency requirement takes effect in 2010.

Although there have not been any Wisconsin court decisions regarding the interpretation of the consistency provision in the comprehensive planning law, in the case *Lake City Corp. v. City of Mequon*, 207 Wis. 2d 155, 558 N.W.2d 100 (1997), the Wisconsin Supreme Court needed to interpret what was meant by “consistent with” as used in Section 236.13(1)(c) of the *Wisconsin Statutes* (the Statute governing land divisions). According to the

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<sup>2</sup>*The Issues and Opportunities Element (Chapter VI) does not include any recommended programs, but rather sets forth general goals and objectives for the City.*

Wisconsin Supreme Court, “[t]he word ‘consistent,’ according to common and approved usage, means ‘in agreement; compatible.’ The American Heritage Dictionary 402 (3d ed. 1992). In other words, ‘consistent’ means ‘not contradictory.’”

### **Zoning Ordinance and Zoning Map Amendments**

It is the City’s intent that the Zoning Ordinance be one of the primary implementing tools of this Plan. As such, it should substantially reflect and promote the achievement of plan goals, objectives, policies, and programs. A zoning ordinance is a legal means for both guiding and controlling development within the City, so that an orderly and desirable pattern of land use can be achieved which conforms to the plan and balances individual property rights with community interests and goals. The Zoning Ordinance contains provisions for regulating the use of property, the size of lots, the intensity of development, site planning, the provision of open space, and the protection of natural resources.

Following adoption of this plan by the Common Council, the Plan Commission should initiate appropriate amendments to the zoning map to bring the map into conformance with the concepts and proposals included in this plan, particularly the land use plan map (Map VIII-8 in Chapter VIII). Although one option would be to amend the zoning map to bring the map into strict conformance with the land use plan map, this approach has disadvantages. Those disadvantages include zoning that could potentially accommodate “leapfrog” urban development (enclaves of urban development separated by agricultural or other rural uses), and/or development in areas that have not yet been provided with sanitary sewer, water, streets, or other necessary services. Another disadvantage might be the creation of nonconforming uses in areas that are already developed, where the plan proposes redevelopment for another use (for example, an area zoned and historically used for industrial use that is proposed to be redeveloped for residential use). Conversely, the zoning map should not permit the establishment of new uses that are not consistent with the land use plan map or other recommendations of the comprehensive plan, such as allowing residential development to occur in areas planned for industrial use.

To avoid the potential pitfalls outlined in the preceding paragraph, the City will use the following approach to update its zoning map:

- Areas of existing development (other than agricultural uses) will be placed in a zoning district that is consistent with the land use designation shown on Map VIII-8. Table XIV-2 lists each of the land use plan categories and their recommended corresponding zoning districts. In cases where the land use plan map recommends a use that is different from existing uses, the zoning ordinance will be amended to include a transition overlay district that will allow the continuation of existing uses, but would require approval of a conditional use permit for the enlargement, reconstruction, or other changes to the existing use that would otherwise not be permitted under the zoning ordinance regulations for nonconforming uses.
- Areas that are currently in agricultural use, and zoned for such use, but shown on the land use plan map for future urban development will remain in agricultural zoning. Rezoning that would accommodate residential, commercial, industrial, or other urban use will be undertaken when a property owner submits a request for rezoning that specifies the proposed use of the property and, where required by the zoning ordinance, a proposed site plan; and where City officials determine that utilities and other governmental services needed to serve the proposed development are in place and the proposed use is consistent with this plan and other local ordinance requirements.
- Areas that are currently in agricultural use and designated for agricultural use on the land use plan map will be zoned agricultural.
- Primary environmental corridors and other natural resource areas shown on the land use plan map will be placed in a conservancy or other appropriate zoning district (such as a park or rural residential zoning district).

### **Subdivision Ordinance**

The City of Port Washington Subdivision Ordinance is intended to be another implementing tool of this plan. It, too, should substantially reflect and promote the achievement of plan goals, objectives, policies, and programs. A

Subdivision Ordinance is a legal means to regulate the division of land into smaller parcels. It provides for City oversight of the creation of new parcels and helps to ensure that new development is appropriately located; lot size requirements specified in the Zoning Ordinance are observed; street rights-of-way are appropriately dedicated or reserved; access to arterial streets and highways is limited in order to preserve traffic-carrying capacity and safety; adequate land for parks, drainage ways, and other open spaces is appropriately located and preserved; street, block, and lot layouts are appropriate; and adequate public improvements are provided.

## **PART 5: CONSISTENCY AMONG PLAN ELEMENTS**

The comprehensive planning law requires that the implementation element “describe how each of the elements of the comprehensive plan shall be integrated and made consistent with the other elements of the plan.” All elements of this comprehensive plan were prepared simultaneously by the same staff with great care given to ensure internal consistency among the various elements. All element chapters were reviewed by the Citizen Advisory Committee; there are no known inconsistencies among plan elements.

## **PART 6: PROGRESS IN IMPLEMENTING THE PLAN**

### **Annual Report on Plan Implementation**

It is recommended that the City of Port Washington undertake a general plan reevaluation on an annual basis, as described in Part 2 of this Element. The annual reevaluation should include a report on plan implementation and progress in implementing the plan during the previous year. The report should summarize how the comprehensive plan was used to direct policy decisions made by City officials and staff and whether circumstances have changed that have necessitated amendments to the comprehensive plan. The annual report should also include a list of all plan amendments approved by the Common Council during the year.

### **Comprehensive Update of the Plan and Maintenance of Inventory Data**

The City of Port Washington should conduct a formal review of the plan at least once every five years, as recommended under Part 2 of this Element.<sup>3</sup> Based on this review, changes or updates should be made to sections of the plan that are found to be out of date and goals, objectives, policies, or programs that are not serving their intended purpose. Any changes or updates should follow the formal process for plan amendments. The City should also work with the Ozaukee County Planning and Parks Department to maintain and update applicable inventory data compiled as part of the multi-jurisdictional comprehensive planning process.

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<sup>3</sup> *The City is required to update the comprehensive plan at least once every ten years by the State comprehensive planning law.*