

State Enabling Acts and the General or Comprehensive Plan

The power to regulate land uses—except where limited by federal law—is primarily a power “reserved” for the states under the United States Constitution. Most states have delegated this power to local municipalities and counties under the planning and zoning enabling laws enacted by state legislatures. Almost always, nothing is built in America unless and until the use of the land concerned has been approved in a city or county general or comprehensive plan, the property has been specifically zoned for that use, a development site plan has been approved, and a building permit issued. These are all local government functions.

Most issues about future land uses impinging on, or negatively impacting, the present or future viability of freight facilities arise from, or come to a head, in the context of zoning or development site plan approvals. The city or county’s comprehensive plan (also called a general plan in some places) is intended, and in most places required, to guide these zoning and site plan decisions. The comprehensive plan also sets expectations as to the allowed use of land in various locations, and developers and builders may make investment decisions based on that plan.

The comprehensive plan should:

- Provide vision of the long-term future character and design of a community
- Show the importance, and interrelatedness of many topics
- Cover a wide geographic area, and show interdependencies among geographic areas
- Show potential long term impacts
- Represent the interests of a broad range of citizens and stakeholders.¹

Ideally local zoning practices should also align with the goals of the comprehensive plan, and in many places such alignment is mandated.

ITEMS TO INCLUDE IN THE COMPREHENSIVE PLAN

In many states, the statutes mandate a list of elements that must or may be included in comprehensive plans. This list is generally contained in a section of the state code referred to as the “zoning enabling act” or sometimes the “planning enabling act.” One element that is often missing within the enabling act requirements is freight. Without comprehensive plan provisions for freight, local jurisdictions may often overlook the importance of freight in their community, and this in turn leads to inadequate zoning provisions to reduce incompatible uses around freight facilities and corridors in order to protect corridors into the future. Lack of focus on freight has also historically led to environmental justice issues that communities of color and low income face because their communities were developed in close proximity to industrial and freight activities.

Ideally, the state enabling act would require local governments to evaluate how to protect current freight systems from incompatible uses and capacity problems, as well as needed future freight facilities.

¹ Anderson, Larz T. (1995) *Guidelines for Preparing Urban Plans*. Chicago, IL: American Planning Association. pages 14 and 7

There are few national examples of enabling acts that include freight requirements. Washington's Enabling Act has specific elements regarding ports that are required within the comprehensive plan.

[RCW 36.70A.085 - Comprehensive plans — Port elements.](#)

- (1) Comprehensive plans of cities that have a marine container port with annual operating revenues in excess of sixty million dollars within their jurisdiction must include a container port element.
- (2) Comprehensive plans of cities that include all or part of a port district with annual operating revenues in excess of twenty million dollars may include a marine industrial port element. Prior to adopting a marine industrial port element under this subsection (2), the commission of the applicable port district must adopt a resolution in support of the proposed element.
- (3) Port elements adopted under subsections (1) and (2) of this section must be developed collaboratively between the city and the applicable port, and must establish policies and programs that:
 - (a) Define and protect the core areas of port and port-related industrial uses within the city;
 - (b) Provide reasonably efficient access to the core area through freight corridors within the city limits; and
 - (c) Identify and resolve key land use conflicts along the edge of the core area, and minimize and mitigate, to the extent practicable, incompatible uses along the edge of the core area.
- (4) Port elements adopted under subsections (1) and (2) of this section must be:
 - (a) Completed and approved by the city according to the schedule specified in RCW 36.70A.130; and
 - (b) Consistent with the economic development, transportation, and land use elements of the city's comprehensive plan, and consistent with the city's capital facilities plan.
- (5) In adopting port elements under subsections (1) and (2) of this section, cities and ports must: Ensure that there is consistency between the port elements and the port comprehensive scheme required under chapters 53.20 and 53.25 RCW; and retain sufficient planning flexibility to secure emerging economic opportunities.
- (6) In developing port elements under subsections (1) and (2) of this section, a city may utilize one or more of the following approaches:
 - (a) Creation of a port overlay district that protects container port uses;
 - (b) Use of industrial land banks;
 - (c) Use of buffers and transition zones between incompatible uses;
 - (d) Use of joint transportation funding agreements;
 - (e) Use of policies to encourage the retention of valuable warehouse and storage facilities;
 - (f) Use of limitations on the location or size, or both, of nonindustrial uses in the core area and surrounding areas; and

- (g) Use of other approaches by agreement between the city and the port.
 - (7) The *department of community, trade, and economic development must provide matching grant funds to cities meeting the requirements of subsection (1) of this section to support development of the required container port element.
 - (8) Any planned improvements identified in port elements adopted under subsections (1) and (2) of this section must be transmitted by the city to the transportation commission for consideration of inclusion in the statewide transportation plan required under RCW 47.01.071.
- [2009 c 514 § 2.]

Notes:

- *Reviser's note: The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.
- Findings -- Intent -- 2009 c 514: "(1) The legislature finds that Washington's marine container ports operate within a complex system of marine terminal operations, truck and train transportation corridors, and industrial services that together support a critical amount of our state and national economy, including key parts of our state's manufacturing and agricultural sectors, and directly create thousands of high-wage jobs throughout our region.
- (2) The legislature further finds that the container port services are increasingly challenged by the conversion of industrial properties to nonindustrial uses, leading to competing and incompatible uses that can hinder port operations, restrict efficient movement of freight, and limit the opportunity for improvements to existing port-related facilities.
- (3) It is the intent of the legislature to ensure that local land use decisions are made in consideration of the long-term and widespread economic contribution of our international container ports and related industrial lands and transportation systems, and to ensure that container ports continue to function effectively alongside vibrant city waterfronts." [2009 c 514 § 1.]

Wisconsin in its revised comprehensive planning law requires review of the four freight modes in the transportation element of the comprehensive plan:

(c) *Transportation element.* A compilation of objectives, policies, goals, maps and programs to guide the future development of the various modes of transportation, including highways, transit, transportation systems for persons with disabilities, bicycles, electric personal assistive mobility devices, walking, **railroads, air transportation, trucking and water transportation**. The element shall compare the local governmental unit's objectives, policies, goals and programs to state and regional transportation plans. The element shall also identify highways within the local governmental unit by function and incorporate state, regional and other applicable transportation plans, including transportation corridor plans, county highway functional and jurisdictional studies, urban area and rural area transportation plans, airport master plans and rail plans that apply in the local governmental unit. (emphasis added)

[Other examples of state enabling acts can be found here.](#)

SELECTED RECOMMENDED CHANGES TO ENABLING ACT COMPREHENSIVE PLANNING GOALS SECTION

Changing the enabling act requirements and transportation and land use element instructions for the comprehensive plan should lead to the inclusion of better freight review within the plan and this will have a far-reaching impact on local land use decisions. Taking Wisconsin as an example, highlighted recommended changes to the enabling act and comprehensive plan goal elements to incorporate freight are provided in the examples below.

1. Promotion of the redevelopment of lands with existing infrastructure and public services and the maintenance and rehabilitation of existing residential, commercial and industrial structures.
2. Encouragement of neighborhood designs that support a range of transportation choices.
3. Protection of natural areas, including wetlands, wildlife habitats, lakes, woodlands, open spaces and groundwater resources.
4. Protection of economically productive areas, farmland and forests.
5. Encouragement of land uses, densities and regulations that promote efficient development patterns and relatively low municipal, state governmental and utility costs, and reduce incompatible uses around freight facilities and corridors.
6. Preservation of cultural, historic and archaeological sites.
7. Encouragement of coordination and cooperation among nearby units of government.
8. Building of community identity by revitalizing main streets and enforcing design standards.
9. Providing an adequate supply of affordable housing for individuals of all income levels throughout each community.
10. Providing adequate infrastructure and public services and an adequate supply of developable land to meet existing and future market demand for residential, commercial freight and logistics, and industrial uses.
11. Promoting the expansion or stabilization of the current economic base and the creation of a range of employment opportunities at the state, regional and local levels.
12. Balancing individual property rights with community interests and goals.
13. Planning and development of land uses that create or preserve varied and unique urban and rural communities and economic generating areas such as freight distribution hubs, inland ports, and freight corridors.
14. Providing an integrated, efficient and economical transportation system that affords mobility, convenience and safety and that meets the needs of all citizens, including transit-dependent and disabled citizens.

SELECTED RECOMMENDED CHANGES TO CONTENTS REQUIRED IN A COMPREHENSIVE PLAN

A comprehensive plan shall contain all of the following elements:

(a) *Issues and opportunities element.* Background information on the local governmental unit and a statement of overall objectives, policies, goals and programs of the local governmental unit to guide the future development and redevelopment of the local governmental unit over a 20-year planning period. Background information shall include population, household and employment forecasts that the local governmental unit uses in developing its comprehensive plan, and demographic trends, age distribution, educational levels, income levels and employment characteristics that exist within the local governmental unit.

(b) *Housing element.* A compilation of objectives, policies, goals, maps and programs of the local governmental unit to provide an adequate housing supply that meets existing and forecasted housing demand in the local governmental unit. The element shall assess the age, structural, value and occupancy characteristics of the local governmental unit's housing stock. The element shall also identify specific policies and programs that promote the development of housing for residents of the local governmental unit and provide a range of housing choices that meet the needs of persons of all income levels and of all age groups and persons with special needs, policies and programs that promote the availability of land for the development or redevelopment of low-income and moderate-income housing, and policies and programs to maintain or rehabilitate the local governmental unit's existing housing stock.

(c) *Transportation element.* A compilation of objectives, policies, goals, maps and programs to guide the future development of the various modes of transportation ***for people and goods, and land use around these modes***, including highways, transit, transportation systems for persons with disabilities, bicycles, electric personal assistive mobility devices, walking, railroads, air transportation, trucking and water transportation. The element shall compare the local governmental unit's objectives, policies, goals and programs to state and regional transportation plans. The element shall also identify highways within the local governmental unit by function and incorporate state, regional and other applicable transportation plans, including transportation corridor plans, county highway functional and jurisdictional studies, urban area and rural area transportation plans, airport master plans and rail plans that apply in the local governmental unit. ***The element will also indicate where incompatible land uses may already occur, or could occur around freight activities (both corridors serving these facilities and the facilities themselves) to ensure that zoning codes around these facilities will be developed to reduce future conflicts.***

(d) *Utilities and community facilities element.* A compilation of objectives, policies, goals, maps and programs to guide the future development of utilities and community facilities in the local governmental unit such as sanitary sewer service, storm water management, water supply, solid waste disposal, on-site wastewater treatment technologies, recycling facilities, parks, telecommunications facilities, power-generating plants and transmission lines, cemeteries, health care facilities, child care facilities and other public facilities, such as police, fire and rescue facilities, libraries, schools and other governmental facilities. The element shall describe the location, use and capacity of existing public utilities and community facilities that serve the local governmental unit, shall include an approximate timetable that forecasts the need in the local governmental unit to expand or rehabilitate existing utilities and facilities or to create new utilities and facilities and shall assess future needs for government services in the local governmental unit that are related to such utilities and facilities.

(e) *Agricultural, natural and cultural resources element.* A compilation of objectives, policies, goals, maps and programs for the conservation, and promotion of the effective management, of natural resources such as groundwater, forests, productive agricultural areas, environmentally sensitive areas, threatened and endangered species, stream corridors, surface water, floodplains, wetlands, wildlife habitat, metallic and nonmetallic mineral resources consistent with zoning limitations under s. 295.20 (2), parks, open spaces, historical and cultural resources, community design, recreational resources and other natural resources.

(f) *Economic development element.* A compilation of objectives, policies, goals, maps and programs to promote the stabilization, retention or expansion, of the economic base and quality employment

opportunities in the local governmental unit, including an analysis of the labor force and economic base of the local governmental unit. The element shall assess categories or particular types of new businesses and industries that are desired by the local governmental unit. The element shall assess the local governmental unit's strengths and weaknesses with respect to attracting and retaining businesses and industries, and shall designate an adequate number of sites for such businesses and industries. The element shall also evaluate and promote the use of environmentally contaminated sites for commercial, freight or industrial uses. The element shall also identify county, regional and state economic development programs that apply to the local governmental unit.

(g) *Intergovernmental cooperation element.* A compilation of objectives, policies, goals, maps and programs for joint planning and decision making with other jurisdictions, including school districts, drainage districts, and adjacent local governmental units, for siting and building public

(h) *Facilities and sharing public services.* The element shall analyze the relationship of the local governmental unit to school districts, drainage districts, and adjacent local governmental units, and to the region, the state and other governmental units. The element shall consider, to the greatest extent possible, the maps and plans of any military base or installation, with at 200 assigned military personnel or that contains at least 2,000 acres, with which the local governmental unit shares common territory. The element shall incorporate any plans or agreements to which the local governmental unit is a party under s. 66.0301, 66.0307 or 66.0309. The element shall identify existing or potential conflicts between the local governmental unit and other governmental units that are specified in this paragraph and describe processes to resolve such conflicts.

(h) *Land-use element.* A compilation of objectives, policies, goals, maps and programs to guide the future development and redevelopment of public and private property. The element shall contain a listing of the amount, type, intensity and net density of existing uses of land in the local governmental unit, such as agricultural, residential, commercial, industrial and other public and private uses. The element shall analyze trends in the supply, demand and price of land, opportunities for redevelopment and existing and potential land-use conflicts. The element shall contain projections, based on the background information specified in par. (a), for 20 years, in 5-year increments, of future residential, agricultural, commercial and industrial land uses including the assumptions of net densities or other spatial assumptions upon which the projections are based. The element shall also include a series of maps that shows current land uses, including corridors and freight facilities, and future land uses that indicate productive agricultural soils, natural limitations for building site development, floodplains, wetlands and other environmentally sensitive lands, the boundaries of areas to which services of public utilities and community facilities, as those terms are used in par. (b), will be provided in the future, consistent with the timetable described in par. (c) and the general location of future land uses by net density or other classifications.

(i) *Implementation element.* A compilation of programs and specific actions to be completed in a stated sequence, including proposed changes to any applicable zoning ordinances, official maps, or subdivision ordinances, to implement the objectives, policies, plans and programs contained in pars. (a) to (h). The element shall describe how each of the elements of the comprehensive plan will be integrated and made consistent with the other elements of the comprehensive plan, and shall include a mechanism to measure the local governmental unit's progress toward achieving all aspects of the comprehensive plan. The element shall include a process for updating the comprehensive plan. A comprehensive plan under this subsection shall be updated no less than once every 10 years.