



What is Zoning?

The division of a political subdivision (municipality, county or township) into districts, and the regulation of land, buildings and structures according to their nature and use.

4 Major Areas of Zoning

- Creating and adopting a zoning ordinance (codified ordinance) + map
- Amending a zoning code and/or map
- Variances (special exceptions) and/or conditional uses
- Enforcement

Legislative/Administrative Distinction + *Why it Matters*

Legislative action: action enacting or creating a law, ordinance or regulation taken by the legislative authority (council)

- + Initial Adoption of Zoning Code and Zoning Map
- + Amendments to the Zoning Code and Zoning Map
- + May only be taken by the legislative authority; cannot be delegated
- + Broader discretion than administrative actions
- + Subject to referendum



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Legislative/Administrative Distinction + *Why it Matters*

Administrative action: action executing or administering (enforcing) a law, ordinance, or regulation that is already in existence taken by an administrative authority (board of zoning appeals or planning commission) or a legislative authority acting in an administrative capacity

- + Conditional or Special Use Permits
- + Variances
- + Decision subject to more stringent standards
- + Subject to appeal to common pleas court



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Legislative + Administrative Authorities

Legislative Authorities

- + Village Council

Administrative Authorities

- + Planning Commission
- + Boards of Zoning Appeal
- + Village Council acting in an administrative capacity
- + County Planning Commission/Regional Planning Commission



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Initial Adoption of Zoning + Zoning Amendments

- Council creates a Planning Commission to frame, adopt and certify to council a plan for dividing the municipality into zones or districts
 - For non-charter villages, five members consisting of the mayor, one member of council and three citizens appointed by the mayor
- Adoption of zoning legislation essentially follows typical municipal legislative process
- Zoning is a police power and municipalities may exercise based upon statutory authority or constitutional home rule powers
- Zoning should be in the interest of the public health, safety, convenience, prosperity or general welfare



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Role of Municipal Planning Commissions

- Create initial Zoning Plan and certify it to Council for consideration
- Zoning Plan must be based upon two or more of the following purposes:
 - Restrictions in locations of buildings and structures
 - Restrictions on height of buildings and structures
 - Small wind farms
 - Restrictions on bulk and location of buildings and structures, percentage of lot occupancy, and set back building lines
- No specific requirements for public hearings; Ohio Sunshine Law applies



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Initial Adoption of Zoning by Legislative Authority

- Council must hold a public hearing following receipt of Planning Commission certification
- Notice must be published at least 30 days in advance of the hearing
 - If 10 or less parcels of land are involved, written notice must also be mailed to property owners contiguous and directly across the street
- Proposed legislation must be on file for public examination
- Zoning ordinance must be adopted by:
 - **Majority of the members elected** to Council if it is following the recommendation of Planning Commission
 - **3/4 of membership** of Council if it materially deviates from the recommendation of Planning Commission



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Initial Adoption of Zoning by Legislative Authority

- An initial municipal zoning ordinance and any legislative amendments are subject to the same initiative and referendum procedures for all municipal ordinances
- Municipal attorney should be contacted immediately when a petition for initiative or referendum is filed



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Amendments to Zoning

- Follows same procedure as adoption of initial zoning plan and ordinance
 - May also be initiated by application of property owner
- Zoning amendments must first be submitted to Planning Commission for recommendation, even when initiated by council
- Vote same as initial zoning: majority of members if recommendation is followed; $\frac{3}{4}$ of Council if material deviation from Planning Commission recommendation



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Amendments to Zoning

- Annexed territory remains subject to township zoning and enforcement until it is zoned in the municipality
- Legislation on zoning amendments is treated like any other municipal legislation
 - May be accomplished through initiative petition
 - Subject to referendum



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Limitation on Zoning

- + Retroactive zoning ordinances are prohibited
- + Non-conforming uses must be recognized
- + Constitutional limitations
- + Pre-emption may apply
 - + *State ex rel. Morrison v. Beck Energy Corp.*, 143 Ohio St.3d 271, (2015) (drilling of oil and gas well within city)

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Administrative Zoning Proceedings

- + Determine the legal rights and interests of the applicant or appellant
- + Separate and distinct from legislative process
- + Applicant has constitutional and statutory rights
- + Applicant must be afforded due process

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Types of Administrative Proceedings

- + Appeal of decision of zoning inspector
- + Conditional Use Permit
- + Special Zoning Certificate
- + Variance or special exception from zoning standards
 - + Use Variance requires showing of substantial hardship
 - + Area Variance requires showing of practical difficulties

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Administrative Hearings

- Administrative hearings are adjudicatory hearings, which require notice, hearing, and the opportunity to introduce evidence
- Must be procedural safeguards for the applicant and others directly affected at hearing. **Some examples include:**
 - Testimony under oath
 - Applicant can present witnesses; offer evidence; and cross examine any witnesses in opposition
 - Decision maker must make findings of fact and conclusions of law
 - A record of the proceedings must be kept



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Administrative Determinations are Subject to Court Appeal

- Appeal of final administrative determination may be taken within 30 days after the decision is made
- Notice of appeal is filed **with the administrative officer, board or commission making the decision**
- Administrative authority must prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence within forty 40 days after filing a notice of appeal
- The court proceeds as in the trial of a civil action but is confined to the transcript or record if it had sufficient procedural safeguards
- Court may affirm, reverse, vacate, or modify the administrative determination and may remand the cause for further proceedings if it chooses
- Decision of common pleas court is subject to appeal to court of appeals



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Role of Village Staff

- Varies depending upon whether there is a zoning clerk
- Often must manage the statutory process for **both** the administrative authorities and the legislative authorities in the zoning process
- Timely manage flow of information between zoning bodies and sometimes courts
 - Legislative actions typically a **two-step process** for municipalities (planning commission and council)
 - Administrative actions typically a **one-step process** unless an appeal is taken



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Typical Activities of Village Staff in Zoning Proceedings

- Receive recommendations from the Planning Commission for consideration and hearing by the legislative authority
- Keep records of the proceedings of the legislative authority
- Provide notices on the zoning proceedings to applicants, surrounding property owners, and by newspaper publication in all zoning actions before the legislative authority
- Keep ordinances or resolutions to rezone certain property on file and open for public examination during the thirty-day advertising period
- Receive and process initiative or referendum petitions on zoning
- Receive and handle filing fees and costs associated with zoning applications and procedures



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Typical Activities of Village Staff in Zoning Proceedings

- Pay expenses and costs associated with zoning activities as authorized by council
- May have responsibilities as the assistant or clerk for the Planning Commission, Board of Zoning Appeals or other administrative board, which would include similar activities to those above
- Serve written decision made by decision-maker in administrative proceedings upon the applicant, preferably by certified mail
- Timely prepare and file with the common pleas court or environmental court (in Franklin County) a transcript of the administrative proceedings when a court appeal is filed
- Provide copies of public records upon request



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Common Governmental Mistakes in the Zoning Process

- **The Sunshine Law Applies:** Ohio's Open Meetings Act and Public Records Act
- All fees + costs must be reasonably related to actual costs
- All required notices should be timely made
- The hearings should be appropriate for the proceeding: administrative or legislative
- Timely provide copy of written decision to the applicant in an administrative proceeding
- Timely assemble the record when an appeal is taken



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