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## 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.

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## 4 Major Areas of Zoning

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

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**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**

<b>Legislative Authorities</b>	<b>Administrative Authorities</b>
+ Village Council	+ 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

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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
  - + **¾ 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., Slip Opinion No. 2015-Ohio-485*

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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 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
- Decision of common pleas court is subject to appeal to court



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## Role of Clerk or Fiscal Officer

- 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 Clerks 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 Clerks 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
- Zoning should be based upon a comprehensive plan
- 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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## Thank You!



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