

# CHAPTER 8

## ZONING ORDINANCES

### Contributing Authors:

Jen Higginbotham, AICP - Current Author

Timothy J. Porter, AICP and Teree L. Bergman, FAICP - Previous Authors

### IN THIS CHAPTER...

The Purpose of the Zoning Ordinance

History

A Typical Zoning Ordinance

Creating or Amending a Zoning Ordinance

Conclusion

Discussion topics

Suggested Resources

What is the essence of America? Finding and maintaining that perfect, delicate balance between freedom “to” and freedom “from.”  
- Marilyn vos Savant

**Intensity** - Impact on the land, level of traffic generated by a use, etc.

**Density** - The number of units per acre. For example, the number of houses, apartments, commercial square footage, etc. in an area.

IC 36-7-4-601 et. seq.

**Setback** - Distance from adjacent properties or public spaces like streets, water features, railroads, etc.

## THE PURPOSE OF THE ZONING ORDINANCE

### What is a Zoning Ordinance?

A zoning ordinance divides a jurisdiction of a local government into districts or zones. Within the zones, the ordinance regulates how the land is used, the *intensity* or *density* of uses, the bulk of buildings on the land, parking, building materials, and other aspects of land use and construction.

The ordinance contains both written regulations and a zoning map, which may both be amended by the local legislative body.

A zoning ordinance is one of several tools used to implement comprehensive plans (See Chapter 7, Comprehensive Plans, for more information). It has been common in Indiana to confuse the zoning ordinance with the comprehensive plan, but they are not the same, and the distinction should be clear:

- The **comprehensive plan** is the guideline for future development; it sets forth the community’s vision and its land use, transportation, and utility policies; and
- The **zoning ordinance** is a regulation designed to make the comprehensive plan a reality. Plan commission members and/or staff should be able to explain the purpose of each zoning regulation and decision in relation to its role in implementing the comprehensive plan.

### How Does a Zoning Ordinance Help the Community?

The Indiana Code lists the following purposes for local zoning ordinances:

- Securing adequate light, air, and convenience of access and safety from fire, flood, and other danger;
- Lessening or avoiding congestion in public ways;
- Promoting the public health, safety, comfort, morals, convenience, and general welfare; and
- Otherwise accomplishing the purposes of Chapter 4 of the Indiana Code - Local Planning and Zoning.

Some zoning regulations are related to concepts of public health and safety, such as limitations on building in flood plains and requirements for adequate *setbacks* and driveway access, but most fall under the broader and less defined category of “general welfare.” Primary objectives of general welfare include protection of property values, lower public costs, and enhancing the livability of residential neighborhoods.



Credit: indianapublicmedia.org

## What About Aesthetics?

There has been a continuing debate about the extent to which zoning ordinances may be used to accomplish aesthetic objectives. The U.S. Supreme Court upheld the right of communities to use zoning for aesthetics in a landmark 1954 decision, *Berman v. Parker*. Writing for the court, Justice William O. Douglas stated:

*The concept of the public welfare is broad and inclusive...the values it represents are spiritual as well as physical. Aesthetic as well as monetary... it is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.*

According to Daniel R. Mandelker in his book *Land Use Law*, “A clear majority of courts hold that aesthetics alone is a legitimate governmental purpose in land use regulation.” Most zoning ordinances contain regulations that at least in part are aimed at aesthetics. Building setback regulations, height limitation, landscaping requirements, and sign regulations all have broad purposes, but community appearance is one of them.

Above all, whatever the regulations contained within a local zoning ordinance, both the written text and decisions made by plan commissions, boards of zoning appeals (BZAs), and legislative bodies should be consistent both with the purposes stated in the Indiana Code and from one decision to the next.

## HISTORY

The zoning ordinance is the most commonly used and oldest tool for implementing land use policy in the United States. New York City adopted the nation's first zoning ordinance in 1906. This ordinance was largely designed to decrease fire hazards by limiting building heights and providing more space between buildings. In 1913 at the Fifth National Conference on City Planning, held in Chicago, the Committee on Legislation report contained several model acts that would help shape land development in the coming years:

- Establishing a city planning department and giving it extra-territorial (three mile) planning jurisdiction and the authority to regulate plans of lots;
- Empowering cities to create from one to four districts and to regulate the heights of buildings constructed in each district;
- Authorizing the platting of civic centers;
- Authorizing the platting of reservations for public use without specifying the particular public use; and
- Authorizing the establishment of building lines on any street or highway.

**Euclidian Zoning** - A convenient nickname for traditional as-of-right or self-executing zoning in which: district regulations are explicit; residential, commercial, and industrial uses are segregated; districts are cumulative; and bulk and height controls are imposed.  
--American Planning Association

## Chapter 8: Zoning Ordinances

1906 – New York City adopts the nation's first zoning ordinance

1921 – Indiana grants municipalities the right to regulate land use and building bulk

1926 – Euclid v. Ambler Realty: Zoning is found to be a valid exercise of police power to protect the public welfare

1954 – Berman v. Parker: The right of communities to use zoning for aesthetics is upheld

**Takings** - To take, expropriate, acquire, or seize property without compensation. --Iowa State University Extension Service

IC 36-7-4-601(b)(2)

**Police Power** - The right of government to regulate personal conduct and the use of land in order to protect that public health, safety, and welfare. The use of police power by a unit of government must follow "due process" and be "reasonable," but the government does not have to pay compensation for related losses. In this last respect, it differs from the government's use of eminent domain (where just compensation is mandatory). --Iowa State University Extension Service

The right of communities to adopt zoning ordinances regulating the use of land is well established in U.S. law. The Standard State Zoning Enabling Act (SZEA) and the Standard City Planning Enabling Act (SCPEA), drafted by an advisory committee of the U.S. Department of Commerce in the 1920s, gave states the right to adopt and enforce zoning ordinances. In 1921 Indiana granted cities the authority to regulate the use of land and building bulk. In 1926, in *Euclid v. Ambler Realty*, the United States Supreme Court found that zoning is a valid exercise of *police power*, which local governments use to protect the public welfare. The court wrote:

*The line which...separates the legitimate from the illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions. ....the question of whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question of whether a particular thing is a nuisance, is to be determined, not by abstract consideration of the building or of the thing considered apart, but by considering in connection with the circumstances and the reality. A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard.*

Although the courts have consistently upheld the right of communities to engage in planning and to adopt regulations to implement those plans, judges have placed limits on this right. Regulations that go too far and deprive a property owner of all economic use of the land are considered unconstitutional *takings* of private property without just compensation.

### A TYPICAL ZONING ORDINANCE

A zoning ordinance contains two elements: text and maps. The two parts are equally important, and both should be carefully developed.

### The Map

The zoning map should be as clear as possible, so that staff and citizens can easily determine the zoning classification and regulations for a particular piece of property. Most communities establish zoning districts according to parcel lines, so that the designation of each property is easily identified. If districts are not established in this manner, it is a good idea to use clear features, such as public right-of-way or railroad tracks, as zoning boundaries. The drawback associated with this is the potential for one property to lie within multiple districts, making it a necessity to clearly state within the text which district regulations will apply.

Geographic Information Systems (GIS) make preparing, maintaining, viewing, and printing zoning maps much easier. For communities that have the capability of producing such maps, electronic mapping systems are desirable. There are many companies that specialize in digitizing paper copies of plat books and zoning maps, and often can provide an internet tool that allows the public to view the community's maps from any computer. These digital maps can be printed at various scales, making it easy to print maps of specific properties.

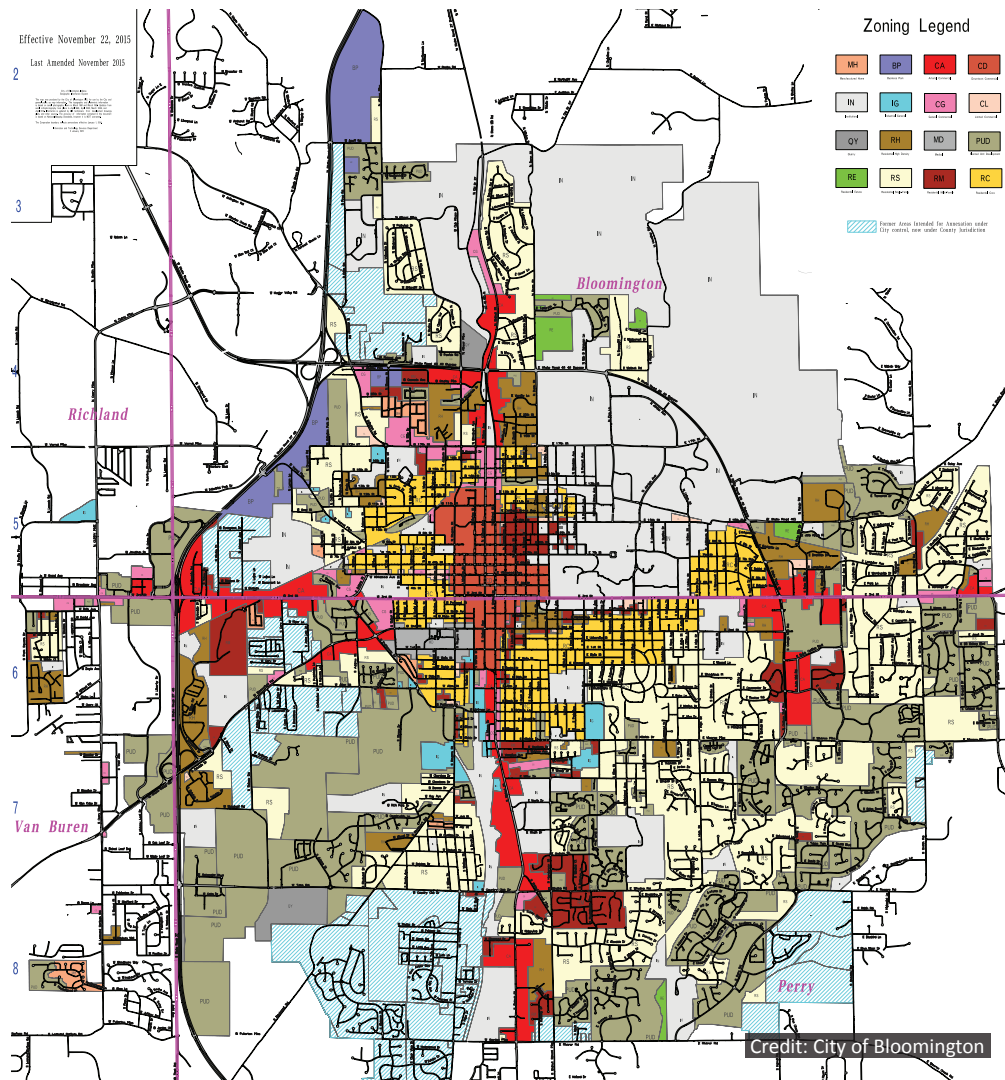


When using GIS systems to maintain the official map, it is usually helpful to also have a large, printed unofficial overall community map to display in a municipal office as a quick reference for the public, board members, and elected officials.

Maps generally show each district as a different color or hatched pattern. When using color, the following color scheme is preferable and widely recognized:

<b>Residential</b>	Yellow to Orange, with the most intense residential use (such as <i>multi-family</i> ) in the darkest shade of orange
<b>Commercial</b>	Shades of Red, with the most intense commercial use in the darkest shade
<b>Industrial</b>	Shades of Purple or Gray
<b>Municipal or Institutional</b>	Shades of Blue
<b>Recreational and Agricultural</b>	Shades of Green
<b>Transportation and Utilities</b>	Shades of Gray

**Multi-Family** - More than one residential unit in the same building, like duplexes and apartments.



### The Text

Each community's zoning ordinance text is different, as it should be. While communities may have similarities, no two are exactly alike. Community goals and objectives are not identical, and their plans (if prepared properly) are uniquely suited to the local context. Different communities also have different attitudes toward land use regulation. Zoning ordinances vary greatly in the amount of detail and sophistication. Tools that are important in one community may not be suitable in another.

A common complaint about zoning is that it is complicated. While simplicity is desirable, it is not possible to have an ordinance that is comprehensive and effective in implementing land use policy and is also short and simple. Land use issues are complex, and by necessity, the ordinances that regulate land use are also complex. Nevertheless, there are things communities can do to make the ordinances more user-friendly.

- Ordinance texts should be written clearly. The same rules that apply to good writing also apply to good ordinances: use active voice, keep sentences as simple as possible, and use terms that are easily understood;
- Illustrations are extremely useful in zoning ordinances. Some concepts that are difficult to grasp in words are easily understood through a graphic, such as a photo or illustration. Definitions of building height, intersection visibility triangles, and how sign area is measured all lend themselves to illustrations; and
- An annotated copy of the ordinance with explanatory material or a quick reference brochure can be helpful for the public. Equally helpful are glossaries and cross references within ordinances, to ensure comprehension and reduce repetition where unnecessary. While simplicity is desirable, it is important to note that the ordinance is a legal document, and sometimes complex language and technical terms are critical to the legal validity of the ordinance. Additionally, some ordinances are written so that each chapter serves as a complete unit, without need for cross referencing, but others separate elements like parking, landscaping, and other requirements into their own chapters. Both have advantages, and it is ultimately up to the community to determine their preference.

## CREATING OR AMENDING A ZONING ORDINANCE

### Developing the Ordinance

Preparing a zoning ordinance is one of the most challenging and important tasks a community will undertake. The public may not pay great attention to development of the plan (although they should), but the zoning text and maps are usually the subject of considerable interest and emotion. Drafting a good zoning ordinance is also a time-intensive proposition. Some communities adopt new plans but never adopt implementing ordinances, because the time involved is too great and the

controversy is overwhelming. In communities where the staff is fully engaged in day-to-day operations, it may be necessary to hire an outside consultant to prepare the zoning ordinance. With or without consulting help, it usually takes at least one year to develop a new zoning ordinance and about six months for a comprehensive update to an existing ordinance. If a representative committee is appointed, the members should know that the time commitment will be significant.

The time between adopting a new/updated comprehensive plan and creating/ updating a zoning ordinance should be as short as possible. Some localities prefer to begin the ordinance development even before the comprehensive plan is completed. By carrying out some of the work simultaneously, communities can achieve a better connection between the plan and regulations. This concurrent process also serves as a reality check, as citizens consider whether a policy is really important enough to translate into a regulation. Without updating and implementing ordinances, the comprehensive plan, as well as other potential community plans, are without significant effect.

Communities who hire consultants will be led through an effective and engaging process, with tasks and a timeline clearly laid out in advance of project start-up. For communities who plan to update the zoning ordinance in-house, consideration for many potential issues must be given in advance of project kick-off. For example, it will be likely that the community will want to:

- Engage a steering committee made of individuals with expertise in development-related or -affected fields;
- Solicit public participation in establishing tolerance for regulation and priorities;
- Determine the overall meeting schedule and timeline for plan updates, taking into account regularly scheduled plan commission and legislative body meetings and potential for comment and revisions; and
- Decide which approach will be most effective with the specific set of decision makers: updating an entire ordinance all at once to ensure cohesiveness and minimal inconsistencies, or updating the ordinance section by section, with adoption of each immediately after review to increase manageability and provide smaller portions for decision makers' review.

While the comprehensive plan must include significant public participation and review, the type of public engagement will be different for a zoning ordinance. The basic nature of an ordinance is to include details that can be enforced and, if necessary, can be defended in a court of law. Too much focus on detail with the general public can hinder an entire process; instead it is much more effective to engage the general public in determining overall tolerance for regulation and prioritizing which issues may need additional detail, more than a previous municipal or county ordinance may have provided. In order to maintain public representation while considering finer details, a properly constituted citizen committee should be engaged. This committee can also be an effective advocate for adoption of the ordinance after it is drafted. Whether or not consultants are used to draft a plan, make sure that the ordinance reflects local tolerance, and that the committee members understand the reasons for, and implications of, every provision to avoid potential confusion or opposition later in the process.

Even though the zoning ordinance must be tailored to a community's individual needs, there is nothing wrong with borrowing ideas from other communities. Many ideas can be generated through perusing a variety of ordinances, a task that has become easier with the proliferation of public documents on the Internet. Regulations developed for one community often can be adapted to serve another. Some sections, such as penalty provisions and severability clauses, are nearly the same in all ordinances, especially ordinances within the same state, and there is no reason to rewrite these if they fulfill local needs. It is important, however, when adapting provisions from other communities to have a legal review by competent counsel. Even within Indiana, local zoning powers differ because there are three kinds of plan commissions (area, advisory, and metro), and some have powers that others do not.

### Common Elements of a Zoning Ordinance

Each community needs to determine the types of regulations it needs to meet its goals, and it needs to evaluate its ability to administer and enforce the ordinance. Common elements of a zoning ordinance are described below.

#### Purpose Statement

The purpose statement should reflect the state statute and the goals established in the comprehensive plan. In the event of lawsuits, judges often look at the purpose statement to determine whether the ordinance is aimed at a legitimate public purpose and whether the regulation at issue is a reasonable means of achieving that purpose.

In addition to stating an overall purpose, many ordinances contain statements of intent for specific zoning districts (i.e. agricultural, neighborhood commercial, planned business, etc.) and/or categories of regulations (i.e., signs, parking, landscaping). Including these statements of intent is good planning practice by letting the public know why the community established a certain zoning district, category, or regulation. And, as with the overall purpose statement, these are helpful in the event of a lawsuit.

#### Definitions

Clear and complete definitions can prevent many zoning disputes. For example, a community could prohibit the storage of junk on private property, but if "junk" is not clearly defined, or if the term is found to be clearly adverse to materials in question, a judge could rule in favor of a property owner. Consider an operating salvage yard compared to an eclectic collector or a yard covered in litter. Definitions should be compatible with other local ordinances.



### Administrative Procedures

The ordinance must generally outline administrative procedures, in order to clearly communicate with the public the necessary steps that both they and zoning ordinance administrators will take for all future cases. This can reduce confusion, and need not be overly detailed. The rules of procedure adopted by the plan commission and BZA should identify the more specific details of the procedures (See Chapter 5, Rules of Procedure). Essentially, a zoning ordinance should contain:

- Procedures to amend a zoning map, consistent with Indiana law;
- Procedures to amend zoning ordinance text, consistent with Indiana law;
- Interpretation procedures (i.e. determining exact zoning district boundaries, determining which district unlisted uses may be permitted within, or enforcing a requirement that may not be clearly written);
- Procedures for identifying, confirming, noticing, and penalizing violations; and
- Appeal procedures.

### Zoning Districts

Zoning ordinances regulate the use of land; they establish districts and describe the uses permitted in each district. Traditionally, each district includes permitted/prohibited land uses and lot development standards or other zoning requirements specific to the district. Make sure that your districts include enough detail to make them enforceable, or to provide a reasonable opportunity for interpretation, without becoming so complex that they become rigid and difficult to enforce.

It is common to find older ordinances that specify the proper district for a “telegraph office” or a “millinery shop” but have no mention of tanning/laundry facilities or mobile phone sales. To avoid exhaustive lists, define categories of uses -- those that are similar in physical size, parking necessity, customer traffic, and operation. For example, “neighborhood business” may be a district, further defined within the definitions or glossary as being small in size with customer foot traffic and lower parking needs compared to other commercial retail, service, and entertainment uses. This method places a higher reliance on staff interpretation, but overall this flexibility will result in better implementation of the district intents. Also, create a matrix or table of uses that will be easy to follow and quick to determine which districts may permit a specific use.

If you’re having trouble categorizing or grouping similar uses, the “*Land Based Classification System*” (LBCS) may provide assistance. Finalized in 1999, the LBCS provides a consistent model for classifying land uses based on one of five characteristics (activities, functions, building types, site development character, and ownership), each comprised of categories and subcategories.

The actual zoning districts assigned to parcels of property in a community are an important part of the text. A typical, modern list of zoning districts for a larger community may look similar to the list on the following page. Many districts have more than one abbreviation option; the first based on a numeric system and the second more descriptive of the district.

The Land Based Classification System (LBCS) is accessible at [this link](#).

## Chapter 8: Zoning Ordinances

Abbreviation	District Name
A-1 or AH	High Intensity Agricultural District
A-2 or AL	Low Intensity Agricultural District
R-1 or RR	Single-Family Suburban or Rural Residential District
R-2 or RL	Low Density Residential District
R-3 or RM	Medium Density Residential District
R-4 or RH	High Density Residential District
R-5 or RMHP	Mobile Home Park District
C-1 or CN	Neighborhood Commercial District
C-2 or CC	Community Commercial District
C-3 or CR	Regional Commercial District
C-4 or CB	Central Business District / Downtown
MU	Mixed Use
I-1 or IL	Light Industrial District
I-2 or IH	Heavy Industrial District
I-3 or BP	Business Park / Office District
IN	Institutional District (Municipal, Airport, Educational, etc.)
OS	Open Space District
PUD	Planned Unit Development District
OL-A	Airport Overlay District*
OL-M	Mining Overlay District*
OL-C	Corridor Overlay District*

\* Overlay districts are discussed in further detail later in this chapter.

### Agriculture Districts

The purpose of an agricultural district is to provide for and preserve viable agricultural land. It can also be used either within or outside of municipal boundaries as a growth management tool for land that is awaiting development, therefore requiring property rezoning and review by the legislative body prior to development. Agricultural districts could include a range of uses from intense livestock operations to low intensity crop production, natural land, or agri-tourism.

In the past many communities have struggled with what uses to permit within agricultural districts. Many land owners attempt to portion off parts of the property for family residences or residential subdivision development. In keeping with the overall intent of the district, regarding preservation and growth management, non-agricultural or maintenance structures should be kept to a minimum. This also reduces the need for potentially expensive public utility extensions to these often outlying properties. Requiring large minimum lot sizes (20+ acres) in agricultural districts can limit the potential for parcelization, but can also cause the more rapid consumption of agricultural land as large residential estates convert farmland into cultivated yards and ornamental gardens.



Credit: Dearborn County

### Residential Districts

The purpose of residential districts is to accommodate various types and styles of dwelling units. The number of residential districts in a zoning code can vary depending on community size and preference. It is not uncommon for a small community to have three residential districts or for a larger community to have ten. The types of residences can range from estate housing, to suburban, to smaller traditional lot sizes, and can vary from single-family homes to multi-family in a number of density and structure styles.

Residential district regulations generally cover types of dwelling units permitted, density (dwelling units per acre), setback lines, *lot coverage* maximums, parking and driveway requirements, accessory structures, building height, etc. These regulations create the character of the neighborhood. There

are some non-residential uses that are generally compatible in residential districts. Accommodations for these uses can be made through a list of special exception uses (see Chapter 2, Board of Zoning Appeals Basics, for more on special exceptions). Also, access to public utilities, the provision of public park and open space, and proximity to services should be considered during the development and the designation of residential districts.



**Lot Coverage** - The amount of structure that is covering the ground or "the footprint." Lot coverage includes the primary building and all accessory structures on the lot.

### Commercial Districts

The purpose of commercial districts is to accommodate providers of goods and services. Smaller communities may have as few as two commercial districts - say local business and general business. Larger communities may have up to ten different commercial districts. Some examples include neighborhood commercial, community commercial, regional commercial (these three based on customer origin, necessary parking, as well as the number and frequency of deliveries), commercial office, commercial entertainment, highway commercial, and central business district commercial (these four based more on character).

Some commercial districts can also accommodate light manufacturing and warehousing. Accommodations for these uses can be made through a list of special exception uses.

Factors that should be considered when developing commercial districts include



size and scale of the establishment, service area of establishment, intensity of use, traffic volume, character of the establishment, range of goods and services provided, access and location along streets, internal lot circulation, convenience factors, proximity to other uses, and utility service needs.

**Walkability** - The degree as to how safe, convenient, and efficient it is to walk in an environment, district, neighborhood, or place.

### Mixed Use Districts

Many communities are beginning to add mixed use districts to their zoning codes. These districts allow different, but compatible uses to share the same structure. Think of a historic downtown, with shops and storefronts along the street and apartments or offices above. This district is most suitable at a major crossroads within a community, a downtown area, or in new developments where *walkability*, street life, and urban form are desired.



### Industrial Districts

The purpose of industrial districts is to accommodate manufacturing and warehousing uses. The number of industrial districts ranges from two to four in most communities because industrial districts generally include only two major distinctions: light industry and heavy industry. The differentiation between industrial districts is in the size, scale, associated traffic, and pollution potential of the manufacturing facility.

Also external physical characteristics, such as outdoor storage vs. enclosed storage, differentiate industrial districts. Industrial district regulations can include special buffering criteria to protect adjacent land uses from appearance, noise, light, and possibly odor associated with industry. Designation of industrial districts should take into account available land, utilities, and easy access to transportation networks.

### Business Park / Office Districts

The purpose of a business park / office district is to provide opportunities for campus development of large, potentially national or international services. These uses can be included in the “commercial district” uses, but some communities choose to create a separate district, allowing for special development of utilities, including high-speed information systems, and access to major highways or executive airports.





### Institutional / Municipal Districts

The purpose of an institutional / municipal district is to accommodate public and private institutions - such as schools and hospitals or large transportation facilities like airports - and municipal uses. In some communities, smaller public facilities like neighborhood schools are allowed by right or special exception within residential districts. However, many schools consolidate to form larger facilities, and therefore a district can be created for their protection. In addition, some municipal facilities, such as treatment plants or power stations, may require special buffering for surrounding uses.



### Open Space & Recreational Districts

The purpose of this district is to protect, promote, and preserve a community's public and semi-public park lands, recreational areas, woodlands, watersheds, water supplies, rivers, streams, wetlands, and other environmentally sensitive areas. These districts generally put limitations on development to protect the natural character of the environment.



A useful source in determining the appropriate number of spaces to require, even for bicycle parking, is the Planning Advisory Service Report Number 432, "Off-Street Parking Requirements."

### Development & Design Standards

Development standards are important in determining the character of a district. Will the downtown feature high-rise buildings, or will it have a lower profile? Will a residential neighborhood feature broad front lawns, or will the houses be close to the street? Will the lots be large or small? Will an industrial area have outside storage within view of the street? All these things are regulated through the development standards in the zoning ordinance. Development standards generally include yards, setbacks, bulk, density, coverage, height, accessory structure regulations, etc. Many of these terms will need to be clearly defined in a glossary or definitions chapter of the zoning ordinance.

#### Parking

To address parking space shortages during the automobile's rise in popularity, many communities established parking standards. These set forth a minimum space size (for example, 9'x18' with 24' aisle widths for two-way traffic) and usually a minimum number of parking spaces required based on square footage, fixed seating, or the number of customers at full capacity for their associated land use (apartment residential, boutique retail, mega big box store, etc.). These minimum numbers of parking spaces are useful in many situations, but some requirements were determined based on the largest possible customer base, which for retail uses likely only happens once or twice a year. This results in large extents of asphalted land that are not utilized during the majority of a year.

Newer techniques have been adopted in many places to better serve the community while accommodating new development such as allowing or encouraging shared parking, smaller parking spaces for compact cars, utilizing porous material or grassy lots for overflow parking to accommodate water runoff, or establishing both a minimum and a maximum for the number of parking spaces.

#### Landscaping & Buffering

Many ordinances require landscaping, particularly in non-residential areas. In some communities landscaping is a high priority, while others consider it less important. Then intent is often to ensure adequate vegetation to contribute to natural systems, while softening the built environment. Buffering is generally required between developments of incompatible uses. For example, uses that generate a high level of noise, light, or traffic (which could range from industry to a ballpark that hosts night games) may need to utilize tall, dense vegetation to mitigate some of these effects on neighboring properties.

The regulations can be simple or complex, ranging from requirements for a landscaped area of specified minimum width to extensive landscaping and lists of acceptable plant species. In determining these requirements, communities need to consider their goals and policies as well as the capability of staff to administer and enforce the ordinance.



Credit: South Bend Regional Chamber of Commerce

### Signs

When considering sign regulation, consider the goals and policies of your community. Signs can run the gamut from large, flashy, and covered with corporate branding to subtle, contextual, and representative of a particular community. It is important to balance the potential for signs to responsibly inform the reader without the possibility of it becoming a distraction and safety hazard. Regulations for the size, placement, design, reflectivity, acceptable lighting methods, and (more currently) motion and video, will often spark debate, but a community must decide what best suits their needs.

When drafting sign ordinances, an attorney with knowledge in this subject should be consulted, as signs have been the subject of several important court decisions. The U.S. Supreme Court has viewed sign regulation as a free speech issue and has limited the ability of local governments to regulate the content of signs. As a guide, if you have to read a sign to regulate it, then you are in effect, regulating the content. It is key to remember that the sign industry is well financed and inclined toward litigation.

### Home-Based Businesses

The number of people operating businesses from their homes has increased dramatically in recent years, and with the increase has come reconsideration of the regulation of such businesses. Until the 1980s the most common way of regulating home occupations was to preclude outside employees and restrict the portion of the residence in which the business is conducted. The issue is now more complicated and requires careful thought. Is a weekly housekeeper, a pool service, or a landscape service an outside employee? If not, is a bookkeeper coming to a residence-based business a half day a week more disruptive than a housekeeper? What about a lawn care business operated from one's residence? Some businesses that include no employees generate traffic and parking problems, for example, if semi-trucks deliver inventory or a network of local distributors come to pick up orders or allotments. The key again is in assessing the community's goals and its ability to administer and enforce regulations.

### Non-Conforming Situations

Legal non-conforming situations are those that were legally established, including following proper procedures and acquiring proper permits, prior to the effective date of adoption of a zoning ordinance, but under the new regulations would have been prohibited or otherwise restricted. Sometimes this situation is referred to as "grandfathered." It is typical in an ordinance not to allow the enlargement or expansion of a legal non-conforming situation without bringing the entire property into compliance. Illegal non-conforming situations are violations of any provision, use, development standard, procedure, etc. of the zoning ordinance and established after the current ordinance's date of adoption. The zoning ordinance should include enforcement procedures for bringing illegal non-conforming situations into conformity.

Non-conforming structures and lots are physical issues. A non-conforming use, however, may be allowed to continue operation until such time that a lease expires or a property changes ownership. At that time the use may be prohibited from continuation, or may be required to follow specific procedures to gain status as a special exception.

### Severability Clause

In the event that a judge finds an ordinance provision invalid, it is important that the ordinance has a severability clause stating that if one provision is invalid, the rest of the ordinance remains in effect.

## Modern Trends and Techniques

As development styles and land uses change, so too must planning techniques evolve. For example, early zoning ordinances allowed each progressive or more intense district to build upon the permitted uses of the previous: residential uses were permitted in commercial areas, both residential and commercial uses were permitted in industrial districts, and so on. During the 1950s and 1960s, many communities shifted to a strict separation of land uses, a practice that more recently has been criticized for creating sterile, inconvenient environments.

New land use issues have been brought to the forefront by new technology, changes in business practices, and societal changes. There are several American Planning Association publications that address a range of topics that many communities may find useful. Additionally, there have been a number of innovative approaches to zoning, explained below, which have been used with varying degrees of success.

### Performance Zoning

These ordinances contain requirements based upon the characteristics of a use, rather than on the category of use. A conventional zoning ordinance might list a printing plant as a permitted use in a particular district, thus treating a quick-print franchise in the same manner as a large commercial printing facility. Under performance-based zoning, the ordinance would instead regulate the size of the building, the amount of traffic it could generate, the types of vehicles making pickups and deliveries, and so forth.

Performance zoning offers several advantages:

- It bases regulation on characteristics of actual operation, rather than category of use;
- It promotes compatibility of uses; and
- It is flexible in allowing “mixed use” developments.

There are disadvantages as well:

- The standards are often difficult to quantify;
- Enforcement requires continual attention, special expertise and equipment; and
- Characteristics may vary from one time period to another.



## Planned Unit Developments

Planned unit development (PUD) provisions promote flexibility in land use while offering more certainty and better protection for neighboring property owners when new developments are proposed. Planned unit developments typically are intended for large parcels where mixed-use developments are proposed. These require up-front planning and design.

In Indiana, planned unit developments are approved by ordinance. Typically the ordinance would include a description of the uses permitted and a specific plan for the development of the property. Some PUD ordinances require a high level of detail: design, colors, and materials to be used for buildings and signs; landscaping plans with the location and species of each plant; parking and circulation details and so forth. While a high level of detail is reassuring to neighbors, it can be costly and limiting for developers as well as time consuming for planning staff to administer. Communities need to determine the level of regulation that works best for the local situation. The ordinance should contain provisions for amendment or modification of approved PUDs as well as provisions for dealing with abandoned plans or projects.

## Development Plan Review

Many communities include site plan review or development plan review requirements in their zoning ordinances, particularly for large-scale developments such as shopping centers or apartment complexes. Indiana law refers to these as development plans, not to be confused with a planned unit development, discussed herein.

The zoning ordinance needs to specify the situations in which development plans are required and the standards by which those plans will be evaluated. These standards need to be objective and specific; a requirement that the new development be compatible and harmonious with its surroundings will not pass legal muster and will not provide guidance for developers. Site plan reviews are largely used by planning staff members to insure that the new development will meet the requirements of the zoning ordinance.

## Design Requirements

Some communities have design review requirements in their ordinances. In the early years these were most commonly of two types: requirements that all buildings be of similar design or requirements that buildings not look alike. Some communities set up design review committees to evaluate the architecture of proposed buildings and to decide whether those buildings are acceptable. In recent years, cities such as Seaside, Florida, have been developed according to zoning codes based primarily upon design standards. These ordinances often contain more drawings than words, and they are intended to achieve a certain community character. Again, the standards must be specific and clear, as must the criteria for deciding whether the designs are acceptable.

IC 36-7-4-1503

IC 36-7-4-1400 Series

### Overlay Districts

An overlay district serves as an additional layer of regulations in areas that are particularly sensitive. The underlying zoning district does not change, and there are generally more requirements pertaining to the overlay.

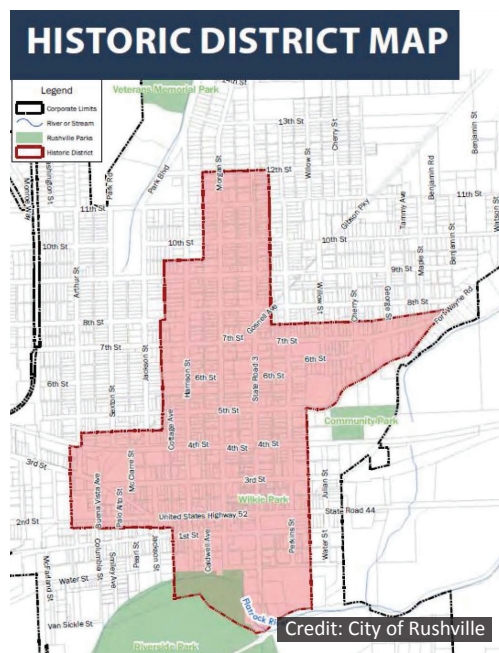
Many communities choose to create overlay districts for areas in need of special aesthetic attention. A prominent corridor, commercial area, or historic district may need special requirements to ensure a positive perception by users. For example, it may be desired to minimize corridor-adjacent parking, encourage cross-access between developments, or more heavily screen outdoor product and waste storage.

Wellhead protection districts are another common type of overlay district in many Indiana communities. The purpose is to protect the community's wellheads or water source. Developments within a wellhead protection district may be required to submit documentation to the local water utility company before development and then periodically to be sure that the community's water source is not contaminated.

An airport noise overlay district is different in that it remains in place unless the noise generated by the airport changes (adding a new runway, for instance). The airport noise overlay district restricts noise sensitive uses such as residences, nursing homes, mobile homes, outdoor auditoriums and similar uses. Some uses are not only allowed but encouraged in noise overlay zones due to their compatibility with noise, such as: manufacturing, most commercial uses, agriculture, mining, and warehousing.

### Farmland Preservation

For many Indiana communities, especially counties, agricultural protection is of prime importance. There is nationwide attention now being given to protecting farmland. In Indiana, the Land Resources Council is charged with finding ways to address this issue. Farmland preservation is not just about food supply; it is about rural landscapes and lifestyle. There are several techniques available to retaining farmland and rural character.



**Exclusive agricultural zones** allow only farming. Houses are considered accessory to farming operations. This land cannot be subdivided or developed for any purpose other than agriculture. If enforced, these zones are effective in protecting farmland.

Many local legislative bodies, however, find it difficult to resist the pressure to rezone these areas for new housing developments and shopping centers. The opposition can be significant, as property owners perceive these exclusive agricultural zones to significantly reduce property values.

**The large-lot zoning technique** establishes a minimum lot size intended to discourage development. Typical sizes range from 5 to 20 acres. These lot sizes often are not large enough to promote the continuation of farming. Many experts believe the minimum size should be 40 or 80 acres; otherwise, the large area requirements simply waste land and drive up the cost of housing and of local services and infrastructure.

Large lots can create the feel of more open space, and they provide better opportunity for properly functioning septic systems and private wells in areas where those are permitted or encouraged.

**Purchase of development rights** (PDR) programs pay landowners for the development rights to their property. An appraisal is made of the difference between the property value as agriculture land and its value if sold for development. The landowner is paid the difference, and the land is permanently protected from development. Several states including Michigan, Massachusetts, New Jersey, and Pennsylvania have these programs. Indiana recently adopted such a program, but funding is currently limited. In Colorado, one county recently voted to increase property taxes to create a pool of funds for such purchases. One suggestion has been to pay for the development rights through a tax on new development.

**Transfer of development rights** (TDR) is relatively recent and not widely used. It involves establishing a base density and then allowing density credits to be taken from one area and applied to another. For example, assume the base density is one unit per acre. A community wishing to protect prime farmland could designate that farmland as “donor areas” and areas less good for farming as “receiving areas.” A developer could transfer 40 development right credits from a 40-acre farm and use them to create 80 ½ acre lots on land not designated for farming.

### Form-Based Zoning

Form-based zoning is a unique form of regulation that places emphasis on the design, appearance, and desired character of an area and does not designate permitted uses. In its purest form, all uses can be made to be compatible with each other according to their design. However, a code of this sort may still regulate whether uses that typically affect their neighbors in a negative way, such as through odor, pollution, vibration, noise, or other means, are truly compatible.



According to the definition given by the United States Environmental Protection Agency, form-based zoning:

“Allows market demand to determine the mix of uses within the constraints of building type set by the community. The community establishes zones of building type and allows building owners to determine the uses. The look and layout of a street is carefully controlled to reflect neighborhood scale, parking standards, and pedestrian accessibility, but building owners and occupants are allowed maximum flexibility to determine how the buildings will be used.”

Some communities that have attempted to implement form-based zoning have resulted in hybrid codes, where a base zoning district may regulate density and land use, but all other standards are flexible according to their location with regard to the use that they apply to.

## Mixed Use Developments

Similar to Form-Based Zoning, mixed-use developments emphasize and regulate form more than use. However, instead of allowing any use, only certain uses considered to be compatible in close proximity to each other are permitted. For example, a small commercial intersection in a neighborhood might be a mixed-use development that allows residential, commercial, entertainment, schools, and very light industry, such as a brewery or wood workers shop. All uses permitted within a mixed-use development would need to adhere to the same land use regulations.





## Adopting the Ordinance

Indiana Code specifies certain actions that local governments must take into consideration before adopting a zoning ordinance. After adopting a comprehensive plan, the process for adopting a zoning ordinance involves the following steps:

- 1) The plan commission must initiate the process and prepare the ordinance. The plan commission then schedules a public hearing and publishes notice in the newspaper at least 10 days before the hearing date. This notice must contain a summary of the contents of the ordinance and the entire text of any penalty provisions;
- 2) The commission holds the public hearing and accepts comment from interested parties;
- 3) The plan commission votes to recommend the ordinance and certifies it to the legislative body (city or town council or county commissioners) for adoption; and
- 4) The legislative body adopts, amends, or rejects the ordinance. If it so desires, the legislative body may schedule a public hearing on the ordinance before it takes action. If the legislative body rejects or amends the ordinance, it must return the proposal to the commission with reasons for the rejection or amendment. The plan commission must then consider the rejection or amendment. If the commission agrees, the legislative action stands. If the commission disagrees, the legislative body must vote a second time.

The commission must publish a notice of adoption, and any penalty provisions in the ordinance must be published in their entirety. The ordinance is not effective until 14 days after the penalty provisions are published.

While this process may seem somewhat cumbersome, it is designed to ensure that there is a dialogue between the commission and the legislative body. There are time limits on the actions to be taken after the plan commission certifies the ordinance. The staff and commission should pay careful attention to these deadlines.

The minimum steps required by statute usually are not enough for an effective and successful adoption process. It is a good idea to hold one or more public meetings before the formal public hearing. At these meetings, the ordinance can be explained and the public has an opportunity for questions and comments. It is likely that the commission or ordinance committee will want to make changes based upon these comments before advertising the ordinance for public hearing. Effective participation requires that copies of the ordinance be available for public review. In addition to having a copy available in the planning office, the staff should place copies in other places that are readily accessible to the public, such as the public library or on the community's website. Ordinances usually go through several revisions before adoption, and it is confusing to have several different versions circulating in the community. Review copies should be dated and clearly marked as drafts.

IC 36-7-4-602

### Amending the Ordinance

Even the most carefully thought-out ordinance will need to be amended from time to time. There are two types of zoning ordinance amendments: text amendments which include changing, adding, or deleting written provisions in the ordinance, and map amendments which are commonly called “rezonings” but can also include adjusting zoning boundaries. The processes for these two types of amendments are different, and it is important that each type is handled correctly.

#### Text Amendments

Text amendments are handled in much the same manner as the adoption of the initial ordinance. The plan commission must hold a properly advertised public hearing on the proposal. The hearing notice must state the subject matter of the amendment. As with adoption of the initial zoning ordinance, the legislative body may adopt, reject, or amend the proposed text amendment. If the council or county commissioners reject or amend the proposal, they must return it to the plan commission with the written reasons for the rejection or amendment, and the process is the same as for the initial adoption of the ordinance.

#### Map Amendments (Rezonings)

A typical plan commission agenda includes one or more requests to rezone property, or an amendment to the zoning map. State statute requires the plan commission and legislative body to pay reasonable regard to the following factors in considering a proposal to rezone land:

- The comprehensive plan;
- Current conditions and the character of current structures and uses in each district;
- The most desirable use for which the land in each district is adapted;
- The conservation of property values throughout the jurisdiction; and
- Responsible development and growth.



The local zoning ordinance text may contain additional criteria. The effectiveness of many comprehensive plans is determined by the care the plan commission and legislative body take in deciding rezonings. There often is considerable pressure from developers and from the public on these issues, and it is important that the decision be made based upon the adopted goals and policies for future land use.

IC 36-7-4-602

IC 36-7-4-603

Indiana law allows rezonings to carry written commitments. In some states these are called “conditional” rezonings. These commitments may be imposed by the city or county or offered by the applicant. Commitments are permitted only if the zoning ordinance provides for them. The ordinance must specify the circumstances in which commitments are required as well as the procedures for creating, amending, enforcing, and terminating commitments. The commitments must be recorded in the office of the county recorder.

While commitments can be a useful tool to ensure quality development that is compatible with its surroundings, they also can be overused and abused. Commitments should not be a substitute for a well-drafted zoning ordinance, and they should not be used to satisfy every neighborhood demand. Each commitment requires mapping, tracking, and enforcement, and they should be used only where they are really necessary or highly beneficial.

### CONCLUSION

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One of the most important characteristics of a zoning ordinance is its ability to bring development issues to the table at a public hearing. Any time a property owner wishes to change the current land use designation, notice is given to the public and a meeting is scheduled. Those in favor of or against the proposal have the opportunity to speak to the plan commission and legislative body prior to any decision.

The zoning ordinance gives the community a voice in the development of their community. No matter how large or small the community, the voices of the residents should help influence the decisions made or the process will be tainted.

### DISCUSSION TOPICS

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- Is your community’s zoning code heavy on aesthetic value? Is this a priority for your community? Should it be?
- Is your community’s zoning ordinance cumulative?
- Think about the zoning map in your community. Is it easily accessible? Is it easy to read and understand?
- Does your community’s zoning ordinance have more than one industrial district? If so, what are the major differences between them?
- Are the permitted uses listed in your zoning code outdated?
- Does your community’s zoning ordinance have any overlay districts?

### SUGGESTED RESOURCES

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Mandelker, Daniel R. Land Use Law, Sixth Edition. Published by LexisNexis, 2016.