



# Planning Implementation Tools

## Zoning Ordinances



Center for Land Use Education

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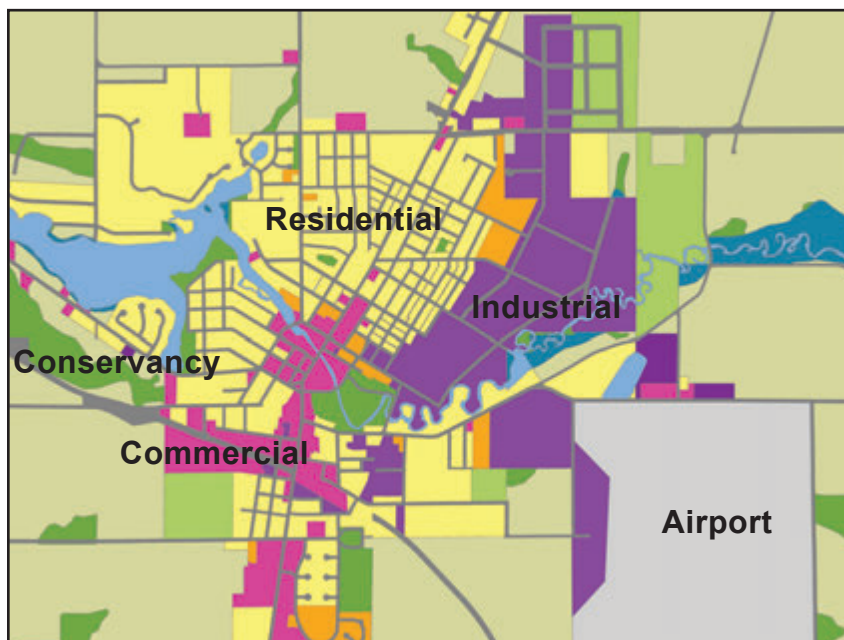
### TOOL DESCRIPTION

Zoning is one of the most common methods of land use control used by local governments. At its core, zoning regulates how a parcel of land in a community may be used and the density of development. Zoning may also regulate the height, shape, bulk or placement of structures and lot sizes or shapes. The intent of zoning is to balance individual property rights with the interests of the community to create a healthy, safe and orderly living environment.

### COMMON USES

Among its many purposes, general zoning may be used to:

- Protect public health, safety and general welfare
- Promote desirable development patterns
- Separate incompatible uses
- Maintain community character and aesthetics
- Protect community resources such as farmland, woodlands, groundwater, surface waters, historic or cultural resources
- Protect public and private investments
- Implement a comprehensive plan



Specialized forms of zoning such as exclusive agricultural zoning; shoreland, wetland or floodplain zoning; and cluster zoning may be used to accomplish specific objectives different than general zoning. This fact sheet focuses on general zoning and does not elaborate on other forms.

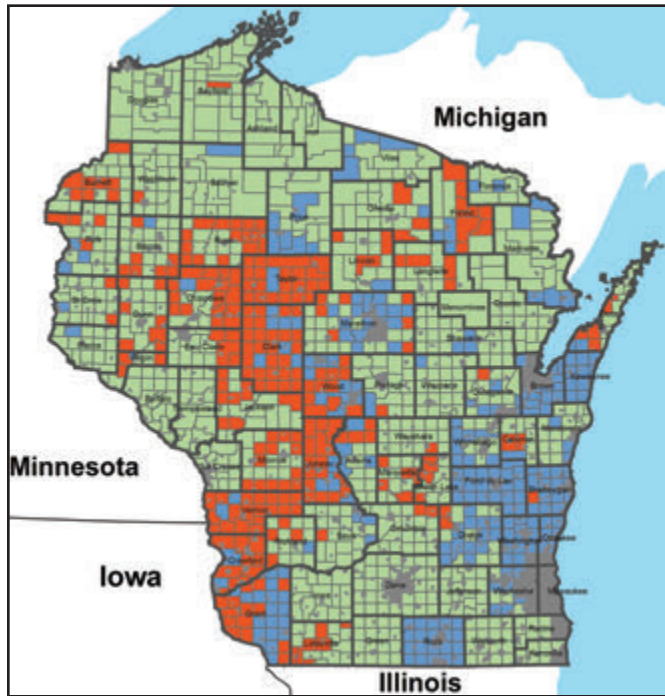
### History of Zoning in Wisconsin

- ◆ **1920** – First Wisconsin zoning ordinance created in Milwaukee.
- ◆ **1923** – Milwaukee zoning ordinance upheld by the Wisconsin Supreme Court. Other Wisconsin cities and villages adopt zoning shortly thereafter.
- ◆ **1929** – Wisconsin Legislature authorizes zoning to regulate all uses in rural areas.
- ◆ **1933** – Oneida County adopts first comprehensive rural zoning ordinance in the U.S.
- ◆ **1968** - Wisconsin requires local governments to administer minimum shoreland and floodplain zoning regulations.

*Figure 1: Zoning ordinances contain maps and text that regulate the uses of land and dimensions and placement of structures within various zoning districts. The zoning map shown at left uses district boundaries to separate uses.*

## IMPLEMENTATION

Figure 2: Status of Zoning in Unincorporated Areas, 2006



According to a 2006 survey, 57 counties administer general zoning ordinances, 747 towns participate in county zoning programs, 244 towns administer town zoning ordinances, and the remaining 269 towns are unzoned.

### AUTHORITY

The use of zoning to specify how land may be used and developed is considered a valid use of the public regulatory power, or police power, by the U.S. Supreme Court and Constitution. In Wisconsin, state statutes provide authority and procedures for communities to adopt general zoning, also known as comprehensive zoning, in order to protect public health, safety and general well-being.

- Counties may adopt general zoning which applies to unincorporated (town) lands within their boundaries, provided the town adopts the county ordinance (Wis. Stat. § 59.69(5)).
- Cities and villages may adopt general zoning which applies to lands within their municipal boundaries (Wis. Stat. § 62.23(7)), or extra-territorial zoning which applies to surrounding unincorporated areas (Wis. Stat. § 62.23(7a)).
- Towns may adopt general zoning if they are located in a county without general zoning (Wis. Stat. § 60.61) or if they adopt village powers and obtain county approval (Wis. Stat. § 60.62).

The use of general zoning in Wisconsin is optional. In contrast, counties are required by the state to enforce shoreland zoning. Likewise, communities that have been issued floodplain or wetland maps are required to enforce floodplain and shoreland-wetland zoning. The map at left shows the status of general zoning in unincorporated areas of Wisconsin.

### CREATION

A zoning ordinance contains two legally adopted components: a map (or series of maps) and text. The zoning map divides a community into different land use districts or ‘zones’ which are designated for different uses, such as residential, commercial, industrial or agricultural use. These districts are mapped based on land suitability, avoidance of conflict with nearby uses, protection of environmental features, economic factors such as efficient provision of public services and infrastructure, and other locally determined land use objectives articulated in a community plan.

The text of the zoning ordinance spells out rules that apply to each zone. Though not required by law, most zoning ordinances contain the following sections<sup>1</sup>:

1. **Title, Authority and Purpose.** This section identifies the state enabling legislation which empowers the community to adopt zoning and outlines the community’s “statements of purpose” or reasons for having zoning.
2. **General Provisions.** This section includes definitions of terms and describes the area affected by the ordinance.

<sup>1</sup> Chandler, Michael, and Gregory Dale. (Spring 2001) “Zoning Basics.” *Planning Commissioners Journal*, No. 42.

## IMPLEMENTATION

- 3. Zoning Districts and Regulations.** This section lists and defines each zoning district and sets out rules that apply to land in each district. These rules specify allowable types of uses, the density of structural development, and dimensions of structures and setbacks. Two general types of allowable uses are listed for each district: permitted and conditional uses.
- 4. Nonconforming Uses, Structures and Parcels.** When a zoning ordinance is adopted, some existing uses, structures or parcels of land may not comply with the zoning regulations. Though generally allowed to continue, the expansion, reconstruction or conversion of these legal “nonconformities” may be limited.
- 5. Impact Regulations.** This section describes a variety of “impact” standards, such as parking, landscaping, signage, historic preservation or environmental requirements, which are put in place to mitigate the impacts of development.
- 6. Administration and Enforcement.** This section outlines the duties of those involved in administering the zoning ordinance, specifies procedures for amending the ordinance, and sets fines for zoning violations.

## ADOPTION

The process for adopting a general zoning ordinance is as follows:

1. Upon request of the governing body<sup>2</sup>, the planning and zoning committee<sup>3</sup> prepares draft zoning recommendations, usually with the assistance of legal counsel, an advisory group, zoning staff, or a private consulting firm. Recommendations should be guided by and consistent with a comprehensive plan.
2. Following publication of a class 2 notice, a public hearing is held on the draft zoning ordinance. Opportunities for public participation prior to the public hearing are usually necessary to ensure that the ordinance is understood and accepted by the public.
3. In response to public comments, the planning and zoning committee may modify the draft zoning ordinance or forward it to the governing body with a recommendation to adopt. The governing body may also request the planning and zoning committee to perform additional work. If significant changes are made, the public hearing process should be repeated.
4. The governing body adopts the final zoning recommendations by ordinance. Prior to adoption, cities, villages and towns are required to hold a second public hearing preceded by a class 2 notice. In order for a county general zoning ordinance to take effect in a town, the ordinance must be approved by the town board and a resolution filed with the county.

<sup>2</sup> Refers to a county board, town board, city council or village board.

<sup>3</sup> Refers to a city, village or town plan commission or committee, a county zoning agency, or a county planning and zoning committee or commission.

*Figure 3: Typical Zoning Districts*



C1 – Commercial



R1 – Single-Family Residential



R2 – Multi-Family Residential



CON – Conservancy



A1 – Exclusive Agricultural

Figure 4: Typical uses found in a Single-Family Residential Zoning District

Permitted Uses:

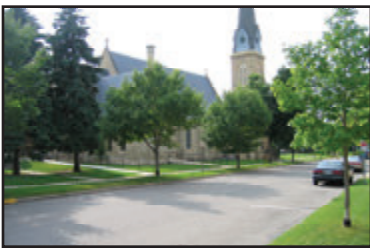


Single family dwellings



Parks and playgrounds

Conditional Uses:



Churches and cemeteries



Schools and day care centers

## IMPLEMENTATION

### ADMINISTRATION

When trying to determine what can be done with a property, an individual must first view the zoning map to identify the property's zoning, and then read the text of the ordinance to identify allowed uses and other pertinent regulations. Zoning staff can help the public to understand what is allowed in various zoning districts.

#### *Permitted Uses*

Permitted uses are allowed as a matter of right in all locations in a zoning district and may be authorized by the zoning administrator or building inspector with a simple permit. Authorization must be granted if the project complies with general standards for the zoning district, any overlay district or design standards, and related building or construction codes. If the permitted uses in a zoning ordinance do not allow the use sought by landowners, they may seek special review of the situation through a conditional use, variance or zoning amendment.

#### *Conditional Uses*

Conditional uses are also listed in the zoning ordinance for each district and may be allowed if they meet the standards listed in the zoning ordinance. Generally, they must be compatible with neighboring land uses, tailored to meet the limitations of the site, and not in violation of the objectives of the zoning ordinance. Conditional uses are decided by the governing body, planning and zoning committee, or zoning board of adjustment or appeals.

#### *Variances*

A zoning variance authorizes a landowner to use a property in a manner that is not permitted by the zoning ordinance. Variances come in two types: use variances and area variances. Use variances, which are rarely granted to avoid undermining the purposes of the zoning ordinance, allow a landowner to use a property in a manner that is not allowed by the zoning ordinance. Area variances, which are more common, allow a property owner to violate a dimensional requirement, such as a building setback or height limitation. The local zoning board of adjustment or appeals determines whether to grant a variance request based on the criteria outlined in state statutes and local ordinances.

#### *Nonconforming Uses*

A nonconforming use is one which existed lawfully prior to the adoption or amendment of a zoning ordinance, but does not comply with present zoning provisions. Wisconsin law generally protects existing legal nonconforming principal uses of buildings, structures, premises or fixtures if they continue unchanged. However, communities may use a variety of methods to prohibit or limit the expansion of nonconforming uses.

## IMPLEMENTATION

### AMENDMENT OR REVISION

Both the zoning map and the text of the zoning ordinance may be updated and amended over time. An ordinance amendment or “rezoning” is usually initiated at the request of a landowner or by a local governing body. A request to change the ordinance is referred to the planning and zoning committee who reviews it and makes a recommendation to the governing body. Following publication of a class 2 notice and public hearing, the governing body has authority to amend the zoning ordinance. Any proposed changes should be reviewed to make sure they are “consistent” with the community’s comprehensive plan.

#### *Town Review Authority*

Towns have authority to disapprove most amendments to a county general zoning ordinance. In the case of map amendments, individual towns may veto the amendment if the proposed change falls within the town boundaries. In the case of text amendments affecting multiple towns, a majority of affected towns must disapprove within a specified time period. Shoreland and floodplain zoning ordinances are not subject to town disapproval (Wis. Stat. § 59.692(2)).

#### *Comprehensive Revision*

If a community wishes to incorporate “numerous and substantial changes,” in essence rewriting the zoning ordinance, the community should consider a comprehensive revision. Following the same procedures for adopting a zoning ordinance, the community may repeal the old ordinance and adopt the new one. Because town approval of a county zoning ordinance is required, towns may “opt out” of county zoning during a comprehensive revision.

### ENFORCEMENT

Enforcement procedures should be outlined in the local zoning ordinance. Techniques generally include refusal of a building or occupancy permit, court action to force compliance, remediation, or fines and forfeitures. Enforcement actions may be initiated by the governing body or affected landowners.

### APPEAL OF ZONING DECISIONS

Applicants, neighboring landowners, and other specified parties that are dissatisfied with a zoning decision may file an appeal within time limits specified by state statutes and local ordinance. Administrative decisions, such as interpretations of a zoning map or text and simple zoning permits, are appealed to the zoning board of adjustment or appeals. Variances and map or text amendments are appealed directly to circuit court. Appeal of conditional use permits depends on which body issued the original decision.

*Figure 5: Uses that may not be allowed in a Single-Family Residential Zoning District*

#### Nonconforming Uses:



A gas station that existed prior to the ordinance may be allowed to continue as a nonconforming use

#### Unlisted/Prohibited Uses:



Uses not specifically listed in the ordinance for a district, such as this industrial building, are prohibited

# Integrating Performance Standards in Traditional Zoning

Traditional zoning ordinances focus on uses of land that are allowed within various districts, and dimensions of buildings and setbacks. In contrast, performance zoning specifies the allowable impacts of a development. While some zoning ordinances are based entirely on performance standards, most incorporate a few performance standards. These standards might address:

- the size, scale or height of buildings
- hours of operation
- traffic, noise, light or odor
- impervious surface coverage
- landscaping
- compatibility with neighboring uses

**Strengths:** Performance standards provide landowners and developers with flexibility to determine how best to meet these standards. In many cases, they streamline the development approval process. Additionally, performance standards may spur municipalities and developers to incorporate new technologies or other innovations not normally allowed with the use of traditional zoning.

**Weaknesses:** Performance standards may be more difficult to administer because they do not follow easily measurable criteria. Performance zoning decisions that are based on confusing formulas, engineering models, or subjective criteria may increase the risk for legal challenges. Developments under performance zoning may also require more technical expertise and cost to design, evaluate or monitor.

*Figure 6: Traditional and performance zoning standards used to regulate parking*

## Traditional Standard

“Impervious surface coverage shall be limited to 25% of the lot to minimize runoff.”



Potential result: 75% of lot is maintained in green space but most runoff is directed to storm drains.

## Performance Standard

“All stormwater runoff shall be retained on site. Treatments might include swales, filter strips, ponds, wetlands, or underground storage.”



Potential result: Vegetative swale, no curbs, and landscaping combine to provide on-site infiltration.

## FOR MORE INFORMATION

Bucks County Planning Commission. (1996) *Performance Zoning Model Ordinance, Bucks County, Pennsylvania*. Available at <http://www.smartcommunities.ncat.org/codes/bucks.shtml>

Kendig, Lane. (1980) *Performance Zoning*. Chicago: Planners Press.

Porter, Douglas R., Patrick L. Phillips, and Terry J. Lassar. (1988) *Flexible Zoning: How It Works*. Washington: The Urban Land Institute.

# *Report Card: Zoning Ordinances*

<b>Cost</b>	<b>Money or staff resources required to implement tool.</b>
<b>B</b>	Writing a zoning ordinance requires significant upfront costs and is usually accomplished with the assistance of a private consultant or land use attorney. Model ordinances are available but must be tailored to the community to be effective. Once in place, a well-written zoning ordinance is relatively simple and inexpensive to administer. At least one staff person (more in larger communities) is required to administer the ordinance. Legal challenges can significantly increase the cost of zoning.
<b>Public Acceptance</b>	<b>The public's positive or negative perception of the tool.</b>
<b>B</b>	The public's familiarity with zoning over time has increased its acceptability. Infringing on private property rights is a common and legitimate public concern. Individual zoning decisions that are "unfavorable" to a landowner or developer may be challenged. Public participation is necessary to create an ordinance that is understood and accepted by the public.
<b>Political Acceptance</b>	<b>Politician's willingness to implement tool.</b>
<b>B</b>	Roughly 80% of Wisconsin communities have general zoning, showing that it is widely accepted by local governments. When adopting an ordinance for the first time, politicians may be afraid to impose new regulations that appear to infringe on property rights. For zoning to compete successfully for local government resources, the benefits and drawbacks need to be understood by politicians.
<b>Equity</b>	<b>Fairness to stakeholders regarding who incurs costs and consequences.</b>
<b>B</b>	Individual landowners may experience some costs associated with zoning (such as being unable to build too close to a lot line). However, these costs are generally offset by other public and private benefits (such as maintenance of property values or creation of safe and efficient living environments).
<b>Administration</b>	<b>Level of complexity to manage, maintain, enforce, and monitor the tool.</b>
<b>B</b>	The difficulty of administering zoning depends on the complexity of the zoning ordinance. Numerous requests for variances may signal the need to build flexibility into the zoning ordinance (i.e. setback averaging, performance or design standards, etc.). Monitoring and enforcement may suffer from lack of staff or monetary resources.
<b>Scale</b>	<b>The geographic scale at which tool is best implemented.</b>
<b>County or Municipal</b>	This tool is suited for use in counties, towns, cities and villages.

**GRADING EXPLANATION**

A - Excellent

B - Above Average

C - Average

D - Below Average

F - Failing

Grades are subjective ratings and should be considered in light of local circumstances.

## WISCONSIN EXAMPLES

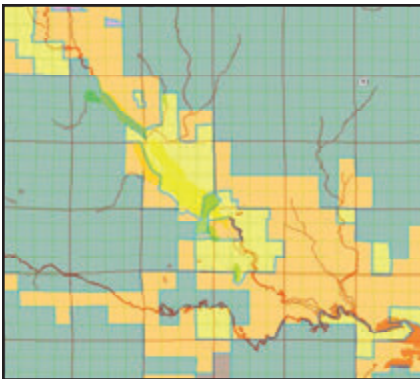
Figure 7: Planned land use map and zoning map from the Town of Wilson in Lincoln County



### Planned Land Use Map

#### Major Land Use Designations:

- Public Forest
- Private Forest
- Environmental Corridor
- Rural Single Family Residential
- Rural Lands



### Zoning Map

#### Major Zoning Districts:

- Forestry
  - Recreation
  - Rural Residential
  - Rural Lands
- Lakes Classification:
- High Sensitivity
  - Moderate Sensitivity
  - Low Sensitivity

### Lincoln County

Following adoption of Wisconsin's comprehensive planning law in 1999 (Wis. Stat. § 66.1001), Lincoln County was one of the first communities to create a comprehensive plan and subsequently revise its zoning ordinance to be "consistent" with its plan.<sup>4</sup> The zoning recodification process took approximately two years, involved considerable coordination with the towns, and was accomplished with the help of a private consultant. Because the county undertook a "comprehensive revision" of its ordinance, one town decided to adopt its own zoning ordinance, while four others opted out of county zoning.

As shown by the maps at left, the consistency requirement does not mean that a zoning map needs to be identical to the "planned" or "preferred future" land use map contained in a comprehensive plan. Rather, these documents and any subsequent decisions should be compatible. As an example, the "private forest" designation on the land use map corresponds with both the "forestry" and "rural lands" districts on the zoning map.

### FOR MORE INFORMATION

Daniels, Thomas L., John W. Keller and Mark B. Lapping. (1995) "The Zoning Ordinance." Chapter 16 in *The Small Town Planning Handbook, 2nd Edition*. Chicago: APA Planners Press.

Markham, Lynn and Rebecca Roberts. (2006) *Zoning Board Handbook for Wisconsin Zoning Boards of Adjustment and Appeals, 2nd Edition*. Center for Land Use Education. [www.uwsp.edu/cnr/landcenter/pubs.html](http://www.uwsp.edu/cnr/landcenter/pubs.html).

Struck, Kevin. (no date) *Zoning*. [Fact sheet adapted from Brian Ohm's (1999) *Guide to Community Planning in Wisconsin*]. University of Wisconsin-Extension. [www.uwsp.edu/cnr/landcenter/pubs.html](http://www.uwsp.edu/cnr/landcenter/pubs.html).

### ACKNOWLEDGEMENTS

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Figure 1 map by Douglas Miskowiak. Figure 2 map by Dan McFarlane, Eric Olson and UW-Stevens Point Land Use Plan Implementation class. Figure 3 and 5 photos taken by Center for Land Use Education staff. Figure 4 and 6 images © Regents of the University of Minnesota. Used with permission of the Metropolitan Design Center. Figure 7 land use map by Vandewalle & Associates. Figure 7 zoning map by Lincoln County Land Information.

<sup>4</sup> The comprehensive planning law requires zoning decisions to be consistent with a comprehensive plan beginning on January 1, 2010.