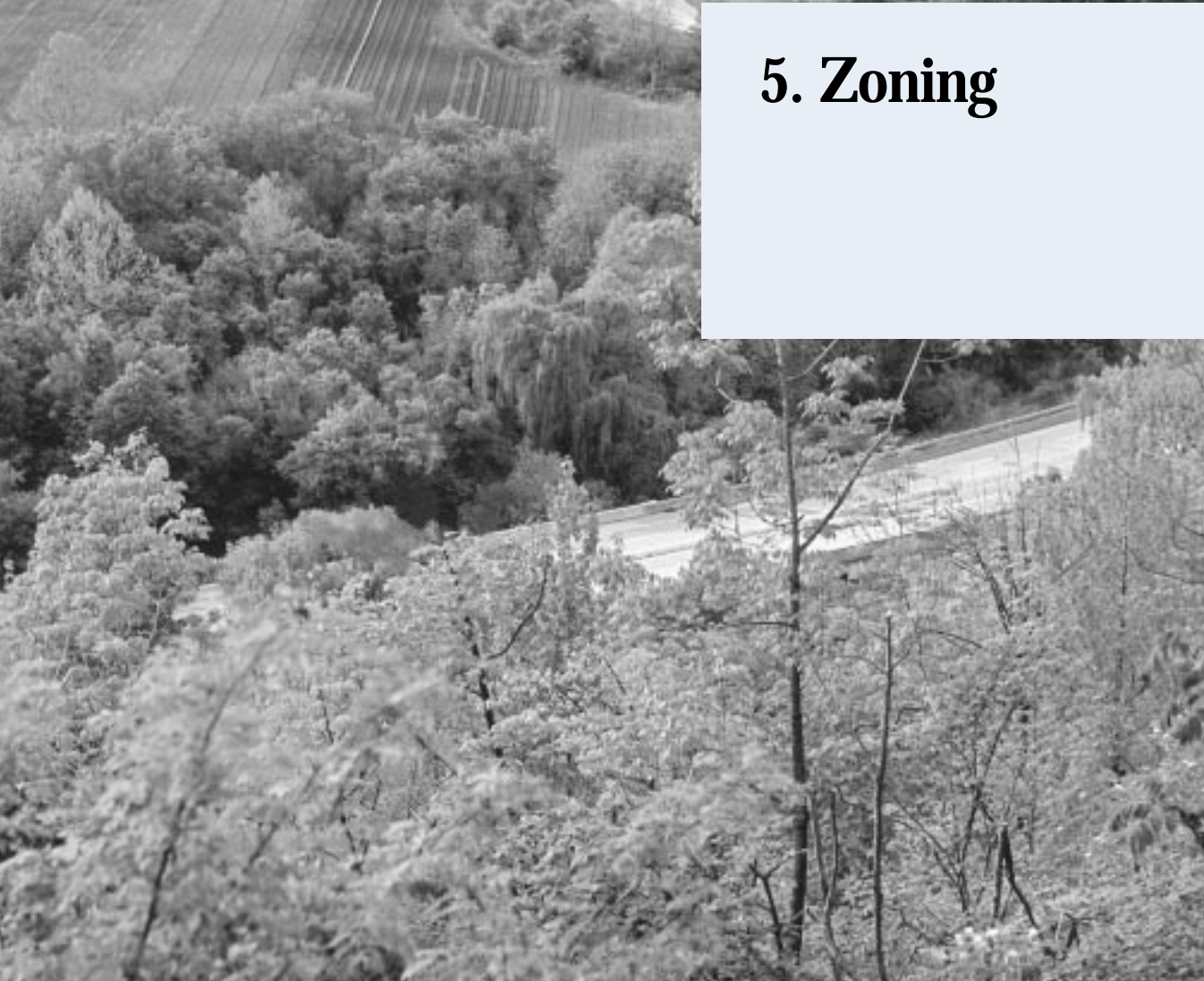




5. Zoning



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This Penn State Cooperative Extension publication is one in a series of bulletins intended to help you better understand the current use of land use planning tools in Pennsylvania. The series uses information from a comprehensive study of Pennsylvania land use regulation and planning, which was made possible in part by a grant from the Center for Rural Pennsylvania, a legislative agency of the Pennsylvania General Assembly.

The comprehensive land use study involved three separate but related surveys that were conducted in late 1999. The first and largest survey was sent to all 2,511 boroughs and townships in Pennsylvania. Forty-two percent, or 1,057 of these surveys were returned. The second survey was sent to all 65 planning directors in Pennsylvania (with the exception of Philadelphia County). Fifty-four surveys were returned, for a response rate of 83 percent. The third survey was sent to all 395 members of the American Institute of Certified Planners who are listed in Pennsylvania. Of these, 181 were returned, for a response rate of 46 percent. The three surveys provide a composite overview of planning effectiveness from a variety of perspectives.

Most of the tables in this publication use data from the state or regional level. For county-level results, visit the Land Use Planning in Pennsylvania Web site at <http://cax.aers.psu.edu/planning/>

For many people, zoning regulations are what make land use planning real. Zoning controls the location of different land uses in a community, and may be used to restrict the types of uses to which land may be put and the intensity of the development. By controlling location, use, and intensity (or density), zoning can play a significant role in protecting critical features in a community such as farms, rural villages, fragile environmental areas, or historic areas. While not as widely used as subdivision and land development regulations, zoning is very common in Pennsylvania.

Most zoning is enacted at the municipal level. County zoning is authorized by the Municipalities Planning Code but is not widely practiced at this time. The Municipalities Planning Code gives precedence to municipal zoning over county zoning; a municipality can override a county zoning ordinance simply by enacting its own zoning ordinance. This relationship between county and municipal zoning ordinances has resulted in relatively few county governments bothering to enact such an ordinance.

The use of zoning throughout Pennsylvania is important to consider if land use planning is to be made more effective. What types of municipalities are most likely to have zoning, and how up-to-date are the ordinances? How active are zoning hearing boards? How well are municipalities taking advantage of the various features that can be included in their zoning ordinances? How many counties have zoning ordinances, and how are they being used? All are important questions to examine.

Municipal Zoning

According to the survey responses, about 57 percent of Pennsylvania townships and boroughs have a municipal zoning ordinance. About 60 percent of boroughs have zoning, as do 100 percent of townships of the first class and 53 percent of townships of the second class. Municipalities in southeast (99 percent) and southcentral Pennsylvania (81 percent) are much more likely to have zoning than are municipalities in northwest (30%) and central Pennsylvania (39%) (see Figure 1).

Whether a municipality has a municipal zoning ordinance also is related to population size. Municipalities with smaller populations are much less likely to have zoning than are larger municipalities (see Table 1). Municipalities in urban counties similarly are much more likely to have a municipal zoning ordinance (82 percent) than are municipalities in rural counties (34 percent).

Not unexpectedly, municipalities that have been experiencing more population and building pressures are more likely to have a zoning ordinance than are municipalities that have had little population change or have been losing population (see Table 2).

Figure 1. Percent of municipalities with a zoning ordinance.

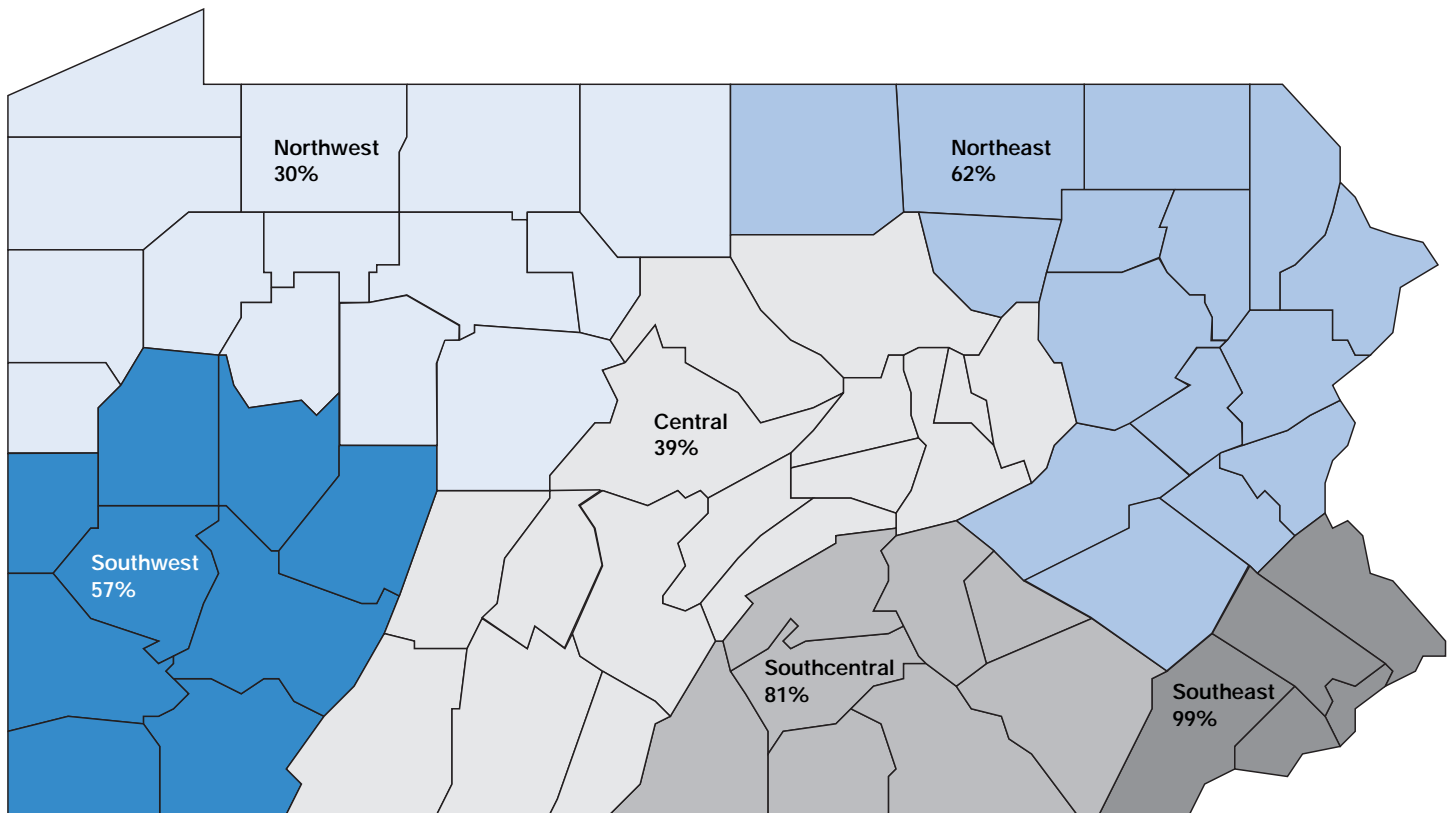


Table 1. Zoning by Population Size (percent of municipalities)

Population Size	Have Zoning Ordinance	No Zoning Ordinance	Don't Know
Less than 500 residents	24%	75%	1%
500 to 999 residents	31	69	0
1,000 to 2,499 residents	50	50	0
2,500 to 4,999 residents	82	17	1
5,000 to 9,999 residents	92	8	0
10,000 to 14,999 residents	100	0	0
15,000 to 19,999 residents	100	0	0
20,000 or more residents	100	0	0

Table 2. Zoning by Pace of Population and Building Development (percent of municipalities)

Pace of Population and Building Development	Have Zoning Ordinance	No Zoning Ordinance	Don't Know
Fast growing	87%	13%	0%
Moderate growth	77	22	0
Slow growing	49	51	0
No change	45	54	1
Declining	48	52	0
Don't know	0	100	0

Updating the Ordinance

About 75 percent of the respondents say their municipal ordinance has been updated substantially since it was first adopted. Of these respondents, about 88 percent report their municipality's most recent substantial update to have been within the past 10 years (1990 or later), suggesting that most municipalities have been actively revising their zoning ordinance in response to local needs and conditions. The most important reasons for updating the zoning ordinance include "rapid development/changes in the municipality," and "ordinance was too old" (see Table 3).

As the first bulletin in this series mentions, municipalities are more likely to have updated their zoning ordinances than their comprehensive plan. One of the most significant purposes of land use regulations and zoning is to implement the policies in the comprehensive plan, which ostensibly is supposed to provide the "vision" and guidance for land use regulations. If zoning ordinances are being revised and updated without similar revisions in the comprehensive plan, it suggests that the tail may be wagging the dog.

Zoning Officer

In most (57 percent) of the municipalities with zoning, the zoning officer is a part-time position. The most common activities performed by the officer include representing the municipality at zoning hearing board hearings, advising the governing body about changes needed in the ordinance, and attending governing body meetings (see Table 4).

Zoning Hearing Board

The number of hearings held by zoning hearing boards (see Table 5) varies dramatically across the municipalities that have a zoning ordinance, ranging from no hearings (3 percent of the municipalities) to 20 or more (9 percent).

The vast majority of municipalities (70 percent) say that their zoning hearing board never meets with the municipal planning commission to discuss zoning matters (see Table 6). About 10 percent of the municipalities say their board meets with the commission once during the year, while 5 percent say such joint meetings are held 12 times a year.

Curative Amendments

The majority of municipalities with zoning (60 percent) report they have received no curative amendment requests in the past five years. About 16 percent report they have received one request, 7 percent report two such requests, and 5 percent report three requests. About 3 percent of the municipalities report having received 10 or more curative amendment requests during the past five years.

Of these requests, about half were granted either as requested by the landowner (30 percent) or with modifications (24 percent). Only 26 percent were denied (the results of the other 20 percent are either pending or unknown by the respondent).

About one-fourth of the denials were appealed to court by the affected landowner. Of these appeals, 25 percent were decided in favor of the landowner, 30 percent were decided in favor of the municipality, and 45 percent are still pending.

Only 9 percent of municipalities with a zoning ordinance report that they have used the "municipal curative amendment" procedure in the Municipalities Planning Code as a way to avoid a landowner curative amendment. Of these municipalities, 91 percent amended the zoning ordinance to correct the invalid provisions.

Table 3. Rank of Reasons for Substantially Updating the Zoning Ordinance (percent of each response on a scale of one to five)

	Not Important					Very Important	Don't Know
	1	2	3	4	5		
Rapid development/changes in the municipality	17%	17%	14%	23%	29%	1%	
Ordinance was too old	12	9	23	22	31	2	
Comprehensive plan was updated	24	13	16	19	23	5	
Changes to the Municipalities Planning Code	17	11	26	24	15	6	
Too many curative amendments	48	15	17	6	7	7	

Table 4. Activities Performed by Zoning Officer (percent of municipalities with zoning ordinance)

	Performs Activity	Doesn't Perform Activity
Attends governing body meetings	68%	32%
Advises governing body about changes needed in the zoning ordinance	71	29
Represents municipality at zoning hearing board hearings	76	24
Attends meetings of planning commission	55	45
Drafts zoning amendments	33	67

Table 5. Annual Frequency of Zoning Hearing Board Hearings (percent of communities with zoning)

Number of Hearings	Percent
0	3%
1 to 2	25
3 to 4	20
5 to 6	13
7 to 11	15
12	12
13 to 19	5
20 or more	9

Table 6. Annual Frequency of Zoning Hearing Board Meetings with Planning Commission (percent of communities with zoning)

Number of Meetings	Percent
0	70%
1	10
2	6
3	3
4 to 10	6
12	5

Features Of the Municipal Planning and Land Use Regulations

Pennsylvania municipalities with zoning report having a variety of features in their municipal planning and land use regulations (see Table 7). These range from strict agricultural zoning provisions (21 percent of municipalities with zoning) and mandatory open space dedication (25 percent) to agreement with PennDOT for access coordination (12 percent). In general, these features are underused by the municipalities, which suggests that many zoning ordinances are out of date and inflexible.

Only 8 percent of municipalities with zoning report having a capital improvements program or budget. Such a budget should be a key component of land use planning, because it helps establish the timing of major public investments and gives the municipality the ability to plan for and control future spending (and tax increases). It is one of the most important tools a municipality can use to help plan for and manage future service demands.

Agricultural Zoning

Agricultural zoning provisions similarly vary across (and are underutilized by) the municipalities (see Table 8). Municipalities with strict agricultural zoning generally are much more likely to have key agriculture-related provisions such as not allowing farms to be subdivided into less-than-viable farm acreage (22 percent of those with strict agricultural zoning, compared to 6 percent of all municipalities with zoning), but even these municipalities tend to underutilize the options. The strong impression is that in too many communities, agricultural zoning allows many non-agricultural uses that end up competing for agricultural land.

Table 7. Features Included in Municipal Planning and Land Use Regulations (percent of municipalities with zoning)

Feature	Have	Don't Have
Performance zoning	16%	84%
Cluster zoning	29	71
Overlay zoning	21	79
Lot averaging	22	78
Urban growth boundaries	10	90
Strict agricultural zoning	21	79
Density bonus for preferred development	10	90
Mediation option to resolve land use disputes	9	91
Capital improvements program/budget	8	92
Official map ordinance for public property	19	81
Transfer of development rights	7	93
Access permits for municipal roads	28	72
Transportation impact fees (Article V-A of Municipalities Planning Code)	6	94
Mandatory open space dedication (or fee in lieu of dedication)	25	75
Planned residential development provisions in zoning ordinance	45	55
Agreement with PennDOT for access coordination	12	88

Table 8. Agricultural Zoning Features (percent of municipalities with zoning)

Feature	Percent With Zoning That Have This Feature	Percent With Strict Agricultural Zoning That Have This Feature
Permits homes only as a special exception or conditional use	6%	17%
Sliding scale to determine number of lots	7	28
Cannot subdivide farm to less than viable farm acreage	6	22
Maximum lot size for residence	13	41
Guidelines for siting residential lots in agricultural zones	15	45
Permits agriculture-related businesses	27	77
Provisions for intensive agriculture	10	35
Agricultural nuisance notice	9	30
Permits bed-and-breakfast use	16	46
Permits farm stands	27	75
Provisions for concentrated animal feeding operations (CAFO)	8	25
Manure management	8	27

County Zoning

County zoning is not widely used in Pennsylvania. The large size and diversity of most counties make county zoning technically difficult. Also, because municipal zoning ordinances take precedence over county ordinances (similar to subdivision and land development ordinances), it is not surprising that county zoning is rare.

Only eight county planning agencies (15 percent) indicate that their county has a county zoning ordinance. Half of these county zoning ordinances cover the entire county (exclusive of municipalities that have their own ordinance), and half cover only parts of the county. In two of the four counties with partial county zoning coverage, the county ordinance was developed because the municipalities asked the county for the ordinance.

Most of these county zoning ordinances cover relatively small geographic areas. Five cover seven or fewer municipalities, one covers only two townships, and another covers only three. The largest county ordinance covers 32 municipalities, while the next largest two cover 13 and 14 municipalities, respectively.

Almost all of the county zoning ordinances have been updated recently. Seven of the eight counties have revised their ordinance since it was first updated, six of these within the past six years. Three of the counties report curative amendment requests from property owners within the past five years. Two counties received two such requests, while the third received one request.

The features included in the county zoning ordinances vary across the eight counties. Cluster zoning (62 percent), planned residential development provisions (62 percent), and

strict agricultural zoning (50 percent) are the most common features across all eight ordinances (see Table 9).

None of the counties includes transferable development rights or overlay zoning in its zoning ordinance.

Table 9. Features of County Zoning Ordinances (percent of counties with zoning)

Feature	Percent
Performance zoning	38%
Cluster zoning	62
Overlay zoning	0
Lot averaging	25
Strict agricultural zoning	50
Density bonus for preferred development	13
Mediation option to resolve land use disputes	25
Planned residential development provisions	62
Transferable development rights	0

Conclusions

The use of zoning in Pennsylvania appears mixed. Larger municipalities and those in the southeast are more likely to use zoning ordinances, and many of these ordinances have been updated within the past 10 years. On the other hand, it appears that many of the updates have been done without similar updates in the comprehensive plan, suggesting a disconnect between the overall plans and direction for the community and the ordinances used to help the community get there.

It is useful for the community's zoning hearing board to meet occasionally with the planning commission to help facilitate communication, but this occurs in only 30% of the municipalities with such a board. Curative amendments do not appear to be a major problem statewide; more than half of the municipalities have not received such an amendment request within the past 5 years.

It is clear from the responses that most municipalities are underutilizing the zoning features available to them under the MPC. Those with strict agricultural zoning appear more likely to be using some of the tools affecting agriculture, but most of the tools still are used by less than half of the municipalities. More education about the tools and how they can be used is needed.

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Through a series of 15 meetings, a project advisory committee of 29 professional planners from throughout Pennsylvania provided feedback during the survey development, assisted with reviewing the preliminary results, and reviewed the investigators' findings and commentary.

The publications in the series focus on state- and regional-level information. County-level information from the study that corresponds to the publication series is available at the Land Use Planning in Pennsylvania Web site at <http://cax.aers.psu.edu/planning/>

Land Use Planning in Pennsylvania: Materials List

1. An Inventory of Planning in Pennsylvania
2. Municipal Planning Commissions
3. County Planning Agencies
4. Comprehensive Plans
5. Zoning
6. Subdivision and Land Development Ordinances
7. Training for Local Government Officials
8. Barriers to Effective Planning in Pennsylvania
9. Collaboration and Communication
10. How Effective is Land Use Planning in Pennsylvania?
11. How to Make Land Use Planning Work for Your Community