

APA-PA2017



MPC Refresher

Key Provisions, What's New, Tips for Users

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Pennsylvania Municipalities Planning Code **Act 247 of 1968 as reenacted and amended**

The MPC – Municipalities Planning Code – is the legal “bible” for planning in Pennsylvania. It specifies the essentials of content and process for comprehensive plans and land use ordinances like zoning and subdivision. It has grown from 40 6x9 pages when enacted in 1968 to over 100 8½x11 pages today.

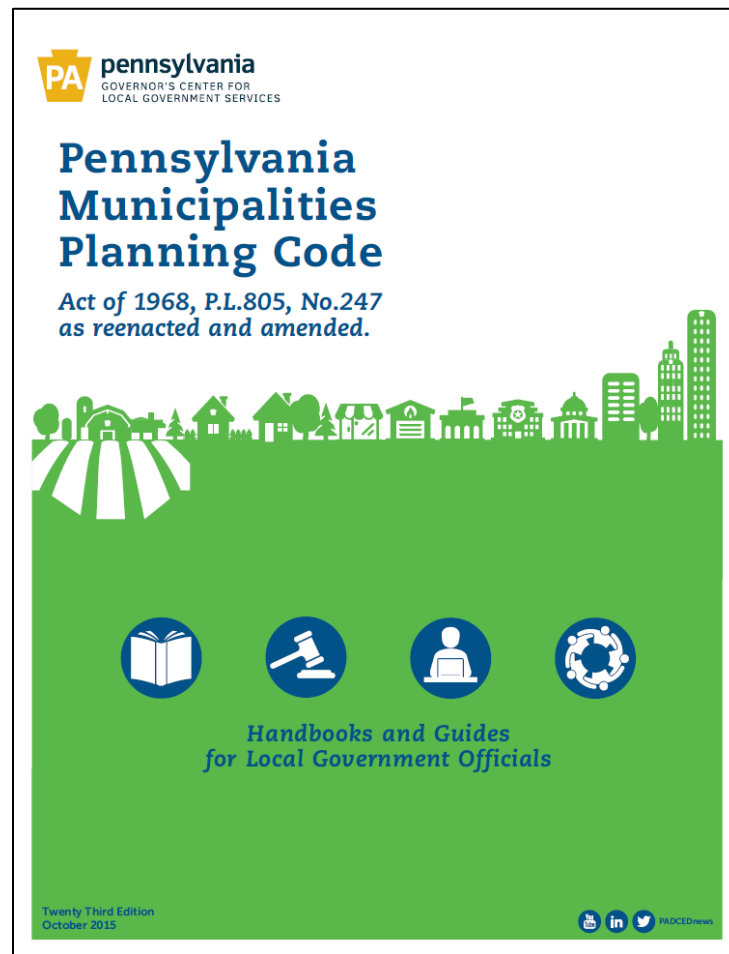
From *Pennsylvania Municipalities Planning Code Recodification & Amendments 1988-2005*, Pennsylvania Local Government Commission:

The Pennsylvania Municipalities Planning Code (MPC) establishes the basic framework for a municipality in Pennsylvania to plan for community development through the preparation of a comprehensive plan. Moreover, the MPC permits a municipality to further govern development locally through both a zoning ordinance and a subdivision and land development ordinance.

Where to find it?

<https://dced.pa.gov/library/>

Select **Local Government, Publications and Documents**



<https://dced.pa.gov/local-government/local-government-laws/>

<http://www.legis.state.pa.us/cfdocs/legis/li/public/>

Select **Unconsolidated Statutes**

Search **1968 Act 247**

BE CAREFUL – There are outdated copies of the MPC online from a variety of sources!!

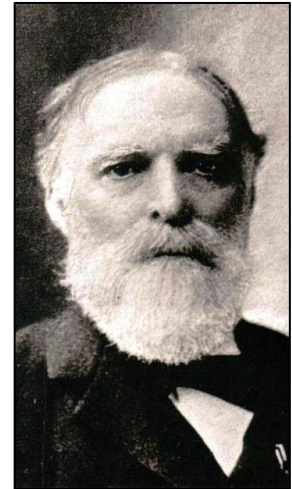
Key concepts

Enabling law, not regulatory

- Power authorized for local governments, not state
- There is no state regulatory agency

Dillon's Rule

- Local governments have no inherent authority
- Exercise only the following powers:
 - Express powers (those stated in MPC)
 - Implied or incidental powers
 - Essential powers
- When in doubt, power is denied



Uniform planning powers and procedures for all classes of local governments (except Philadelphia & Pittsburgh), including counties and home rule

- Definition of “municipality”

Other statutes

Preemptions

Case law

MPC enables:

- Structure of a planning agency
- Powers for planning, zoning, etc.
- Procedures for the exercise of powers

MPC generally does not specify the substantive content of a plan or ordinance, but it has become more prescriptive.

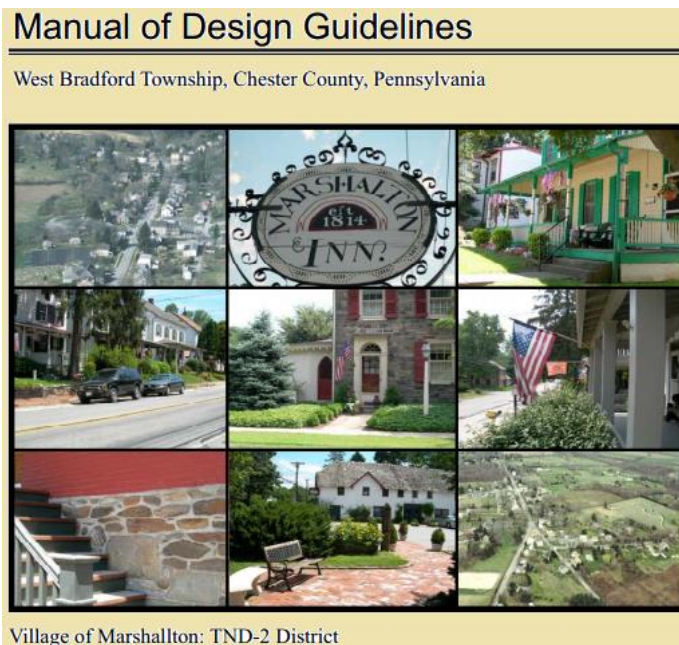
Amendments in the last 10 years

2008 Act 39

- Section 108 – New section authorizing optional notice to provide certainty of procedural validity of a land use ordinance/amendment or decision by limiting the time for bringing a procedural challenge.
- Section 1002.1-A – Time limits for a procedural challenge and challenger’s burden of proof.
- Change of jurisdiction for procedural challenge to a land use ordinance from the zoning hearing board to the court of common pleas.
- Companion law 2008 Act 40 (Section 5571.1 of the judicial code).

2010 Act 111

- Section 702-A – Changed and clarified the nature of TND zoning authorized by the MPC. TND now must be either 1) designated district or districts reserved exclusively for TND, or 2) a type of development permitted in any part of the municipality or in one or more specified zoning districts.
- Section 708-A – Clarified that a manual of written and graphic design guidelines accompanying TND provisions may be incorporated into the zoning ordinance or SALDO or both.



2012 Act 97

- Section 508.1 – Requires a municipality to submit monthly to the school district superintendent written notice of plans for “residential development” receiving final approval. Notice must include location of development, number and types of units, and construction schedule.
- Article XI-A – New article for Wastewater Processing Cooperative Planning. NOTE: Applicable in limited situations and locations, see MPC Section 1104-A.

SENATE AMENDED	
PRIOR PRINTER'S NOS. 856, 3060, 3335, 3463	PRINTER'S NO. 3792
THE GENERAL ASSEMBLY OF PENNSYLVANIA	
HOUSE BILL	
No. 823	Session of 2011

2012 Act 154

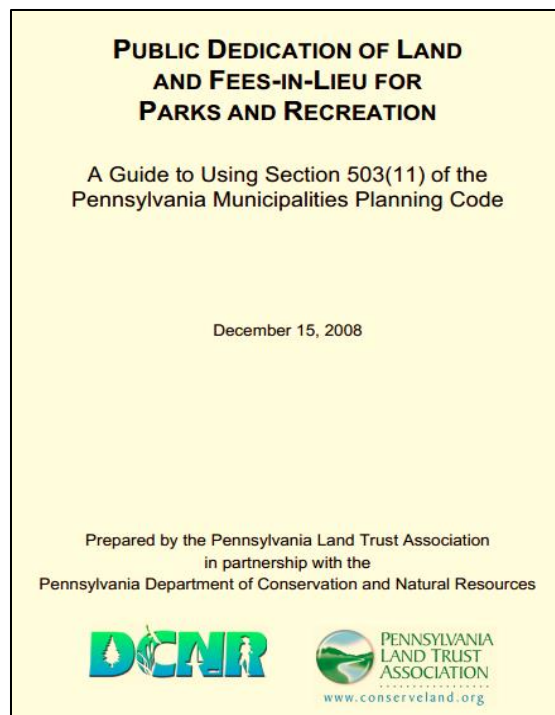
- Section 503 – Increased from 45 to 100 days the time an applicant has to dispute S&LD review fees.
- Section 509 – Minor clarifying word changes.
- Section 510 – Increased from 30 to 100 days the time an applicant has to dispute S&LD inspection fees, and changed provisions for arbitration of disputed inspection fees.

2013 Act 36

- Section 109 – New section requiring, upon request from land or mineral rights owners, notice to be provided by mail or email of a proposed zoning ordinance or zoning ordinance amendment. Included new definitions in Section 107 for “electronic notice” and “mailed notice”.
- Sections 608 & 609 – Changed to cross-reference Section 109 requirements for electronic or mailed notice.

2014 Act 135

- Section 503 – Changed provisions for recreation fees-in-lieu to allow fee proceeds to be used for acquisition, operation, and maintenance of rec facilities, to clarify that such facilities must be “reasonably” accessible to the developments that dedicated the land or paid the fees, and to remove the three-year timeline to use fees or repay them.



2015 Act 42

- Sections 203 & 207 – Provided authorization for appointment of 1-3 alternate members to a planning commission, and provided for their seating, participation, and voting.

Suggestions for reading and interpreting the MPC

Look for relevant provisions in more than one location

- 301(c), 301.4, 302(d), 603(k)
- 608, 609, 610

Read it carefully. Read every word. Interpret literally. Don't read in or assume words not there.

Check if there are definitions for certain words. The definitions add substance to the interpretation.

Words in the MPC may have specific meaning

- forestry
- land development
- preservation or protection
- public notice

There may be no clear or absolute interpretation

- Is the action or regulation legally defensible within the MPC provisions?
- Does the MPC give authorization – power or responsibility – to take specific actions or achieve specific purposes?

Check case law and how it supports, adds to, or alters the MPC

- Billboards and cell towers
- Exclusionary and fair share zoning

Land Use Law Library – State statutes and case law

<http://www.landuselawinpa.com/>

Watch for “may” and “shall”

- 503, 503-A, 603, 706-A



FAQs

Hearing, public hearing

Decision, determination

Two sets of definitions in different sections

Can comprehensive plan be appealed?

Can a municipality have more than one comprehensive plan?

Comprehensive plan structure and subject matter

Ad hoc comprehensive plan committees

Division of responsibilities and powers in zoning – governing body, zoning officer, zoning hearing board, planning commission

Zoning amendment procedures, including comprehensive revision

Applicability of zoning to state & local agencies

Conditional uses and special exceptions

Methadone treatment facilities

Subdivision and land development review process & timelines, including recording

Conditions on S&LD approvals

Multimunicipal zoning (for accommodation of “shared” uses)

Joint public hearing for multimunicipal plan or zoning ordinances

Tie vote

Additional information for Act 39 (2008) amendment to PA MPC Excerpt from DCED publication *Zoning / Planning Series #4*

(Note: The below excerpt explains Act 39 MPC amendments in the context of zoning, but Section 108 optional notice and other Act 39 provisions apply to any land use ordinance enactment or land use decision.)

Procedural Challenges to Enacted Zoning Ordinances

The validity of a zoning ordinance may be challenged on the basis that it was not enacted in conformance with the procedural requirements of the MPC found in Sections 607, 609, and 610. Such a challenge is called a “procedural challenge,” and its objective is a determination that the enacted zoning ordinance or amendment is void for failure to comply with MPC-required procedures. A procedural challenge is heard by the court of common pleas (by contrast a substantive challenge must first be heard by the municipal zoning hearing board).

There were several notable Pennsylvania court decisions involving successful procedural challenges to ordinances that had been enacted many years and even decades before the challenge. As a consequence, the ordinances were determined to be void ab initio, that is without legal validity from the moment they were enacted. The Pennsylvania legislature responded to these decisions and the concerns the decisions generated among the municipalities by enacting legislative amendments to the MPC (Sections 1002.1-A and 108) and the Judicial Code (Section 5571.1) that limit the opportunity for bringing a procedural challenge.

Both the time to bring a procedural challenge and the challenger’s burden of proof are addressed by Section 1002.1-A of the MPC. Under Section 1002.1-A, an individual bringing a procedural challenge within 30 days of enactment of the zoning ordinance need only establish that a municipality did not strictly follow the procedural requirements set forth in the MPC. However, where a procedural challenge is brought after 30 days, the municipality need only demonstrate substantial compliance with the procedural requirements. The challenger must prove that, because of the alleged defect in procedure, either the public was denied notice sufficient to permit participation, or those whose substantive property rights were or could be directly affected were denied an opportunity to participate.

In addition to Section 1002.1-A of the MPC, the General Assembly enacted Section 5571.1 of the Judicial Code, 52 Pa.C.S. § 5571.1 (Appeals from ordinances, resolutions, map, etc.). Like Section 1002.1-A of the MPC, Section 5571.1 of the Judicial Code provides presumptions of validity, times for bringing a challenge, and the challenger’s burden of proof. It also provides that a determination that an ordinance is void from inception does not affect rights acquired by property owners who, in good faith, relied on the validity of the ordinance prior to the determination that the ordinance is void.

Finally, Section 108 of the MPC (Optional notice of ordinance or decision; procedural validity challenges)

authorizes publication of a public notice of an enacted ordinance. The purpose of such optional notice is to provide certainty of the procedural validity of the ordinance by limiting the time for bringing a procedural challenge. Such optional notice must be published once each week for two consecutive weeks in a newspaper of general circulation. Such optional notice may be published by either the governing body of the municipality or any resident or landowner in the municipality. The optional notice must contain all of the information required by Section 108(c). Where the optional notice has been published, a procedural challenge to the enacted notice must be brought within 30 days of the second publication of the optional notice. If the procedural challenge is not filed within the 30-day period, the ordinance is deemed to be reaffirmed and reissued on the date of the second publication of the optional notice

Section 108 specifically provides that an appeal shall be exempt from the 30-day period if the party bringing the appeal establishes that the application of the 30-day limitation would result in an unconstitutional deprivation of due process.

However, Section 108 further provides that the optional notice would not modify the time for bringing a procedural challenge under Section 1002-A of the MPC where the appellant had “adequate opportunity” to bring such challenge upon the enactment of the ordinance. As addressed by the courts, Section 108 does not abrogate the procedures established by Section 5571.1 of the Judicial Code (described earlier). Therefore, the appellant would need to show that the procedural irregularities were such that he or she was denied the opportunity to know about the proposed ordinance and was prevented from commenting on it.

The Section 108 optional notice offers a municipality a means to remedy longstanding (or recent) ordinances or amendments thereto that are believed to have been enacted in a procedurally deficient manner or where record of the actual enactment procedures is incomplete and uncertain.

A municipality minimizes the risk of a procedural challenge – and need not resort to the Section 108 optional notice – when its zoning officer and other administrative staff are fully informed about the MPC-required procedures for enacting an ordinance (including consultation with the solicitor) and strictly follow those procedures. If a procedural error occurs, the municipality should not hesitate to redo the deficient procedural step correctly. Sweeping the procedural error under the rug is neither a prudent or lawful response. Finally, the procedures taken by the municipality on a given ordinance should be well documented. A current and complete procedural record avoids delay and expense in preparing to defend against a procedural challenge, should one be filed.

Act 36 (2013) amendment to the PA Municipalities Planning Code
Mailed and electronic notice

Effective August 31, 2013

Municipalities must, upon request, provide an owner of land or mineral rights with mailed notice or electronic notice of public hearings which may affect such land regarding the enactment of zoning ordinances and amendments.

Parties that may request mailed or electronic notice:

- Owner of a tract or parcel of land located in the municipality
- Owner of mineral rights in a tract or parcel of land located in the municipality

Public hearings for which mailed or electronic notice must be provided:

- Public hearing for enactment of a zoning ordinance (MPC Section 608)
- Public hearing for amendment of a zoning ordinance (MPC Section 609)
- Public hearing for a zoning amendment which, after a first public hearing, is substantially changed or revised to include different land (MPC Section 609)

Mailed notice		Electronic notice
<p>Given by municipality by first class mail.</p> <p>Requester must:</p> <ul style="list-style-type: none"> • Make request in writing • Make timely request • Supply stamped, self-addressed envelopes <p>Requester is solely responsible for:</p> <ul style="list-style-type: none"> • Number & sufficiency of envelopes • Accuracy of address <p>Municipality is not liable if requester does not notify of change of address.</p>	<p>Mailed and electronic notice of public hearing shall include:</p> <ul style="list-style-type: none"> • Time • Place • Particular nature of the matter to be considered <p>Mailed notice shall be deposited in US Mail and electronic notice provided:</p> <ul style="list-style-type: none"> • ≤ 30 days • ≥ 7 days <p>from the public hearing date</p> <p>Notice shall be deemed received by requester on the date it is deposited in US Mail or provided electronically.</p> <p>For each hearing, municipal secretary or zoning officer shall prepare, sign, and keep a list of mailed and electronic notices and dates of notices. The list constitutes a presumption the notice was given.</p> <p>Failure of requester to receive mailed or electronic notice shall not invalidate the action or proceeding.</p>	<p>Given by municipality through the internet.</p> <p>Requester must:</p> <ul style="list-style-type: none"> • Make request in writing • Make timely request • Supply an electronic address <p>Requester is solely responsible for:</p> <ul style="list-style-type: none"> • Accuracy and functioning of electronic address <p>Municipality is not liable if requester does not notify of change of electronic address.</p>

Governor's Center for Local Government Services

888-223-6837

<https://dced.pa.gov/local-government/>

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Publications Free Online

<https://dced.pa.gov/library/>, select **Local Government, Publications and Documents**

- Pennsylvania Municipalities Planning Code
- Planning Series Publications
 - No. 1 - Local Land Use Controls in Pennsylvania
 - No. 2 - The Planning Commission
 - No. 3 - The Comprehensive Plan
 - No. 4 - Zoning
 - No. 5 - Technical Information on Floodplain Management
 - No. 6 - The Zoning Hearing Board
 - No. 7 - Special Exceptions, Conditional Uses and Variances
 - No. 8 - Subdivision and Land Development
 - No. 9 - The Zoning Officer
 - No. 10 – Reducing Land Use Barriers to Affordable Housing
 - Planning for Agriculture

Land Use Law Library

State statutes and case law related to planning and land use.

<http://www.landuselawinpa.com/>

Education & Training

Training programs, online resources, and fact sheets.

<https://www.patrainingshub.org/>

Financial Assistance

Municipal Assistance Program (MAP) – Competitive 50% grants to local governments for cost of undertaking community plans and new or updated land use ordinances.

<https://dced.pa.gov/programs/municipal-assistance-program-map/>