

Community Democracy River

CREATE OR UPDATE ZONING LAWS

Create or Update Zoning Laws

- Zoning laws are the rules and expectations about how land in your community can be used.
- Zoning shapes our communities by informing where housing, industries, school, and parks are located, who can access them, and how they are built.
- Zoning laws usually follow the roadmap the comprehensive plan has laid out.
- Zoning has been used to create segregation and unequal access to opportunities, and higher exposure to environmental hazards for households with low-income and households of color. (Watch [this video](#) to learn more!) See page 8 for zoning solutions that strengthen environmental justice.

River point: Upriver –Zoning ordinances can be created and put into practice at any time. It may be a **long** process to create and pass new zoning ordinances, but this process can begin at any time. New zoning will be strongest if levers are also pulled up- and midriver.

- Authentic relationship building
- Co-create Community Vision
- Learn about your municipality
- Learn about your community’s health and wellbeing
- Vote in local elections
- Become part of your local municipality
- Update municipality’s comprehensive plan
- Engage your relationships + community
- Attend meetings, public meetings
- Develop strategic messaging
- Make verbal and written comments on issues you care about

Strengths & Skills that can pull lever:

- Relationship Building & Feeling
- Influencing & Motivating
- Thinking & Strategy
- Doing & Executing

Decision-Making Power: Municipal governing body and/or County governing body

Community Democracy River

CREATE OR UPDATE ZONING LAWS

Zoning Examples

The goal of this worksheet is to help you see possibilities and how other towns have used zoning to create stronger environmental justice conditions. You can use these ideas to figure out what solutions will work best in your town. It's important to know that most ideas will not get rid of the issue completely, sometimes getting your decision-makers to agree and pass your ideas will take time and advocacy, and the final idea needs to align with standards and other local, county, state, and federal policies.

The following five examples show different ways that towns and cities have used zoning to protect the environment and work toward environmental justice. All five are assessed for:

Practicality	Equitable	Resiliency
<ul style="list-style-type: none"> ● Ease to create and enact. ● Affordability to municipality. ● Has clearly defined measures of success ● Potential preemption issues from state and/or federal laws. 	<p>Builds toward equity and social or political determinants of health. Includes addressing past harms and changing the future for racial, economic, LGBTQ+, immigrant & refugee outcomes:</p> <ul style="list-style-type: none"> ● Physical and mental health and wellbeing. ● Jobs & economic security. ● Healthy and affordable housing. ● Positive neighborhood environment. ● Food security ● Neighborhood safety. ● Ongoing community input & participation. 	<ul style="list-style-type: none"> ● Protects the environment through healthy air and water, green spaces, and heat index. ● Opportunities for youth ● Opportunities for community connection & togetherness

Community Democracy River

CREATE OR UPDATE ZONING LAWS



Zoning Example One: Environmental Site Analysis

<p>Fulton, GA: This ordinance puts requirements on anyone applying for a special use permit or requesting to be rezoned. When they submit their application, they must also file an Environmental Site Analysis. For any industrial development that is requesting to be rezoned, the ordinance also creates a requirement to provide an Environmental Impact Report.</p>	
Practicality	<p>The Environmental Site Analysis and the Environmental Impact Report requires a list of all areas in which the land use proposal may impact the environment. This list includes: whether the proposed permit would potentially pollute adjacent land; if it gets close to wetlands, floodplains, or streams; and how it may affect local water quality.</p> <p>The Report or Analysis must be approved by the Board of Commissions for the applicant to move forward in the application process.</p> <p>Fulton County considers “Fiberglass manufacturing, incineration, paper manufacturing, recycling, and chemical storage” to be environmental adverse uses. These will be the points to consider when the zoning board is reviewing the Environmental Site Analysis or Impact Report.</p> <p>The ordinance puts the burden on permit seeker or rezoning applicant to produce the report. Fulton County has the department of public works review the report but can be tailored to be reviewed by a governmental organization specific to the community if not the zoning board itself.</p>
Equitable	<p>The Fulton County ordinance creates a process for permitting and rezoning that most industrial applications will need to follow.</p> <p>Each permit and rezoning application will be different. This ordinance doesn’t change how to apply for these applications but uses the Site Analysis and Report as a way for the developer to say how this development may impact environmental concerns in the region. This process can create more transparency for the community to understand the potential impact of the development.</p>
Resiliency	<p>The purpose of the Site Analysis and Impact Report is to define “environmentally adverse uses”. “Adverse uses” can include federal laws about environmental protection, and also includes a chart that outlines how much distance is needed to separate industry from residential land depending on the materials involved.</p> <p>The Site Analysis and Reports will be available to the public. Likewise, no application can be approved until there is a public hearing held regarding the application. While its approval will come from the zoning board, community members will have an opportunity to voice concerns on what is disclosed in the Report or Analysis.</p>
Highlights	<p>This ordinance creates more transparency because the developer needs to clearly state how the development will impact the environment.</p> <p>It also creates a procedural gate to prevent industries from using land without proper oversight for its potential environmental effects.</p>

Zoning Example Two: General Environmental Protections

McCandless, PA	
This ordinance creates restrictions on how construction on uninhabited, natural land can be protected as much as possible as allowed by law. It does not outright prohibit clearing of woodlands or other sensitive areas but sets minimum requirements to preserve natural land when developed.	
Practicality	<p>The ordinance states several types of natural resource areas likely to be hurt by environmental disruption including: drainageways, floodplains, mature and young woodlands, and steep slopes, among others.</p> <p>The ordinance allots a certain percentage of those natural resource areas that cannot be disturbed. For example, “no more than 15% of any mature woodland may be cleared or developed.” This means that only 15% of any new development on “mature woodlands” can only be cleared.</p> <p>The ordinance also creates protection over adjacent lands by creating “buffer yards” to minimize potential negative impacts on other lands. For example, for “low intensity building” (these is “Class I” development that has the most minimal environmental impact on the land) has a required buffer yard width of a minimum of five feet to a maximum of twelve and a half feet. And for “high intensity building” (development that may have a major impact on the adjacent land) is a buffer yard of a minimum of thirty feet and a maximum of seventy-five feet.</p>
Equitable	<p>This ordinance creates the same rules on anyone seeking to develop land on designated natural resource areas but is particularly important to industrial uses.</p> <p>Residential development can clear lands within the percentages of the ordinance, but many industrial purposes would likely exceed the allotted percentages. As a result, many industrial purposes may be rejected.</p> <p>The buffer zones take into consideration how hazardous waste may affect neighboring communities.</p>
Resiliency	This ordinance sets out to preserve natural resources. Having an all-encompassing ordinance that prohibits any sort of development would be too burdensome on landowners and likely found unconstitutional. The ordinance toes the line to preserve natural areas to the highest extent allowable in addition to allowing developers continue to develop the land in a reasonable manner.
Highlights	<p>This ordinance establishes a comprehensive plan to preserve natural resources based on clearly defined development restrictions.</p> <p>This zoning ordinance was deemed valid by the Commonwealth Court of Pennsylvania in <i>Jones v. Zoning Hearing Board of the Town of McCandless</i>, 578 A.2d 1369 (Pa.Cmwltth. 1990).</p>

Zoning Example Three: Oil and Gas Restrictions

<p>Bell Acres, PA This ordinance creates requirements oil or gas companies need to complete before a new development will be approved. These requirements include: notifying local residents and assessing health and safety impacts, and emergency plans. This ordinance does not prohibit oil and gas development.</p>	
<p>Practicality</p>	<p>The oil and gas company has the burden and cost to create the oil and gas report. This process can create more transparency for the community to understand the potential impact of the development. Included is:</p> <ul style="list-style-type: none"> • Proof of written notice to all property owners within 2,500 feet of the well; • Copy of a preparedness, prevention, and contingency plan for environmental or health emergencies caused by the drill site; and • Community and environmental impact analysis - this includes analysis of the drill's effect on water sources, fire and explosion risks, potential pollution, and the impact of noise levels and traffic for the community. <p>With this full amount of information, the Zoning Board has the power to vote 'yes' or 'no' to the permit application.</p> <p>Ohio Law Preemption – Ohio specifically prohibits local regulation of an industry regulated by the state to provide uniform statewide industry standards. Ohio Revised Code § 1509.02 prohibits local regulations that discriminates against, unfairly impedes, or obstructs oil and gas activities and operations regulated by state law. Accordingly, this zoning regulation would not likely be enforceable in Ohio.</p>
<p>Equitable</p>	<p>This ordinance makes the oil or gas company gather all materials necessary to ensure compliance with the ordinance.</p> <p>This ordinance also imposes a penalty mechanism for any violation of the ordinance with any continued violation, granting the township the ability to halt well use until all violations are resolved.</p> <p>This ordinance may lessen oil and gas development because the application may not be able to meet Board's expectations. Therefore, it may limit the amount of oil and gas wells in residential communities.</p> <p>This may also lend toward neighborhood safety by limiting any risk of water contamination and pollution from the oil and gas wells.</p>
<p>Resiliency</p>	<p>The ordinance seeks to make sure that even if the oil and gas well is approved, it will be forced to comply with continuous environmental oversight from the DEP, EPA, and Zoning Board.</p> <p>Before approval there is a required public hearing regarding the application. Under Pennsylvania state law, notice is required for all residents in the area of the hearing. There, concerned residents will be able to review the application collectively and voice their concerns on what is ascertained.</p>
<p>Highlights</p>	<p>This ordinance creates more transparency because the developer needs to clearly state how the development will impact the environment.</p> <p>This ordinance creates a highly detailed process for oil and gas developers. Additionally, the oil and gas development, if approved, will be held to the scrutiny of the Board and other administrative agencies.</p> <p>As this is a more procedural restriction than it is an outright restriction on development, it has a higher chance of being held constitutional.</p>

Zoning Example Four: Overlay Zones

Findlay, PA	
The Findlay ordinance is several ordinances. The list of ordinances classifies several natural resource areas like “wetlands, steep slope, and floodplain areas” as an “overlay zone”. Overlay zones put additional rules over certain areas to protect vulnerable land or environmental features.	
Practicality	<p>The Findlay overlay zones are specific to the type of area they protect. For example:</p> <ul style="list-style-type: none"> • <i>Findlay Landfill Overlay District</i> requires the permit applicant or any existing landfills to submit information pertaining to the hazardous waste potentially housed in the landfill, traffic and noise reports of the landfill, drainage patterns, a site analysis for future land development which may be caused by the instability of the landfill, release of gases or seepage of liquids into the community, among many others. • Wetlands Overlay zone: outright bans any development on wetlands. • <i>Mined Land Overlay Zones</i>: mining construction is limited to sites of no less than one hundred feet of construction land, mandates buffer zones of one hundred feet between adjacent areas of land, and mandates that no site development will decrease water quality or have any adverse environmental impact.
Equitable	This ordinance creates additional requirements to protect natural resources. It also adds requirements that could protect health and wellbeing of those who live nearby ensuring local water, air, and the neighborhood will not be negatively impacted.
Resiliency	Overlay zones can be one of the highest environmental protections generated from zoning. It is a step up from what is allowable from zoning.
Highlights	The Pennsylvania Municipalities Planning Code Section 605 serves as the legal foundation for overlay zones. It allows communities to enact “additional classifications” for certain areas of land.

Community Democracy River

CREATE OR UPDATE ZONING LAWS



Zoning Example Five: Green Zones

Minneapolis, MN	
Green zones are designated areas of a community that promote sustainable practices, reduce harmful environmental impacts, and organize programs and work that promote environmental justice.	
Practicality	<p>Minneapolis adopted two green zones in their community: a Northside Green Zone and Southside Green Zone. Once separated and established, the city opted to have an advisory board for each Zone made-up of residents of their Zones.</p> <p>Southside Green Zone Council – Advisory board to City Council with of 20 members who have a term limit of 24 months. The Southside Green Zone Council developed a Policy Work Plan that suggested policies residents seek to be implemented.</p> <p>The Council will aim to improve various environmental issues specific to the green zones, such as water contamination, air quality improvement, and build greater ecological consciousness.</p>
Equitable	<p>This green zone is different from overlay zones because it has an equity element in its goals as well. In addition to environmental protections, Green Zones also address the relationship between the environment and racial, and socio-economic disparities.</p> <p>The Minneapolis Green Zone seeks to increase the affordability of environmentally friendly housing, enact considerations to judge how businesses and branches of the government take responsibility in promoting environmental justice, and seek to end prejudices associated with environmental issues. For example:</p> <ul style="list-style-type: none"> • Approved for free home energy audits for Green Zone residents; • Offered a 20% reimbursement up to \$40,000 for energy efficiency for population reduction efforts initiated by local businesses; • Proposed that all city leadership be educated on local history of race based, zoning, housing, and environmental justice.
Resiliency	Green zones can provide community decision-making tools that places priority on environmental justice like the creation of biweekly public hearings with the Green Zone Councils. It has more of an emphasis on <i>future</i> development than normal zoning ordinances, guiding communities in development and growth of public awareness on the issues.
Highlights	The two Minneapolis Green Zones created community-lead task force charged with spearheading environmental efforts in the designated green zone.

Community Democracy River

CREATE OR UPDATE ZONING LAWS

Common Elements of Zoning Codes:

Zoning Environmental Justice:

Zoning has been used to create segregation and unequal access to opportunities, and higher exposure to environmental hazards for households with low-income and households of color. (Watch [this video](#) to learn more!) Here are some zoning strategies that can help Environmental Justice:

- **Public Participation:** Meaningfully bring diverse groups of neighbors to be part of the process to create or update a comprehensive plan and zoning laws. This makes sure that zoning is developed to reflect the needs of the community. Zoning laws can also strive to be more proactive and inclusive of public input during decision-making of future developments by requiring more notification; additional or different structure for public meetings; and transparent and accessible assessments and reports by potential developers.
- **Citizen Involvement:** Local boards (zoning hearing board, for example) make a lot of decisions that impact environmental justice, but often those who are part of these boards may not represent the full community. Appoint board members who represent the diversity of the community as a whole - including race, gender, income, homeownership, renters, and age.
- **Environmental Impact Reviews and Analysis:** Require that developers address demographics and Environmental Justice matters in Environmental Impact Assessments (including: traffic studies, acoustic studies, air quality studies, hydrological studies, geological studies, pre-development and post-development testing). This can give municipalities ability to review and seek to ensure that cities have the power to reject these applications or require changes that mitigate their impacts. It also increases accountability and transparency.
- **Community Impact Statements:** Mandate a process where members of the impacted community make a statement about what they believe the positive or negative impacts will be if a particular use is approved or allowed to expand. Local officials could be required to take the results of the community group's CIS into consideration.
- **Eliminating Non-Conforming Uses:** Usually, developments that have been in the community already are 'grandfathered' in, which means they do can continue functioning even if they do not meet a town's new zoning laws. You could:
 - In some states, you can adopt a local amortization law to eliminate the use. Amortization laws give developments that do not follow new zoning laws a certain amount of time, or a change in owners, to either comply with new zoning laws or stop functioning. Unfortunately, this is not legal in PA, and may not be legal in West Virginia and Ohio.
 - Pass new zoning laws. If you change the underlying zoning rules and the existing development tries to change into a different type of development in the future, they will need to re-apply for a non-conditional use approval. For example: imagine a new zoning rule creates a residential neighborhood, and a restaurant has been in that neighborhood for years. The restaurant can continue to exist in that residential neighborhood because it's already there. If the restaurant gets popular and wants to expand, it can build a patio without any problem because it's still the same business – serving food. But now let's imagine the restaurant wants to change to be a bar. This may not be allowed under the new zoning rules because it is now trying to operate as something different – it would need to try and apply to be a non-conforming use. This gives the municipality a chance to say 'no, you can't – this doesn't align with our new zoning rules.'
 - Pass and enforce public nuisance ordinances to meet the updated plan and zoning codes and create accountability for industries to follow updated laws.
 - Ohio law allows zoning regulations to eliminate non-conforming uses if the use has been *voluntarily* discontinued for at least six months.
- **Conditional or Special Exceptions:** Ensure new developments that may harm health or wellbeing comply with additional requirements before they are approved.
 - Many developments are automatically approved 'by right' – for example, think of a residential house that is being built in a residential zone. This is automatically allowed because it meets all the zoning requirements. Special Exceptions and Conditional Uses give the

This resource is part of Fair Shake Environmental Legal Service's Community Democracy River.

For more information and additional resources, tools, and levers, visit: <https://www.fairshake-els.org/community-organizing-resources>.

Community Democracy River

CREATE OR UPDATE ZONING LAWS

- municipality the chance to do a more in-depth review and require opportunities for public participation because they could have a larger impact on the community.
- **Special Exceptions:** A special exemption asks permission to do something that the zoning laws allow only under special circumstances. For example, a store that is 5,000 square feet in the zone as long as certain setbacks, landscape, noise buffering, and parking requirements are met. A Zoning Hearing Board has decision-making power over Special Exception applications. The Zoning Hearing Board must approve the permit when the developer meets all of the requirements and can deny the permit when the development will negatively impact to public health, safety, or general welfare. During the public meeting to discuss the approval, the Zoning Hearing Board can ask the developer about how the conditional use will affect the neighborhood, as well as things like:
 - **General Welfare:** to make sure the development doesn't damage public welfare or public property
 - **Nuisance Concerns:** to make sure the development doesn't cause too much traffic, noise, smells, dirt/soot, or other problems;
 - **General Plan:** that the development aligns with any Comprehensive Plan the municipality has completed;
 - **Zoning Consistency:** to make sure it goes with existing zoning laws.¹
 - **Conditional Use:** these are almost identical to Special Exceptions. The only difference – the municipal's governing body is the one with decision-making power.
 - **Overlay Zones:** Create additional requirements over an existing zoning district to ensure additional protections. Overlay zones designate specific areas within the community that require higher protections.
 - For example, environmental, public health, or historic zones.
 - **Industrial Siting + Buffer zones:** create districts that serve as a transition between two or more uses that may not be good next to each other.
 - **Watch Out!** If your goal is to have a new zoning map to keep all industry together in a specific industrial zone, make sure to also think about how it could still lead to inequities. Why? Historically and today, policies and funding have meant that low-income neighbors and communities of color are more likely to live near industrial zones. Updating zoning to mandate that industry can only be in this part of a neighborhood could make it worse by inviting more or higher polluting industries located near low income or households of color. To decrease that, think about buffer zones to include physical screening, landscaping, significant setbacks, open spaces, affordable housing programs, and even other lower-intensity commercial uses.
 - **Exactions and mitigation fees:** fees that municipalities can assess developers to reimburse the costs associated with their new development that can be spent on Environmental Justice issues.
 - **Banning** - ban specific land use or industries that harm health and/or environment. This is the most direct way to impact change but can be challenged in court and may have significant industry push-back.
 - **Watch Out!** Exclusionary zoning says you cannot create any zoning ordinance that prohibits an economically viable use *everywhere* in a municipality. The question to ask is: when a zoning ordinance is created, at that time, does it prevent some particular business from operating anywhere in the municipality? It often arises when municipalities try to exclude something with extreme setbacks. For example, an ordinance that says that methadone clinics or fracking wells cannot be placed anywhere within 3,000 feet of a school, church, playground, or nursing home. While that ordinance is not outright saying it's not allowed, it's also limited it so strictly that there wouldn't be a place in the whole municipality that fits the description, which means it has, effectively, prohibited this across the whole municipality which is not allowed.

¹ <https://www.mysiteplan.com/blogs/news/conditional-use-permit>

Community Democracy River

CREATE OR UPDATE ZONING LAWS

Comprehensive Plans + Zoning:

A comprehensive plan is often the first step to enacting zoning. A comprehensive plan is a roadmap for where your municipality will go in the future, and then zoning laws match what is laid out in the comprehensive plan. Usually, a comprehensive plan is developed by your municipality's Planning Board, Commission, or Department, and is updated every five or ten years. (Don't have a Planning Board or Commission? Check out [Planning Commission + Comprehensive Plan - Model Ordinance](#)). A Comprehensive Plan should be a long process that includes a lot of community input and feedback to shape what it includes and where your municipality is headed in the future. Once the comprehensive plan and zoning laws are drafted, your municipal decision-makers (such as City Council) will approve the creation of zoning laws. Comprehensive plans are a very important tool but not always required:

- Ohio: Cities and Villages do not need a comprehensive plan before developing zoning laws. Counties and Townships do need a comprehensive plan first.²
- West Virginia: You must have a comprehensive plan before developing zoning laws.
- Pennsylvania: A comprehensive plan is only required if the governing body enacts a transportation impact fee; if multiple municipalities collectively enact joint zoning controls; or if the governing body is a county.

Inclusion of Community Members & Transparency:

Once a plan and zoning laws are in place, there should be ongoing opportunities for community inclusion. Often, overlay zones require a community effort to identify those areas likely in need of greater environmental protections, like wetlands or green zones that look at pollution impacts, health disparities, and economic impacts. Many communities may even draft a study to identify the environmental problems in the community and how an overlay ordinance would address those issues. Then, once those zones are approved, a working group of local residents are appointed to serve in an advisory capacity to help your local governing body (like city council) make decisions.

Another way that a plan and zoning laws could intentionally include community is ensuring strong transparency when new developments are being proposed. This can happen through:

- Environmental and community impact assessments and reports;
- Increasing opportunities for public participation while the developers are sharing their assessments and reports;
- Ensure developers proactively tell anyone who lives close to the site what their proposal is and includes.

Youth Involvement Opportunities:

A comprehensive plan can prioritize youth voice and involvement while it is being created ensure that the municipality is creating a space where youth have opportunities and want to stay after they finish school.

Improving Environmental Conditions:

Zoning laws are one of the strongest ways that municipalities can protect and improve the natural and built environment.

² https://odh.ohio.gov/wps/wcm/connect/gov/791e1124-7fd6-4782-8392-367a68257391/FAQ_Factsheet_Land+Use+Zoning.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_M1HGGIK0N0JO0QO9DDDDM3000-791e1124-7fd6-4782-8392-367a68257391-mJMzfuy

Community Democracy River

CREATE OR UPDATE ZONING LAWS

Additional Considerations:

Overlay zones, like the ones provided by Findlay, allow communities to tailor ordinances to unique situations that may only be found in their community. Overlay zones can also be used to protect culturally historical districts, housing diversity, efficient transportation systems, and economic development. For example, Fremont California established an affordable housing zone that mandates any residential development for profit to provide affordable housing adjusted to the median income of the county.³ Likewise, Wilksburg, PA enacted a Transit-Oriented Development Overlay that has development conform to transit needs, such as developing parking spots and sidewalks for future development.⁴

The Role of the Municipality:

The municipality has decision-making power over all Comprehensive Plan and Zoning activities.

References and Additional Resources:

- *Zoning Overlays*, Chester County Planning Commission, <https://www.chescoplanning.org/MuniCorner/eTools/65-ZoningOverlay.cfm>
- *Land Use Tool: Overlay Zoning*, Planning for Hazards Land Use Solutions for Colorado, <https://planningforhazards.com/overlay-zoning>
- *Oil & Gas: Preemption of Local Regulation*, GRB Law, <https://www.grblaw.com/Resource-Oil-Gas-Preemption-of-Local-Regulation>.
- *Green Zones*, Minneapolis City of Lakes, <https://www2.minneapolismn.gov/government/departments/health/sustainability-homes-environment/sustainability/green-zones/#:~:text=We've%20identified%20two%20green,Southside%20Green%20Zone>.

Local Policies for Environmental Justice: A National Scan, Natural Resource Defense Council, <https://www.nrdc.org/sites/default/files/local-policies-environmental-justice-national-scan-tishman-201902.pdf>.

³ <https://www.codepublishing.com/CA/Fremont/html/Fremont18/Fremont18155.html#18.155>

⁴ <https://ecode360.com/8425596?highlight=overlay&searchId=43386596085425580#8425596>