



FREQUENTLY ASKED QUESTIONS

Counties and Townships Authority to Zone, Permit, and Approve Certain Wind, Solar, and Other Green Energy Construction Projects¹

Can voters in a county use the initiative petition process under article V, section 5 of the Oklahoma Constitution to enact zoning and regulatory authority on wind energy?

Possibly. The Oklahoma Constitution reserves to the legal voters of every county the powers of the initiative and referendum as to all local legislation, provided the Legislature must establish the manner for exercising such powers. Okla. Const. art. V, § 5. Efforts to enact zoning and regulatory authority on wind energy may face legal challenges.

Besides the initiative petition or referendum process, can counties regulate wind energy projects through zoning or planning regulations within their jurisdictional boundaries?

Yes. Generally, the power to enact and enforce zoning laws is derived from the state's police powers, which operate to protect health, morals, safety, and general public welfare. *Indian Territory Illuminating Oil Co. v. Larkins*, 1934 OK 125, 31 P.2d 608; *In re Initiative Petition No. 382*, 2006 OK 45, 11, 142 P.3d 400, 406. In land use, public welfare includes scenic beauty, quiet noise or seclusion from noise, and economic welfare. The United States Supreme Court succinctly described that land use restrictions, properly and lawfully adopted, "aim to prevent problems caused by the 'pig in the parlor instead of the barnyard.'" *City of Edmonds v. Exford House, Inc.*, 514 U.S. 725, 732, 115 S.Ct 1776 (1995) (quoting *Village of Euclid v. Amber Realty*, 272 U.S. 365, 388, 47 S.Ct 114, (1926).

There are at least five applicable statutory programs relative to county planning and zoning. 19 O.S. §§ 863.21-863.44 (counties containing a city of 180,000 population); 19 O.S. §§ 865.51-865.69 (county planning and zoning); 19 O.S. §§ 866.1-866.35 (city-county planning and zoning); 19 O.S. §§ 868.18 (counties over 500,000 population); and 19 O.S. §§ 864.1-864.16 (Lake Area Planning Commission). Generally, the board of county commissioners has authority for zoning within the county, and the following guidance illustrates other county boards and commissioners involved in these actions.

¹ This guidance is general in nature, is not an exhaustive list or analysis of applicable law, and there may be other, more relevant and applicable, federal, state, or local laws and regulations on the topics addressed herein. The Office of Attorney General reserves the right to modify this guidance document as additional information is available. Finally, this document and its contents shall not be construed as rendering legal advice.



Are there any examples of municipalities or counties that have enacted any regulations regarding wind farms or wind generation facilities?

Yes, there are several.

Canadian County, El Reno Code § 361-30(E), type of ordinance: Height, Setback;

Kay County, Ponca City Code § 11-5-1(14)(a), type of ordinance: Utility-Scale Ban; and

Canadian County, Yukon Code Ords. § 204-173(a), type of ordinance: Noise, Setback.

Is there a growing trend in other States to regulate electric generation from wind and solar?

Yes, a USA Today article titled “Across America, clean energy plants are being banned faster than they’re being built” gave several statistics on the trend of local regulations throughout the country.

“At least 15% of counties in the U.S. have effectively halted new utility-scale wind, solar, or both, USA TODAY found. These limits come through outright bans, moratoriums, construction impediments and other conditions that make green energy difficult to build.”

“In the past decade, about 180 counties got their first commercial wind-power projects. But in the same period, more than twice as many blocked wind development. And while solar power has found more broad acceptance, 2023 was the first year to see almost as many individual counties block new solar projects as the ones adding their first projects.”

“The local regulation landscape for renewables is changing quickly,” said Tamara Ogle, a member of the land use team at Purdue University Extension who inventoried Indiana’s renewable energy ordinances in 2022.”²

Does the Legislature defer to local control as to whether a county regulates zoning within the county?

Yes. Each statutory authorization for regulating zoning or planning defers to local control, though the specific procedures for establishing and utilizing each authorization depend on population and geography. To illustrate, consider two statutorily-created commissions: city-county cooperative commissions and county planning commissions.

2 Elizabeth Weise & Suhail Bhat, *Across America, Clean Energy Plants Are Being Banned Faster than They’re Being Built*, USA TODAY (Feb. 4, 2024), <https://www.usatoday.com/story/news/investigations/2024/02/04/us-counties-ban-renewable-energy-plants/71841063007/>.



What is a city-county cooperative commission?

A city-county cooperative planning commission, also known as a “metropolitan area planning commission” may be created in any county where no city has a population greater than 200,000. 19 O.S. § 866.1. Additionally, more than fifty percent of its territory inside a county may agree with that county to create a large metropolitan area planning commission. 19 O.S. § 863.2. A MAPC is a cooperative planning and zoning commission created by a county and a cooperative municipality.

What powers does a metropolitan area planning commission (“MAPC”) have?

Under Oklahoma law, counties have only those powers granted to them by statute. *Tulsa Expo. & Fair Corp. v. Bd. of County Comm’rs*, 1970 OK 67, 468 P.2d 501, 507. A MAPC functions as an “advisory, consultative, and coordinating agency” that harmonizes planning and development and performs these functions through a comprehensive plan submitted to the city council or board of county commissioners. 2012 OK AG 2, ¶ 4.

A MAPC does not have independent zoning authority, but counties that are part of a MAPC have statutory powers through the county commissioners, including the authority to establish zoning regulations. *Id.* Suppose a participating municipality in a MAPC wants to adopt a similar city/town zoning or permitting ordinance. In that case, the city council must vote for it to become effective in the incorporated area. Specifically, large MAPCs (counties with a city having a population of 180,000 or more) are authorized to “regulate the location, height, bulk, number of stories and size of buildings and other structures in all or any part of the unincorporated area of the county”³ [19 O.S. § 863.13](#); see also [19 O.S. §§ 866.2, 866.16](#) (authorizing small MAPCs to regulate the location, height, bulk, number of stories, and size of buildings and other structures in the unincorporated areas of the county).

This is like a city planning commission, which presents findings and recommendations to the city council for adoption. Here, a MAPC acts similarly, and the county commissioners determine whether or not to adopt the recommendations of the MAPC. In both instances—a city planning commission and a MAPC--the process authorizes and encourages active public participation. 19 O.S. § 866.3.

³ For purposes of county zoning, a “structure” is any object constructed or installed by a person, and a “building” is a particular kind of structure that has a foundation, walls, and a roof. 1998 OK AG 31.



How is a MAPC created?

The board of county commissioners must adopt a resolution, which must include the intention to contract with a specified municipality. A vote of the people is not required. [19 O.S. § 866.5](#); see *also* [19 O.S. § 863.3](#) (authorizing a board of county commissioners to establish a large metropolitan area planning commission by resolution of the board of county commissioners). Once created, the jurisdiction of the MAPC is exclusive within the affected parts of the municipality and the unincorporated areas of the county, excepting any board of adjustment. 19 O.S. § 866.33.

Are there limitations on a MAPC?

Yes, at least three. First, the MAPC has no statutory power to adopt or pass zoning ordinances. 1983 OK AG 194, ¶ 6. Second, even though the MAPC adopts a plan for the county and city, it is not official until the city council and board of county commissioners adopt it. 19 O.S. § 866.10. Third, the jurisdiction of the MAPC is coextensive with the county and municipality, meaning the city and county retain their enforcement jurisdiction over their respective territory. 19 O.S. § 866.4.

What is a county planning commission (“CPC”)?

Different from a MAPC, a CPC may be created to cooperate with the State in conserving natural resources and promoting the health, safety, peace, and general welfare of the people. [19 O.S. § 865.51](#). CPCs may adopt plans for area development, provided reasonable notice, public hearings, and the board of county commissioners approve the plan. 19 O.S. § 865.58. Once established, a county has jurisdiction for planning, and the authority extends to all unincorporated areas except those exempted by statute. [2012 OK AG 2](#).

Are there limitations on a CPC?

Yes, there are at least three limitations worth discussing. First, a CPC has jurisdiction only over unincorporated areas of the county. Second, before construction can occur, the CPC must make recommendations on the proposal in light of the development plan. Finally, the CPS has limited regulatory authority, but planning authority does not amount to zoning authority. [19 O.S. § 865.59](#); [1986 OK AG 37](#), ¶ 12 (discussing zoning and planning authority and determining that a CPC has authority to adopt a plan for development in the unincorporated areas of a county but does not have authority to zone). Concerning large counties and planning commissions, see provisions of title 19, sections 868.1–868.22, particularly title [19, section 868.8](#) (the planning commission has authority to approve and directly regulate plats and subdivisions).



Even if a CPC does not have pure zoning authority, do the county commissioners?

While a CPC is without pure zoning authority, the Legislature vests boards of county commissioners in large and small counties with the authority to enact and enforce zoning regulations. 19 O.S. § §§ 868.9, 868.11-868.16 (board of county commissioners to issue zoning regulations for unincorporated areas of the county); see also [19 O.S. § 865.67A](#) (board of county commissioners has authority to establish and enforce fines and penalties for violating zoning regulations). Additionally, the board of county commissioners must approve a CPC plan for developing unincorporated areas of the county. [19 O.S. § 865.58](#).

This is similar to how the MAPC and city planning commissions work. The CPC submits a proposal to the county commissioners, and then the county commissioners can review and decide whether to proceed and adopt the recommendations. This allows for more public input by the time the county commissioners vote to adopt or change any recommendations made by the CPC.

How is a CPC created?

In counties with a population exceeding 500,000, the Legislature establishes a CPC and a county board of adjustment. [19 O.S. § 868.1](#). In other counties, a CPC may be created along with a board of adjustment by a resolution of the board of county commissioners and a vote of the “majority of the people voting at an election called for such purpose in said county.” 19 O.S. § 865.52.⁴

Can a county have both a CPC and a MAPC?

No. title 19, section 865.51 prohibits a county from having both a county planning commission and a MAPC. However, the board of county commissioners may confer authority to a metropolitan area planning commission instead of a county planning commission, and in this instance such authority exists to plan in the county and extends only to the unincorporated areas in that county.

Are there any exceptions to county zoning power, even if granted?

Yes, at least five. In addition to the above statutory requirements. First, a governmental entity may not use its power to regulate land use if the regulation does not have a substantial relationship to public health, safety, morals, or general welfare. *In re Initiative Petition No. 382*, 2006 OK 45, 11, n. 19, 142 P.3d at 406 (citing *Nucholls v. Board of Adjustment of the City of Tulsa*, 1977 OK 3, 11, 560 P.2d 556). Second, a county may not regulate through an unreasonable and arbitrary exercise of its police powers. *McConnell v. Town Clerk of Tipton*, 1985 OK 61, 704 P.2d 479,

⁴ 19 O.S. § 865.58.



481 (citing *Keaton v. Oklahoma City*, 1940 OK 215, 102 P.2d 938). Third, under title 19, section 863.13 of the Oklahoma Statutes, county zoning power does not apply to the erection, installation, and use of structures and equipment by public service corporations subject to the jurisdiction and regulation of the Oklahoma Corporation Commission or other similar state or federal regulatory bodies. 19 O.S. § 863.13. Fourth, county zoning authority does not apply to the erection or use of the usual farm buildings for agricultural purposes or the planning of agricultural crops. *Id.* Finally, zoning is prohibited to the extent it amounts to a taking under the Oklahoma Constitution or the United States Constitution.

Are there any data, research, or other available resources to know what local regulations or ordinances other states are enacting?

Yes, the WindExchange, which is the Government website that tracks energy regulations, has created a reference guide evidencing local regulations and ordinances in Oklahoma and other states.

(<https://windexchange.energy.gov/projects/ordinances>).