



Zoning Needs An Overhaul

Cities would do better to loosen prescriptive zoning codes and give more flexibility to developers.

By Chris Fiscelli
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Zoning has a long history in the US dating back to the landmark Supreme Court case of 1926– the Village of Euclid, OH vs. the Amber Realty Company when the Court upheld zoning as a proper exercise of police power. Zoning proved to be an excellent tool throughout a good portion of the 20th Century by separating residential areas from polluting, noisy industrial plants, for example. Zoning became the primary land use regulation by which cities sought to achieve their land use visions. However, technology and economic restructuring, among other things, has led to many changes in the United States leaving traditional zoning as an outmoded land use policy that is sorely in need of change.

While segregation of land uses was a crucial component of zoning in the past, it is now seen as a defunct procedure that fosters pods of detached, similar land uses limiting interaction among them. Much of today's zoning also legislates a specific allowable land use for most every parcel of a city and relies on general or master plans to make changes to the use. These plans attempt to look forward for as many as 30 years and predict the best use of all land, but it is impossible to forecast land use in the distant future as so many changes are possible. Think about the changes that have occurred in some of the nation's faster growing communities in the past 30 years. Zoning, the implementing tool of the general or master plan, does not respect land uses or communities as dynamic entities where land uses and neighborhoods change in response to technology, consumer preferences, and changes in society.

Most cities' zoning ordinances also specify a host of other land development regulations, sometimes known as height and bulk regulations. These include density minimums and maximums,

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By *Carol Coletta*

Aug 25, 2005

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floor area ratio (FAR) restrictions, minimum parking requirements, minimum and maximum lot size requirements, setback requirements, height restrictions, and building footprint coverage requirements. In addition, cities may further regulate architecture and landscape design as part of their overall land use regulation. The general purpose of these regulations is to define the nature of development in an area. But, the use and development of private land is very much of an economic process constantly evolving to meet the needs of consumers and businesses. By dictating a specific outcome for an area years in advance, zoning stifles this evolutionary process.

At a practical level, zoning tends to foster development patterns that conflict with smart growth objectives while using a process objectionable to free market advocates. It restricts densities of projects that may have a market for a greater density, it prevents mixed land uses even though that may be the preferred design, and it requires parking ratios that assume most residents or customers will drive most places. With this type of land use regulation, it should not be surprising that much of suburbia looks as it does.

At a more perverse level, cities abuse zoning to exclude whatever they are trying to keep out, in many cases, high density housing, or lower-priced housing. Much of this is done in response to community demands as residents move to an area for a reason and prefer to keep the neighborhood as they found it. Unfortunately, this exclusionary or snob zoning, as it is sometimes called, distorts real estate markets, contributes to income and racial segregation, and increases sprawl.

Recognizing the shortcomings of traditional zoning, some cities have been actively seeking alternatives. New urbanists have been advocating form-based codes and while they are certainly an upgrade over traditional codes, they carry the danger of over-regulation and defining specific outcomes. By limiting market forces, we will continually fall into the trap of being one step behind the times. In other words, consumer wants and needs will always change faster than governments' recognition of them.

Flexible zoning is a concept that embraces the notion that individual land uses, neighborhoods, and communities are dynamic and constantly evolving as society, technology, and preferences change. Flexible zoning simply sets the rules of the marketplace like not allowing an adult theatre within a certain distance of a school or requiring mitigation measures for certain uses. But it does not specify a specific land use or density or parking requirement for private land.

Flexible zoning also need not require a general or master plan. While the thought of not having a general plan is disturbing to some, consider that plans must constantly change to adapt to

the Census Bureau leaves much to be desired, writes Carol Coletta in this week's Op-Ed. But even if cities were in decline, a city's population is no longer tied to its economic success. What is ironic about these estimates and the misleading story of decline that has been spun around them is the fact that cities no longer have to grow big to grow wealthy. For the first time, according to research from CEOs for Cities, a city's population is no longer tied to its economic success.

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By *Ric Stephens*

Jul 26, 2005

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changing conditions so that it is usually the plan that tends to mirror reality instead of reality following a plan. William Fulton's recent study of Ventura County shows the pains associated with plans that do not reflect reality. In that case, actual densities were far less than planned densities creating a housing shortage and affordability problem. Cities can still take preemptive actions to affect their future in a positive manner by buying land for park development, open and public spaces, and infrastructure development. Instead of planning the private realm, cities can more productively plan the public realm essentially setting the guidelines for development by their actions.

It is clear that local government involvement in land use is required. However, it is also clear that we should not continue on the current path. Land use regulation is stifling innovation and distorting real estate markets by trying to determine specific outcomes and development patterns when those outcomes are best determined by the market discovery process. Just as modern machinery requires state-of-the-art tools, today's urban development problems require state-of-the-art land use regulations. Revamping zoning would be a great start.

Chris Fiscelli is a research fellow with the [Urban Futures Program](#) at the [Reason Foundation](#).

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