Zoning

Zoning is at once a key technical competency of urban planning practice and a highly politicized regulatory tool. How this contradiction between the technical and political is resolved has wide-reaching implications for urban equity and sustainability, two key concerns of urban planning. Moving beyond critiques of zoning as a regulatory hindrance to local affordability or merely the rulebook that guides urban land use, this textbook takes an institutional approach to zoning, positioning its practice within the larger political, social, and economic conflicts that shape local access for diverse groups across urban space. Foregrounding the historical-institutional setting in which zoning is embedded allows planners to more deeply engage with the equity and sustainability issues related to zoning practice.

By approaching zoning from a social science and planning perspective, this text engages students of urban planning, policy, and design with several key questions relevant to the realities of zoning and land regulation they encounter in practice. Why has the practice of zoning evolved as it has? How do social and economic institutions shape zoning in contemporary practice? How does zoning relate to the other competencies of planning, such as housing and transport? Where and why has zoning, an act of physical land use regulation, replaced social planning? These questions, grounded in examples and cases, will prompt readers to think critically about the potential and limitations of zoning. By reforging the important links between zoning practice and the concerns of the urban planning profession, this text provides a new framework for considering zoning in the 21st century and beyond.

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Zoning

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Elliott Sclar has been a champion, mentor, and leader for a variety of zoning-related initiatives at Columbia University and in the planning community more broadly in recent years. This book and broader project would not exist without him. Participants in a series of conversations from 2016 to 2018 catalyzed a broader renewal of interest in zoning across planning that builds on the scholarship of Jerold S. Kayden, Sonia Hirt, Raphaël Fischler, Rachelle Alterman, and others. With two conferences at Columbia University in 2016, several panels and a roundtable at the Association of Collegiate Schools of Planning (ACSP) annual conference in 2016, 2017, and 2018, and a working session with book contributors in the summer of 2018, many rich discussions and individuals strengthened this book and connect it to ongoing projects.

We started with two conferences reflecting on the centennial of New York City’s original zoning ordinance in 2016 that included Amale Andraos, Charles Bagli, Sai Balakrishnan, Vicki Been, Patrice Derrington, Raphaël Fischler, Lance Freeman, Michael Gerrard, Ingrid Gould Ellen, Sonia Hirt, Jerold S. Kayden, Paul Lagunes, Daniel Montandon, Moira O’Neill, Harriet Tregoning, Rachel Weber, Andrew H. Whittemore, and Weiping Wu. The initial 2016 conference was led by the textbook authors but was only possible with the assistance of students enrolled in the Urban Planning PhD program at Columbia University, including Cathy Hyun Hye Bae, Elizabeth Marcello, Deepa Mehta, Jenna Dublin, Magda Maaoui, Tyler Haupert, and Jose Ramirez-Orozco, as well as recent graduates, Adèle Cassola, Eric Goldwyn, Matteo Stiglich, and Jonas Hagen.

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The editors would like to extend a special thanks to the authors who contributed chapters and cases for this textbook. They have all graciously crafted the intellectual threads that weave through this book, produced thoughtful writing, and participated in many rounds of edits and conversations that helped to produce a cohesive volume. We learned so much from each contributor and are very grateful for the intellectual discussions that this project has brought about. This textbook contributes to a long legacy of work on the complexities of zoning practice. We look forward to continuing the conversations with the growing network of scholars and practitioners motivated to improve zoning theory and practice in the 21st century.
I. Introduction.
How should cities employ the tool of zoning to shape their physical environments? Should they use it at all? Is there a superior legal mechanism that exists or should be invented? Anniversaries are time-honored hooks for celebration and, ideally, critical reflection. Zoning’s centennial birthday in the US affords us that opportunity. For better and worse, 100 years after New York City in 1916 enacted the country’s first comprehensive zoning ordinance, zoning remains the chief legal technique employed by American cities and towns to control what is developed on privately owned land. By regulating the use of land, as well as the location, shape, and size of buildings through text and maps, the technique is a principal sculptor of our built environment. That is no small thing. Winston Churchill famously opined, “We shape our buildings and afterwards our buildings shape us.”¹

Perhaps more than ever, zoning’s ubiquity and staying power confound contemporary critiques. Some censure zoning for overly constraining development in both city and suburb, driving up the price of land and buildings and making the procurement of adequate housing unaffordable for many individuals and families (Glaeser, 2011; Furman, 2015). Others criticize it for becoming a substitute for planning, something it was never meant to be (Haar, 1955). Some see zoning as overly responsive to neighborhood interests to the detriment of citywide interests (Hills, 2015). Others decry zoning as being captive to real estate and business interests (Angotti, 1993). Some dislike the patterns of urbanism produced by older models of zoning and seek to substitute form-based codes and traditional neighborhood development ordinances (Duany, Plater-Zyberk, & Speck, 2000). Others dislike zoning for being imposed city by city, town by town, and village by village rather than regionally or statewide (Schragger, 2016). Some criticize zoning for being too complex, far beyond the comprehension of the average person and, some would add, the average lawyer, thereby mitigating democratic governance and meaningful public engagement (Babcock, 1966).

The list of critiques grows, yet zoning survives and thrives. Foundational questions arise: Is zoning as instrument the culprit, with asserted flaws to be
found in its DNA? Or is the problem the way zoning has been deployed by its practitioners? Or is there no problem at all? If the first is true, then it may be time to junk zoning altogether. If the second is more accurate, however, an inquiry into reforms is reasonable. The third possibility prematurely ends this essay. To decide among the first two, it is essential to take a clear-eyed look at what zoning is and is not in law and practice. The following observations focus on the US context, but many will be relevant to zoning’s use in other parts of the world.

II. Zoning Is Not Planning.

This distinction is hardly clear to the average person or even to those who should know better. If a Martian arrived from unzoned Mars, the Martian could easily conclude that US planning is zoning. Think of how people criticize zoning provisions and actions. Do they criticize the technical mechanics of zoning, or do they criticize the public policy or plan that zoning is trying to implement? This may sound overly parsing, but it is actually quite fundamental. What do we mean when we say San Francisco or Chicago has great or terrible zoning? When we criticize zoning for being too permissive or too restrictive, are we discussing the mechanics of floor area ratios to regulate bulk, or are we discussing the merits of density and community character in a given location? Citing the unaffordable cost of housing, some observers pillory zoning for preventing additional development in existing urban neighborhoods or the suburbs (Avent, 2011). Is it useful to observe that such criticism should be more precisely leveled at the planning and policy ideas implemented through zoning?

Semantics aside, is there anything wrong with conflating zoning with planning? One hundred years of legislative history would argue yes. Let us start with the 1924 *A Standard State Zoning Enabling Act*, model text prepared by an expert advisory committee under then US secretary of commerce, and later president, Herbert Hoover, specifying that zoning should be in accordance with “a comprehensive plan” (Advisory Committee on Zoning, 1924). The subsequent 1928 *A Standard City Planning Enabling Act*, also prepared by a Hoover-convened advisory committee, called for a “master plan for the development of the territory” (Advisory Committee on City Planning and Zoning of the U.S. Department of Commerce, 1928). To be clear, these Hoover products were not laws themselves but were proposed texts that states could copy and enact in their own legislation. And enact they did, incorporating much of the language from the Hoover models, prominently including the distinction between planning and zoning (Meck, 1996). New York State, for example, has a zoning statute that requires zoning to be “in accord with a well considered plan” or “in accordance with a comprehensive plan” (New York State Division of Local Government Services, 2015).

Why did these original thinkers of zoning, nearly a century ago, demand the separation and serial application of planning and zoning? Three reasons
are key. First, planning is more comprehensive than zoning in terms of subject matter, territorial coverage, time horizon, and implementation tools. Planning addresses, for example, the location and nature of public streets, infrastructures, and buildings, the armature of the public realm, in addition to what happens on privately owned land. Section 6 of *A Standard City Planning Enabling Act* says, about the city’s comprehensive, municipal, or general plan:

> [S]uch plan with the accompanying maps, plats, charts and descriptive matter shall show the planning commission’s recommendations for the development of said territory including among other things the general location, character, and extent of streets, viaducts, subways, bridges, waterways, waterfronts, boulevards, parkways, playgrounds, open spaces, the general location of public buildings and other public terminals whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power and other purposes as well as include a zoning plan for the use of private buildings and premises [italics added].

(Advisory Committee on City Planning and Zoning of the U.S. Department of Commerce, 1928)

Zoning text and maps sometimes refer to city-owned land and the buildings thereon, but as owner and regulator, cities can and do more or less whatever they want with city-owned land. No one would look to the zoning map to determine the city’s approach to its streets and sidewalks. Indeed, planning relies on many nonzoning mechanisms to implement its desires. Capital budgets for infrastructure spending, public subsidies for job-accommodating facilities and affordable housing, public land acquisitions through eminent domain and dispositions through requests for proposals and sole source methods, and other nonzoning techniques implement planning. In short, zoning executes only a piece of planning.

The second reason for distinguishing planning from zoning is that planning, potentially as a long-term, open-ended exercise, invites a different type of discussion and public participation than that which often accompanies zoning. By not being locked into outcomes that are directly legally binding, planning can seem less consequential and transactional on its immediate terms and thus can avoid eliciting the ferocious commitment of “fors” and “againsts” commonly arguing their cases before bodies deciding zoning matters. The voices of zoning lawyers and their experts on behalf of property-owning clients or neighbors in opposition may be less present at planning meetings deemed less outcome-determinative. By being preliminary to zoning, planning, at its best, broadens the discussion. That is not to suggest that there is not much work to be done to make “public participation” more than a two-word alliterative phrase whether it occurs in planning or zoning.
The third reason for the separation is that planning helps to legalize zoning, providing a benchmark against which judges may measure the reasonableness of a zoning decision when it is legally challenged. The standard constitutional test in the US for reviewing a garden-variety zoning challenge is whether the zoning is “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals and general welfare.” Judges are more comfortable if they can frame discrete zoning actions within comprehensive, deliberative, longer-term planning approaches, thereby providing at least minimal assurance that the zoning action was not an arbitrary and capricious knee-jerk response.

It must be noted that the call of the US Department of Commerce model acts, that there be a separate comprehensive plan against which zoning must be in accordance with, while followed by many state laws, has suffered more than a glancing blow from reality. Many cities and towns stopped enacting comprehensive plans years ago for good and bad reasons. Part of it was the growing distrust of static plans in a rapidly changing world. Part of it was the realization that plans too often sat on shelves collecting dust. Part of it was the underfunded world of planning that allowed plans to fall out of date without necessary updating. Faced with this disjunction of law and reality, some judges and lawyers, ever innovative, came up with a tautological deus ex machina: Zoning is the plan (Kressel & Sullivan, 1975). The map and text would ipso facto be deemed the plan. The resulting truism, that zoning was, by definition, in accordance with itself, was hardly what the drafters of the model acts had in mind when they crafted the nostrum that zoning must be in accordance with a comprehensive plan.

At the end of the day, is it truly of concern when people use the shorthand “zoning,” as in the zoning here is terrible, to criticize an underlying planning policy? Perhaps not, but only if people understand that zoning’s lack of neutrality is most often a reflection not of its instrumentality or agency but of the planning choices made by its wielders. If we are to debate the merits of density, for example, then let us, as individuals striving to improve cities, set the debate in planning rather than zoning terms. Let us make sure that more than zoning aficionados and experts participate, an outcome made more possible if the word zoning releases its iron grip on the discourse. I have been caught saying on more than one occasion, “To plan is human, to implement, divine” (Sadik-Khan & Solomonow, 2016; Kayden, 2014). Divinity is, of course, loftier than zoning.

III. Zoning Is Reinventable.

To be sure, zoning has a core definition. At base, it exercises regulatory control over the use and development of privately owned land in the furtherance of a broad spectrum of planning goals. It is not tax policy. It is not eminent domain. It is not a capital infrastructure investment program. But zoning is also not limited definitionally to the technical tactics of traditional Euclidean
zoning, named after the landmark 1926 US Supreme Court *Village of Euclid v. Ambler Realty Co.* case, whose pillars include geographically defined zoning districts within which uniform, preset rules control the use of land and the shape and density of buildings on it.

Decades are temporally imprecise but broadly helpful brackets for locating zoning’s 20th-century reinventions. In the 1950s, planned unit developments, cluster zoning, and exactions were popularized7 (Frank, 1987). In the 1960s, incentive zoning, transfer of development rights, and special districts were pioneered (Kayden, The New York City Department of City Planning, & The Municipal Art Society of New York, 2000; Kayden, 1992; Babcock & Larsen, 1990; Barnett, 1974). In the 1970s, Ramapo-style growth management zoning was introduced, requiring property owners to wait to develop until adequate public infrastructure was in place or provide or finance it themselves if they wanted to jump the queue.8 In the 1980s, inclusionary zoning, linkage, and design review were on display (Thaden & Wang, 2017; Kayden & Pollard, 1987; Duerksen & Goebel, 1999). In the 1990s, traditional neighborhood development ordinances were promoted by new urbanist planners that deemed neighborhoods the proper district for zoning purposes and introduced more detailed rules about uses and shapes than those found in traditional Euclidean ordinances (Duany et al., 2000).

One of the biggest changes over the past 50 years has been expanded resort to discretionary approvals to leaven zoning’s original as-of-right, uniform, district-based approach. “As-of-right” zoning means that owners can develop without project-specific public reviews as long as their proposed development conforms with the rules specified in the existing zoning text and maps. As-of-right zoning dominated zoning for its initial decades, with minor use of discretionary approvals confined to so-called conditional uses, such as funeral homes and gas stations in residential districts. Today, many cities and suburbs impose various processes of discretionary review over larger projects (Blaesser, 2019). Concerns ranging from extra traffic to environmental impacts to aesthetic outcomes are considered case by case. Developers must demonstrate that they have mitigated harmful impacts and provided public benefits before receiving a special permit to proceed. In some cases, zoning authorizes a design review to assure that proposed development is compatible or contextual or harmonious or consistent with the physical characteristics of the surrounding neighborhood. References to architectural styles, building materials, cornice lines, fenestration, and other criteria are common. Santa Fe likes faux adobe. Coral Gables likes the Mediterranean style. Years ago, San Francisco held what was colloquially known as the “beauty contest” in which development proposals competing for limited development slots were judged case by case on the basis of aesthetics (McGovern, 1998).

Another reinvention has involved zoning mechanisms that directly secure public benefits. Zoning’s district-based uniformity may have kept the proverbial “pig” out of the “parlor,” but larger ambitions would require additional technical approaches. Today, zoning often encourages or demands the
provision of social, economic, and environmental public benefits such as affordable housing, expanded roadways, and open space, provided on-site or off-site or through a cash payment. In many jurisdictions, the limited ambitions of Euclidean zoning are almost quaint.

The latest rage that reconceptualizes zoning’s structural mechanisms is form-based zoning. Cities across the country, including Miami, Milwaukee, and Denver, claim to have form-based codes, even if their zoning actually regulates more than form (Parolek, Parolek, & Crawford, 2008; Talen, 2012). What makes form-based codes so interesting is how, at their purest, they place full faith and credit in shape restrictions alone to fashion the desired city. Architectural theorists Aldo Rossi and Colin Rowe, who laid intellectual foundations for the significance of urban form independent of use, would be pleased (Koetter & Rowe, 1979; Rossi, 1982).

The technical attributes of form-based codes are fascinating. The original zoning trio of use, shape, and bulk restrictions is reduced to a single instrument. Use and bulk restrictions are silenced, and the remaining solo goes to more detailed, prescriptive controls over height, setbacks, lot coverage, frontage, and yards. For form-based zoning, the envelope, rather than its contents, gets the attention. To be sure, function often does follow form. Regulating form inevitably affects use. After all, factories and office buildings demand specific typologies of buildings. But this reinvention of zoning from a trio-based to a solo instrument demonstrates the versatility of the tool. And it leads to thought experiments. What if, for example, zoning regulated use alone? Cambridge, Massachusetts, my hometown, is considering a zoning proposal that would allow, as of right, 100% affordable housing developments anywhere in the city, with far less attention paid to the shape and bulk for such projects as compared with other types of uses (Community Development Department, 2019). That goes partway down the use-only path and has elicited support and opposition depending on one’s judgment about the relative merits of underlying social and physical goals.

Of course, there will always be resistance to zoning’s reinventions. People who live in single-family neighborhoods enjoy the century-long tradition of as-of-right, single-family residential zoning districts. Sonia Hirt’s superb history *Zoned in the USA* (2014) and Michael Wolf’s terrific dissection of the *Euclid* case in *The Zoning of America* (2000) document the long-standing American obsession with single-use, low-density residential districts. William Fischel’s smart *The Homevoter Hypothesis* (2001) says it all in his title and raises the question of why homeowners should be able to commandeer the powers of government to exclude others. That is a reasonable debate about the wisdom of a policy implemented by zoning. Note, however, that with one pass of the drafter’s hand, zoning can remain zoning as technique while eliminating what many deem its private capture by homeowner interests. The City of Minneapolis and the state of Oregon have made clear that single-family zoning can be relegated to the ashcan of historical zoning techniques if the political will is present.9
IV. Zoning Is for Sale.

Cities are selling zoning to obtain public benefits (Kayden, 1991). Some people call this “value capture,” but I prefer “value sharing” because the phrase expressly acknowledges that this is very much a two-way street. Value sharing means that the owner and the public are both enjoying benefits from zoning changes. Value capture suggests that the public is the sole beneficiary as it captures owner value. At the heart of the “capture” versus “sharing” debate is the baseline question whether zoning takes away or creates land value. For those espousing the former, zoning takes away the natural right to build a skyscraper to the moon. For those endorsing the latter, there is no underlying thing as a natural right to property and rights to develop are granted by society through government. As with most binaries, the oppositions overstate the case. Property rights and associated land values have been contingent for centuries, affected by centuries-old common laws, such as nuisance laws, and zoning’s subsequent codification of its principles. People have been buying and selling land at values reflecting the capitalization of market trends, demographic shifts, interest rate swings, entrepreneurial efforts, and public infrastructure investments, as well as regulation. The zoning that applies now to a property may be often, although not universally, understood as the baseline from which to determine whether a zoning action gives or takes value.

When zoning restrictions are eased specifically to generate financial benefits for the owner in order to encourage the owner’s provision of public benefits, then this is an express example of zoning for sale. New York City pioneered so-called incentive zoning in its 1961 zoning ordinance when it allowed office and residential developers to exceed the otherwise maximum floor area ceilings if they agreed to provide plazas and arcades on their lots that would be open to the public (Kayden et al., 2000). These privately owned public spaces, or POPS, became the first in a list of zoning-encouraged public amenities that ultimately included legitimate theaters, subway entrances, and affordable housing. The latest examples of zoning for sale in New York City include a massive rezoning for a multiblock area surrounding Grand Central Terminal and the upzoning of neighborhoods to encourage affordable housing. The former, known as the Greater East Midtown rezoning, introduced significant zoning incentives to encourage the provision of transit improvements, such as new and better subway entrances, escalators, and elevators, as well as more and improved public space. The latter, known as Mandatory Inclusionary Housing, upzones neighborhoods for greater development capacity while mandating the provision of affordable housing.

At one level, zoning for sale should be no more shocking than, as depicted in the 1942 American movie classic *Casablanca*, gambling in Rick’s Casa-blanca Americain. As municipal budgets have experienced increased funding demand for basic services, US cities have routinely turned to incentive zoning to provide or fund public realm amenities and affordable housing. This
was to be the proverbial free lunch. The public received public benefits, the developers received financial benefits, and no public dollars would be expended. The recognition that development rights have financial value is hardly new. Whether one cites Henry George’s distinction between use and value (George, 1880, edition 2008); the 1942 British Uthwatt Report’s exegesis on use, exchange, and floating values (Uthwatt, 1942); planning gain in the British Town and Country Planning Act 1932; Don Hagman and Dean Misczynski’s provocative Windfalls for Wipeouts (1978); transfer of development rights for historic and land preservation (Kayden, 1992); or San Paulo’s “certificates of additional construction potential bonds” (Sandroni, 2010), it is no secret that money is to be made, or lost, in the zoning game.

The deeper question is how far zoning should pivot to a broad-based, operationally commodified, understanding of development rights. Development rights are valuable to developers, so why not expressly recognize their exchange value in service of the public good goes the argument. Tethered to so-called “related” public benefits, this is not so controversial. New York City’s Greater East Midtown rezoning allowed greater density to, among other things, pay for infrastructure improvements to address existing and anticipated density. The physical planning connection was more or less retained. Plazas and other public spaces may be similarly understood as density-ameliorating amenities accommodating the greater number of employees and residents emerging from the bonus floor area. It may seem a bit odd to grant additional density in return for amenities that mitigate the negative effects of additional density, but at least there is a connection between the two. If bulk and other zoning restrictions become negotiable, however, not on the basis of time-honored, territorially specific physical planning criteria, such as infrastructure capacity and light and air, but on the basis of paying for a wide range of public benefits, including ones that are arguably unrelated to the impacts of the additional bulk, then we need to more fully appreciate the planning implications.

Does such an approach breed cynicism about zoning writ large? Is the physical planning rationale for zoning being sacrificed on Mammon’s altar? Will bulk controls be manipulated only with revenue generation in mind? Should zoning permissions be outright sold in order to produce a reliable income stream alongside the property tax? Will the naked introduction of neoliberalism into the as-of-right bloodstream of zoning administration undermine society’s collective willingness to spend general-purpose tax dollars on the public realm? Can a mechanism that works only in areas where there is market demand for extra floor area equally benefit less-well-off areas that have no such demand?

Further problems may arise. The public benefits secured through zoning for sale are often managed, day to day, by private owners who have provided these benefits not because they want them on their own terms but because they want the zoning incentives. The record of private management is too
often a sorry one, with examples abounding about how private owners fail to adhere to the deal. POPS are illustrative. Since their introduction in 1961, POPS have too often failed to comply with the legal obligations attached to them. Two comprehensive assessments, one conducted by me with the New York City Department of City Planning and The Municipal Art Society of New York in 1999 and the other conducted by the New York City comptroller in 2017, revealed similar results: Roughly 50% of all buildings with one or more POPS failed to comply with legal requirements applicable to the public space (Kayden et al., 2000; Office of the Comptroller, City of New York, 2017).

Trump Tower in New York City is one of many examples of a stubborn record of noncompliance. In return for the provision of a public atrium, two landscaped terraces, and bordering retail space, the Trump building received floor area bonuses totaling close to 200,000 square feet. For many years, the Trump POPS flowed in and out of legal compliance. Knowing that a required, heavily used 22-foot public bench across from the building’s elevators near the Fifth Avenue entrance had been replaced by a sales kiosk selling Trump memorabilia, that a second sales kiosk illegally occupied the atrium, and that the future president had descended in the atrium on June 16, 2015 to announce his presidential ambitions feet from both violations, I contacted a reporter at *The New York Times* to investigate and report. The subsequent *Times* story12 did its work. The City followed up with an issuance of a violation as the system grudgingly sprung into action. I worked with Department of Buildings lawyers to prepare the case and attended all six hearings before the Environmental Control Board, a Buildings Department administrative body tasked with hearing violations. The dispositive meeting was attended by Trump lawyer Michael Cohen, who forthrightly conceded that the developer had no paper evidence to dispute the violations. Some two years after my initial efforts, the two sales kiosks were finally removed, a new bench installed, and $14,000 in fines paid. This is hardly the way to enforce both sides of a zoning-for-sale deal. Responsibility and funding for enforcement need to be built into any system so reliant on private operation of a public benefit.

V. Zoning Need Not Axiomatically Privilege Neighbors and Neighborhoods.

To be clear, there is nothing wrong with recognizing that people either within or near an area subject to a zoning change will experience that change differently than those miles away. The question is what extra sway, if any, should be given to such individuals as compared to nonneighbors who reflect the collective city as a whole when zoning decisions are made? From the outset, zoning has granted owners directly affected by or close to a zoning change some degree of preferential treatment (Babcock, 1966). The Village of Euclid’s 1922 ordinance stated, “If a protest against such amendment be presented by the owners of 20 per cent of the land within such area proposed
to be altered, such amendment shall not be passed except by a three-fourths vote of the Council.” 

Neighbors to the change enjoyed a preference as well: “If such amendment will transfer an area to a less restricted use, height or area district and a protest is presented, duly signed and acknowledged by the owners of 20 per cent of the land adjacent to and within 200 feet from such area to be transferred and within a more restricted use, height or area district than the district in which such area is proposed to be transferred, such amendment shall not be passed except by a three-fourths vote of the Council.”

Section 5 of *A Standard State Zoning Enabling Act* similarly provided that “[i]n case, however, of a protest against such change, signed by the owners of 20 per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending ___ feet therefrom, or of those directly opposite thereto extending ___ feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality.” And when it comes to the issuance of variances, those within a defined radius normally receive special notice that a variance is being considered, whereas those beyond that radius receive no such notice.

Today, it is standard practice for public officials considering zoning changes to consult with, if not defer to, the “neighborhood.” NIMBY (Not In My Back Yard) is not just an acronym but also a formidable phenomenon that frustrates those who see parochial, status quo residents standing in the way of citywide interests, such as more affordable housing or simply housing or development of any sort. Some have referred to this condition as the “Iron Triangle” of land use regulation: the applicant proposes; the neighborhood opposes; the government disposes. Political practices, expressly or with a wink and a nod, endorse a behavioral norm in which all other legislators defer to the decision of the local district representative, thereby amplifying zoning’s neighbor preference. Although Chicago’s new mayor has pushed to end that city’s infamous aldermanic courtesy/privilege/prerogative, there is no evidence that this represents the crest of a zoning wave. As long as individuals believe they have a right to their neighbor’s zoning, it will be hard to change practices favoring neighbors (Babcock, 1966).

To be clear, neighborhood concerns are not axiomatically meritless. Displacement, gentrification, traffic, neighborhood character, and the like are real issues that often underlie opposition to new development. Cities are not just one big thing but also a collection of neighborhoods with their own social, economic, cultural, and physical personalities. In a world that often seems uncontrollable, neighboring lots and blocks may be among the last bastions of individual agency. John Costonis’ important book *Icons and Aliens* (1989) recasts historic preservation and neighborhood character battles in such terms. At the same time, the aggregation of individual neighborhood interests may not produce the same amount of social benefits as that represented by citywide interests. Many studies have demonstrated how
exclusionary zoning, whether practiced neighborhood by neighborhood or suburb by suburb, is a hindrance to broader goals of affordability, equitable development, and inclusion (Glaeser & Ward, 2009).

Can zoning be retooled to solve this problem? One simple solution would be to de-privilege neighbors by repealing zoning text that allows them to trigger supermajority votes. In jurisdictions where supermajority votes are required for all zoning changes, a change to a majority vote would similarly make a difference. It is all too easy, however, to write about such changes, as if the political will to effect them does not matter. If a citywide majority is unable for whatever reason to impose its will on neighborhoods, then neighborhoods must be persuaded to support changes that impact them while serving a broader interest. Proposals abound to cut the Gordian knot. One is to robustly engage the comprehensive plan where benefits and burdens affecting all neighborhoods are simultaneously on the table and negotiated in advance (Hills & Schleicher, 2015). Another approach adopts principles of “fair share” and periodic accounting to ensure that land uses that benefit, as well as burden, neighborhoods are equally distributed throughout the city (New York City Department of City Planning, Spring 1988). A third approach secures neighborhood support through widened use of community benefits agreements or privileged treatment in the building and occupying of new projects, although such approaches themselves run the risk of replicating the very ills they are trying to solve (Marantz, 2015).

Neighborhood power within a city may be likened to city power within a state. Zoning is most often a creature of state, not local, power. If they wanted to, many state legislatures could change the way zoning is practiced city by city by majority vote (Schrager, 2016). The key words are “if they wanted to.” Some states have introduced a degree of state override. Massachusetts, for example, has a state law that diminishes the power of local zoning to discourage affordable housing. But if neighborhoods generally appear to exercise disproportionate influence within a city, the same may be said for cities within a state when it comes to zoning decisions. It is not happenstance that the Mount Laurel doctrine requiring growing suburbs in New Jersey to accommodate their fair share of low- and moderate-income housing emerged from the judicial branch under the state constitution rather than from the state’s legislative branch. And the often-tortured history of implementing the Mount Laurel doctrine after its judicial announcement in 1975 demonstrates the difficulty of balancing diverse interests at different scales (Kirp, Dwyer, & Rosenthal, 1995).

VI. Zoning Should Be Understandable and Transparent.

Does anyone really know what is in their zoning ordinance? Knowledge is often limited to specialists within departments of city planning, a few law firms, and planning and design consultancies. Knowledge is power, and these specialists are able to converse adroitly about technical aspects. For
the rest of us, the document seems as indecipherable and inaccessible as the US tax code. Meaningful democracy and equality are harder to achieve if foundational documents are beyond common understanding.

New York City has taken justifiable pride in demystifying the thousands of pages constituting its zoning resolution. The Department of City Planning for many years has prepared an illustrated zoning primer to explain the contents of the resolution (New York City Department of City Planning, 2018). Could the primer itself become the resolution? Could graphic representations do more of the work? Could the proliferation of online zoning across the country make a significant dent in the obscurities? Online zoning resolutions will only help if the resolutions themselves are written in user-friendly language.

And what about what I call “Dark Zoning,” the accumulated zoning of discretionary actions, special permits, variances, and building department and zoning inspection decisions that end up shaping the city as much as the published zoning text and maps that constitute the ordinance itself. It is time to put daylight on these decisions using user-friendly digital applications that can demonstrate to ordinary city users what a proposed zoning change will mean to them case by case and cumulatively over time.

VII. Zoning, Too, Will be Affected by Climate Change.

Is climate change an environmental or a land use problem? It is both. Indeed, climate change is a worldwide problem that demands response at all levels of government. National laws, whether regulatory or tax-based, can mitigate greenhouse gas emissions. Adapting to the effects of climate change will likely depend on significant national infrastructure investments. As players on the front lines, local governments are not waiting for their national governments to act and, instead, are reviewing the tools at their disposal. Zoning, whether it be called green zoning, sustainable zoning, or climate change zoning, is one such tool.

Interestingly, for most of their lifetimes, land use law and environmental law regimes have remained largely separate and distinct. To this day, developers often consult two sets of laws and two sets of lawyers. In New York City, for example, one needs to know and navigate uniform land use review procedures and CEQR for larger projects seeking discretionary approval. There are historical and functional explanations for the initial separation and, given path dependencies, its continuing grip (Kayden, 2000). Zoning emerged locally in the 1910s and 1920s and environmental laws nationally in the late 1960s. Scientifically derived public health criteria and goals underpin most environmental laws, even if politics is never that far away. Zoning implements a broader set of goals measured against more elusive, often qualitative criteria. Nonetheless, duplicative reviews tax everyone’s patience, especially when land use concerns now routinely raise traditional environmental concerns and environmental concerns now routinely raise traditional social concerns.
The urgency of climate change is likely to cut through the distinctions. Zoning that discourages car-dependent carbon dioxide–generating patterns of land uses may be expected to become more prevalent. Zoning’s classic competence to allow or prohibit development in a given location will be deployed to address development in areas vulnerable to flooding from sea-level rise and stormwater surge. Legal and political challenges from property owners will make such decision-making stressful for all (Kayden, 2015). New interpretations of nonconforming use rules capping the period such uses are permitted to continue, known as amortization periods, should be considered. “Dynamic” zoning that automatically changes applicable regulations as conditions on the ground change can be baked into the zoning cake in advance. Zoning that requires increased on-site permeable surfaces for stormwater runoff is already part of the mix.

VIII. Zoning Should Be Taught in Schools of Architecture, Landscape Architecture, and Urban Planning.

I wrote an article titled “Why Implementation Matters” (Kayden, 2014). I made the argument that knowledge about and facility with law, finance, and politics should be more robustly included in design and planning curricula. The thing is, most students love to learn about zoning. I know it, having taught a land use and environmental law course for many years. Taught well, this is not an “eat your spinach” recommendation. Once students realize that zoning is a design tool affecting the built and natural environment wholesale rather than one building at a time, their interest perks up. In 2011, I co-chaired with then New York City Planning Commission chair Amanda Burden a conference celebrating the 50th anniversary of New York City’s 1961 zoning ordinance. I moderated the last panel, which included architects Thom Mayne and Robert Stern. I will always remember Thom’s truthful comment that, more or less, advanced the proposition that the least capable of his employees worked on zoning issues. The view of zoning as backwater subject matter and career diversion will more likely change if the schools that produce planning and design professionals initiate the change.

IX. Conclusion.

In our quest to build more productive, equitable, sustainable, and livable cities, zoning has played the primary regulatory role controlling private land use and development. Are there superior substitutes in existence or to be invented that could help achieve the goals that society currently seeks to achieve through zoning? That is a fair question, to be sure, but the reality of zoning’s deeply embedded institutional roots and the path dependency that follows counsel that zoning is here to stay. Let us recognize zoning for what it is and is not. It is a reasonably malleable tool implementing a vision established politically and technocratically. It is a means to an end.
Zoning may be compared to a thermostat that regulates temperature. City users, their political representatives, and their planning advisors should argue about the right “temperature” before setting the thermostat. A separate discussion should be had about the mechanisms of zoning and whether they deliver the city we desire. Let us engage creatively with those mechanisms, critiquing current operations, assembling new theories and knowledge, and introducing reforms. Let us not overly blame the thermostat when it is too cold or too hot. For all its flaws, zoning is predictably here to stay and deeply worthy of intellectual engagement.

Notes

2. N.Y. Gen. City Law Section 20(25); N.Y. Town Law Section 263; N.Y. Village Law Section 7-704.
5. I have also used the word design instead of plan.
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Section I

Zoning in Context
1 Zoning Matters

Institutions and Action in the 21st Century

Elliott Sclar, Bernadette Baird-Zars, Lauren Ames Fischer, and Valerie E. Stahl

“Activists plead: Don’t Turn Sunset Park into Williamsburg” ran a March 2015 headline of the Brooklyn Daily Eagle (Katina, 2015). The anguish behind this headline was news that owners of a 16-warehouse complex on the New York City waterfront proposed a $1 billion redevelopment plan. The complex, located in a neighborhood only 30 minutes by ferry from Wall Street, would surely have an impact on the lives of the predominantly working-class Latino and Asian populations who call Sunset Park home. The new owners’ site proposal consisted of a new university research facility, a hotel, and a conference center. But to accomplish this transformation, they first needed a zoning change. New York City would have to change the existing heavy industrial use zoning to zoning that allows mixed commercial, industrial, and residential uses (Levitt, 2015). The developer’s promise of an influx of local jobs failed to assuage local fears borne of the lessons of a similar rezoning 10 years prior farther up the waterfront in Williamsburg, which was followed by intense gentrification that subsequently transformed the character of that neighborhood (Figure 1.1) (Curran, 2007; Angotti, DePaolo, Marcuse, Morse, & Stein, 2016). Planners and activists often cite Williamsburg, Brooklyn, as a case of extreme gentrification gone wrong—and zoning changes as a culprit. As urban areas change to varying degrees, zoning frequently plays a central role. How planners understanding zoning’s power and pitfalls—as part of planning—will shape the future of urban form, development, and justice. This book provides the tools to tease out how zoning weaves through complex urban stories.

How did Williamsburg’s experience become a cautionary tale of zoning-driven gentrification? Wealthy developers did play a critical role in securing land use changes from the city that drastically altered the neighborhood and set a precedent for similar areas. And a development-friendly mayor supported the rezoning in 2005. But the story goes beyond simple narratives of economic coalitions or a single “powerbroker” politician. Rather, the contemporary history of land use along the Brooklyn waterfront reflects an intersection of more than a century’s worth of social, economic, and political interests brokered within the historical context of New York City.
The roots of the 2005 rezoning in Williamsburg and the anticipated Sunset Park rezoning stem from the last major revision of the city’s zoning code in 1961. That change cemented waterfront neighborhoods in Brooklyn and Queens into being the city’s prime industrial areas (Wolf-Powers, 2005). Yet as global economic shifts led to a decline of manufacturing jobs in Williamsburg from nearly 100,000 in 1961 to a mere 12,000 in the 1990s (Brooklyn Public Library, 2005), the city’s 1961 land use plan became irrelevant. In the two decades preceding that Williamsburg rezoning, manufacturing work disappeared from the neighborhood, and top city policy makers took a hands-off approach. Neighborhood residents independently weathered the decades of deindustrialization. Despite local groups’ advocacy for affordable housing and green spaces through a community-based plan in the late 1990s (Hill, 2013) and a 1996 city planning study that called for greater residential uses in the area through a rezoning, the mayoral administration of Rudolph Giuliani largely allowed private actors to dictate the neighborhood’s future. The administration took no action to shape the emergent development along the waterfront (Rosenberg, 2014).

Figure 1.1 The Evolving Williamsburg Waterfront from Manhattan, March 2019

Source: Valerie Stahl, 2019.
In the early 2000s, the following administration of Mayor Michael Bloomberg not only mainly continued Giuliani’s laissez-faire land use strategies but also presented a conflicting message by designating parts of the area for industrial use via a special purpose Industrial Business Zone (Pratt Center for Community Development, 2008). Meanwhile, developers were taking advantage of the city’s indecision to capitalize on early signs of neighborhood gentrification. Using zoning variances granted by the Board of Standards and Appeals (BSA), the city’s obscure zoning relief agency, developers converted more than 100 Williamsburg properties from industrial to residential use between 1998 and 2004 (Fischer, Stahl, & Baird-Zars, 2018). These use changes de facto primed the area for the subsequent upzoning, a formality that was only publicly debated, adjudicated, and accepted in 2005. Longtime Williamsburg residents, faced with displacement pressures, were far from pleased with the waterfront rezoning, ultimately attributing the city’s actions (and lack thereof) with the area’s accelerating gentrification (Hill, 2013).

Today, land use changes in Williamsburg have converted a once-working class area into a luxury neighborhood. That experience has given neighborhood activists across New York City good reason to distrust the city rezoning process. In Sunset Park, as in other neighborhoods, residents now fear that changes to the zoning code will dramatically change the social composition of their diverse neighborhood as well. But by the time the issue evolves into a political fight over zoning change, the conditions that slate neighborhoods for redevelopment have long been in place.

While this anecdote is a New York story, the many forces of urban change that it encompasses are global. Layered conflicts in city, community, and developer-driven plans for land use change are always a dynamic of historical and institutional factors. It is these factors that define the practice of modern zoning, and it is these factors that we explore in this textbook. Our goal is to help planners unpack and understand these factors, and so help them make wiser decisions than might otherwise be the case as they pursue social justice and environmental sustainability in their professional work.

Zoning as presented here is a matter of institutional decision making. By that we mean that zoning practice originates in the values, discourses, transactions, networks, formal regulations, and informal rules that both overtly and covertly define the processes of public land use regulation and private land use decision making. From Williamsburg to Sunset Park and beyond, the seemingly formal and static regulatory tool of zoning is actually a socially dynamic and deeply embedded and contested collective project that carries powerful normative implications. In order to understand zoning as an institutional process of social decision making, it is first necessary to situate the zoning discourse within broader planning histories and contemporary tensions emerging from political-economic understandings of land use in changing cities.
Zoning and Planning

Despite the powerful role zoning can play as a planning tool, planning schools often focus on teaching its technical and legal details, not how it plays out in practice. This is especially problematic as zoning sits squarely in planning’s mandate. Indeed, zoning expertise is arguably one of the few planning tools that actors in other policy arenas seldom claim. Urban planners “own” zoning. It is time to lay claim. This textbook lays out a road map for planners to understand and practice zoning as a political and institutional tool of practice.

Zoning developed in tandem with urban planning as an instrument to implement comprehensive plans and address the ills of rapid urbanization. Although a central part of planning’s technical apparatus, zoning has always been a contested and political tool that reflects and reinforces the values and power of governing coalitions (Beauregard, 1989; Boyer, 1983). Early supporters of zoning had diverse, and sometimes conflicting, motives (see Fischler, this volume). Merchants argued for zoning to prevent light industry from encroaching on residential and commercial uses on Fifth Avenue in New York (Makielski, 1966) while progressive reformers advocated for zoning to ameliorate overcrowding. In Munich, the Socialist Party advocated for better living conditions using the zoning code; in colonial developments, such as in Fez, Morocco, administrators advanced zoning as a tool of racial, ethnic, and religious segregation (Hirt, 2015; Silver, 1997; Rabinow, 1989, p. 44; King, 1977). In the century following its creation, zoning proved to be an immensely powerful mechanism to shape the city. Low-density residential districts in the US fueled an ‘automobile sub-urbanism’ (Hirt, 2014; Levine, 2005) while de facto racialized zoning helped solidify racial and economic segregation in metropolitan areas (Silver, 1997; Whittemore, 2017).

In recent decades, public expertise and guidance around urban land use have been led by a stream of urban economists who have launched a sustained attack on zoning-as-regulation that fails to resonate with the realities of planning and zoning practice. For these urban economists, zoning is, if not the, major cause of the urban housing affordability crisis, at minimum is a highly significant culprit (Glaeser, Gyourko, & Saks, 2005; Glaeser, Schuetz, & Ward, 2006; Quigley & Raphael, 2004; Schuetz, Meltzer, & Been, 2009). The indictment, characterized via “stylized facts” runs as follows: some of the greatest economic opportunities in the US are located in coastal cities, such as San Francisco, Boston, and New York, but the high cost of housing in these cities prevents too many people from accessing these booming job markets (Hsieh & Moretti, 2017). The main culprits behind this lack of affordability, according to these neoclassical economists, are zoning and building codes that prevent the housing industry from pursuing development projects that would provide a sufficient number of units. Their counterfactual is that sprawling cities in the South and West are more affordable due to their lack of regulation. Although both of these facts are
true, the methodological connections between the two concepts are weak; zoning per se cannot exclusively be linked to reduced affordability any more than ice cream sales can be causally linked to homicide rates, although the two might rise in tandem during a summer heat wave.

These dominant economic perspectives ultimately ignore the social institutions at the heart of zoning by substituting an ahistorical and deinstitutionalized model of competitive markets. The social and political power dynamics that define actual markets are thus rendered invisible, as are the values that individuals from different walks of life place on space and community amenities, such as urban transport, quality public education, and proximity to cultural affinity groups. In contrast, planners begin with a normative view of the “good city” that acknowledges and seeks to transform existing power dynamics, with varying success. By working with the ever-evolving institutions of collective decision making—such as zoning—on a daily basis, planners learn to be adept at navigating the complex upsides and downsides that the simplified economic interpretations leave out. The key term here is ever-evolving institution. Planners understand zoning as a contextual land use tool that takes into account numerous (and occasionally conflicting) policy and planning goals. Yet, in policy debates, planners and planning scholars often fail to adequately defend zoning as a necessary and significant institution of urban social decision making in the late neoliberal city.

Conflicts between the views of zoning as market regulation and zoning as a social institution create a messy landscape for zoning practice. Contemporary zoning codes aim to address a myriad of planning problems, including fixing a suite of issues created by the past century of zoning. In recent decades, the narrative of “highest and best use” in service to a more market-oriented approach to zoning has gained currency to justify a wide array of contested land use changes, ranging from the urban renewal schemes in the 1960s to contemporary rezonings in increasingly valuable inner-city areas (Harr & Kayden, 1989; Wolf-Powers, 2005; Angotti et al., 2016). But zoning is also heralded as a potential solution to the social equity issues brought about by the “back to the city” movement, such as the use of inclusionary zoning to tackle affordable housing crises (Schuetz et al., 2009). Indeed, as spending on urban public services, such as housing and economic development, has decreased in recent decades, zoning has been expected to fix an expanding range of problems resulting from empty municipal coffers, from mitigating rising rents to reducing traffic congestion. As the chapters in the volume illustrate, zoning’s use for a wide range of planning purposes makes the “devilish details” of zoning practice, and the context of zoning actions, increasingly relevant (Hirt, 2007). Over the past several decades, a few scholars have paved the way forward for a renewed examination of zoning (Harr & Kayden, 1989; Fischler, 1998a, 1998b; Hirt, 2015; Angotti et al., 2016; Whittemore, 2017). Along with an international conference on zoning held at Columbia in the winter of 2016 and several conference
sessions on zoning in 2016, 2017, and 2018, the approaches taken by these scholars inspired this book.

By reforging the important links between zoning practice and the normative concerns of the urban planning profession, this collaboratively authored textbook offers a revived framework for thinking about the intersections of zoning and planning. Namely, we consider if, when, and how zoning can be used for advancing justice and equity, all of which are key planning concerns for the 21st-century city. Keeping zoning’s complex, contested, and normatively embedded history in mind, planners should embark on a revitalized approach to zoning that emphasizes its potential while also being mindful of its pitfalls. With the planner’s toolbox increasingly consisting exclusively of zoning and other land regulation tools, planners require a historical and institutional examination of zoning that recognizes its strengths, as well as limits. This textbook is an attempt to delve deeper into specific histories and stories of zoning as an institution—an institution that greatly shapes the contours of planning practice today.

**Zoning as an Institution**

How can planners approach zoning by employing an institutional frame? Work in this volume aligns closely with sociological institutional analysis, an approach concerned with the social processes behind the formal and informal structures that shape individual actions (Healey, 1999, 2006); for more in-depth discussion see Ray, Baird-Zars and Sclar, this volume). Indeed, many planning scholars (albeit inadvertently) employ institutional perspectives in their work on land use. For instance, Annette Kim’s 2008 study of development in Vietnam documents how changing norms and discourses impact the role of the state in land (Kim, 2008). Similarly, Sonia Hirt’s work (2014, 2015) on single-family zoning identifies discourses that prioritize low-density living as a particularly powerful institution upholding predominant approaches to zoning in the US. Groups and networks of caste and political access drive patterns of land transition and exclusion in Sai Balakrishnan’s (2016) ethnography of peri-urban Bangalore. In southern Beirut, zoning changes trace back to sectarian contestations (Bou Akar, 2018), and in its downtown, zoning exceptions are acquired through networks of developers (Fawaz, 2017). Formalized participatory processes to develop climate resilience zoning in both Jakarta and Santiago—structured by formal laws and operating on “working rules”—responded to individual behaviors of the privileged and contributed to deepening zoning’s regressive outcomes (Anguelovski et al., 2016). And in New York, a 1961 court decision (“formal rules”) reinforced the power of a discretionary agency (the BSA) to grant zoning relief, a process that is heavily influenced by social and community networks (Fischer et al., 2018).

Examinations of zoning as an institution considers the big picture surrounding land use practice: it requires planners to connect how zoning maps,
and their exceptions and implementation, respond to interests and networks (e.g., property owners, neighbors, developers, city planners, and politicians), values and discourses (e.g., which groups are targeted for affordable housing, competing views about climate change, or rationales for infrastructure investments), transactions (e.g., land and property markets), and embedded legal and bureaucratic practices (e.g., taxation systems or construction permits) that contribute to unequal enforcement and patterns of societal exclusion.

The analytical approach of zoning-as-institution enables an identification of the dimensions of zoning practice where meaningful change can occur. Mapping the broad institutional field helps planners identify what contextual aspects of a given planning scenario are relevant to generating more just outcomes. Through identifying the dynamics of the institutions involved, this perspective also requires students of zoning to formally analyze “how things work” by tracing the way that zoning practices play out on the ground (Baird-Zars, this volume). In other words, mapping and tracing the institutions relevant to zoning can help clarify what elements matter in a given case and how. An institutional approach also pushes planners to expand their scope of analysis to phenomena and actors that are often overlooked or excluded from planning narratives, such as the granting of exceptions to existing regulations. The chapters and cases throughout this book draw on an institutional reading that explicitly engages with the history of zoning as practiced, requiring readers to grapple with zoning’s larger sociopolitical context, its relationship to other parts of planning, and the details of daily implementation. By systematically illuminating the complexities of practice, institutional analysis helps identify concrete steps that planners and advocates can take to transform zoning to better enact their normative view of the city (see Ray et al., this volume).

Understanding zoning-as-institution, in fact, aligns with a reemerging understanding of land as nuanced and layered and as constituting the bundle of rights and rents (Haila, 2015; Ryan-Collins, Lloyd, & Macfarlane, 2017; Obeng-Odoom, 2016). Unpacking the ways that land can be regulated and rented beyond simple lifetime freehold ownership matches with the increasingly creative ways that cities and planners aspire to “unbundle” parts of land to zone, for example, through transferable development rights, land trusts, or density payments. This understanding draws on a long tradition in economics that concludes that the simple nonhistorical and noninstitutional theory of supply and demand economists use to disparage zoning, and land regulation more generally, provides a poor descriptive fit for the actual complex nature of urban land markets (Molotch, 1998). Land, as Karl Polanyi (1944) observed, is a “fictitious” commodity. It is fictitious in that land or location exists prior to and external to its exchange on the market; treating it as a simple tradeable asset produces many “wicked” problems. The fixity of land—that is, that we cannot produce more of it with the same geo-locational benefits as it currently exists—demands a substantive and
policy-relevant understanding of urban space that engages with a complexity far beyond that of supply and demand (see Sclar, this volume). So long as the zoning-as-regulation perspective dominates, the lessons from zoning stories, such as the case of the Brooklyn waterfront, will always come down to zoning being the culprit in reproducing urban inequalities. In contrast, a zoning-as-institution approach helps planners understand the complexities of land use decisions in an already-changing neighborhood, allowing planners to draw lessons on how rezonings can be structured and integrated with other regulations, norms, and values to potentially produce different outcomes. If planners in rapidly changing urban areas learn anything from this textbook, it should be to consider the intersecting networks, transactions, and discourses that prompt land use decisions—and how such decisions formulate responses from the public in a similarly integrated manner.

**Book Structure**

This textbook helps planning students and practitioners examine zoning from an integrated and institutional perspective. Section I of the textbook outlines the values behind the roots of zoning in North America. Using examples primarily from US cities, Section II connects zoning practice to planning’s key areas of concern. Section III spotlights cases of zoning from both US cities and abroad and includes a “how to” chapter on methods for studying land use using institutional analysis. Throughout the book, contributors illustrate the utility of institutional thinking for engaging with the complexity of zoning practice and highlighting avenues for transformative change.

This introductory chapter presents zoning as a normative tool that planners, private actors, and citizens have wielded to various ends. In Chapter 2, “The Six Stories of Zoning,” Raphaël Fischler outlines the multiple and, at times, competing narratives of zoning in US and Canadian cities. Through the stories, Fischler traces rationales for zoning’s 19th- and 20th-century roots to trends that pervade in its implementation today. Chapter 3, “The Financialization of Zoning and the Fungibility of Air Rights,” by Elliott Sclar, considers the contemporary evolution of zoning by focusing on how it has been wielded as an instrument for private actors to extract ‘highest and best uses’ from the public welfare. In Chapter 4, “Rural Zoning: Land Use Policy in a Contested and Neglected Landscape,” Evangeline R. Linkous considers land use in its oft-overlooked rural context in the US, describing how competing definitions of the rural have further complicated the implementation of zoning and land use strategies in such areas. Both Sclar and Linkous situate contemporary US land use practices in the present neoliberal moment and more broadly in what Fischler describes in one of his stories as the import of “money.” All three chapters also acknowledge the key role of the state in facilitating the institutional relationships that contextualize contemporary zoning practice.
In Section II, the chapters examine zoning practice through its critical ties to other key competencies of urban planning: transportation, economic development, the environment, and housing. In Chapter 5, “Zoning, Transport, and Urban Growth: An Institutional Perspective,” Lauren Ames Fischer uses the cases of Portland, Oregon, and Kansas City, Missouri, to illustrate the relationship between the institutional structures guiding land use regulation and transport provision in US cities. In Chapter 6, “Zoning Dollars and Change: Local Economic Development Zones,” Rachel Meltzer describes the advent of locally bounded revenue streams through mechanisms such as business improvement districts, tax-increment financing, and empowerment/enterprise zones, illuminating the potential and trade-offs of hyper-localized approaches to economic development. In Chapter 7, “Zoning to Adapt: Climate Change Zoning and the Lessons of Environmental Zoning Efforts Past,” Siobhan Watson considers the historical role of zoning in light of environmental hazards while also outlining approaches for using zoning in the case of planning for nonroutine events, such as environmental disasters. Chapter 8, “Zoning for Inclusion and Affordability: US Lessons on the Opportunities and Limits for Local Housing Policy,” by Adèle Cassola, draws on examples from past studies and an original data set of 79 large-city governments on the role that inclusionary zoning programs play in the creation of affordable housing. Fischer and Watson trace the relationship between land use, transit, and the environment from before zoning’s Progressive Era origins, while Meltzer and Cassola primarily focus on policy innovations resulting from neoliberalization in the latter half of the 20th century. Despite touching on different issue areas and historical moments, all of the chapters speak to the importance of institutional contexts as both barriers and potential pathways to more productive and equitable planning and policy practices.

In Section III, the chapters highlight how deep-dive analysis can be used to tell complex stories of zoning. In Chapter 9, “Zoning as a Verb: A Scaffold for the Practice of Land Use Planning,” Bernadette Baird-Zars examines understandings of implementation and practice in land use across the global North and South and advances an institutional typology of land use and zoning actions and spaces for planners to meaningfully intervene. In Chapter 10, titled “Racial Bias in Zoning: the Case of Durham, North Carolina, 1945–2014,” Andrew H. Whittemore examines two key periods in Durham’s land use history that explain how and why racial bias persisted through the ways in which local actors wielded the zoning code. In Chapter 11, titled “Zones of Resistance: Disparities in Two New York City Neighborhood Rezonings,” Valerie E. Stahl provides a comparative analysis of the collaborations and contestations surrounding rezonings under a mandatory inclusionary housing plan in New York City, spotlighting the role of local participatory institutions. Finally, in Chapter 12, “Analyzing Zoning as an Institution: Methods for Scholarship and Practice,” Rosalie Ray, Elliott Sclar, and Bernadette Baird-Zars outline an array of methodological approaches and techniques used
within an institutionalist approach that can provide a more satisfying analysis of zoning in practice. While Baird-Zars describes the varied legacies of “working rules” of zoning across the global North and South, Whittemore and Stahl show how these rules have historically been and continue to be used to justify racial exclusion from both physical space and local decision-making processes across US cities. Meanwhile, Ray et al. provide a prescription for how students of land use could examine these working rules—that is, zoning regulations—through institutional analysis. All authors acknowledge the potential of reforming the “rules” of the zoning “game” to more inclusionary ends, with a focus on the social and political relationships that have to be consistently examined and revised within a given city or community.

In spite of the above categorizations, the chapters overlap in their efforts to highlight the values guiding the relational, contextual, and procedural aspects of zoning-as-institution. We have also included “pop-out” cases by both chapter authors and external contributors throughout the book to illustrate how the ideas outlined in a particular chapter translate to a diversity of other places. While many of the examples across chapters and pop-outs focus on “global Northern” cities located in the US, taken together, our approach shows that examining how zoning plays out “on the ground”—be it in New York, Bengaluru, Beirut, or rural Japanese provinces—is just as important as the legal infrastructure “on the books” in a given nation, province, or locality. For zoning and other forms of land use, this textbook shows how context and implementation matter just as much as place.

By addressing the normative implications of zoning, we hope to bring some of the debates on zoning’s potential and problematics into the daylight. Ultimately, the adequate response to zoning’s far-reaching implications is seldom black or white; this textbook encourages planners to be comfortable operating in the gray area of zoning practice and to comprehend zoning’s limits, as well as its potential. Understanding zoning as the institution that it has become is central to crafting a more nuanced portrait of planning practice and, in turn, to ensure that zoning tools, while not the only ones necessary, can be used to build a more just vision of the city whenever possible.

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1. All authors contributed equally to the development of this chapter as well as to the compilation of this volume.
2. The owners of Industry City submitted an application to begin the rezoning in February 2019 but were met by immediate resistance from the local community board and city council member. The community board hopes to conduct preemptive studies on the impact of the anticipated rezoning prior to beginning the land use review process (Spivack, 2019).
3. In New York City, community boards, borough presidents, and the Department of City Planning can all develop nonbinding proposals for land use changes, called 197-a plans, that they can submit for consideration by the city planning commission and city council (Angotti et al., 2016). In the case of Williamsburg,
local advocacy groups worked with the community board to propose a plan that was never formally considered.

4. This distrust pervades even when the intent is “inclusionary”—that is, the municipality requires a certain percentage of affordable units in exchange for additional height or bulk. See Cassola’s chapter, this volume.

5. The tools that planners have to enact normative visions for the city have changed considerably over time. As a vestige of the progressive era, urban planning was originally conceived of as a means to rein in corrupt political decision making by utilizing scientific principles to organize and influence collective decision making (Beauregard, 1984). Tools available to planners mirrored those of the nascent bureaucratic state (Boyer, 1983; Scott, 1998; Fainstein, 2010), including the collection and analysis of quantitative data, the creation of impartial administrative organizations charged with both creating and enforcing rules related to the use of space (e.g., zoning), and the embrace of the “public interest” as a guide for determining appropriate action. Zoning developed under the Progressive Era mind-set that viewed the relationship between state and society and state and market differently than people view it under today’s neoliberal framework.

6. The term *stylized fact* when used by economists refers to a generalization drawn from a review of a set of empirical facts (Kaldor, 1961, p. 178; Cooley, 1995, p. 4).

1. A comprehensive review of all forms and motifs of zoning is impossible in this short chapter. Some relevant topics, historic preservation, for instance, will not be discussed; others, such as environmental sustainability, will be treated only succinctly. Other forms of land use regulation, such as subdivision codes, will not be examined either.

2. Montréal’s incorporation of 1834 was rescinded; a new charter was adopted, and a bona fide municipal government instituted in 1840.

3. This characterization of the changing geographies of French and Southern European cities and of North American cities is, of course, a gross oversimplification; in both regions, patterns were much more complicated (Corbin Sies, 2001; Harris & Lewis, 2001).

4. The first residential zone was established in Bylaw no. 75: “Respecting the erection of buildings above the level of Montrose Avenue and to Regulate the class of houses to be erected in that locality,” March 1, 1897 (City of Westmount Archives). Use of the floor area ratio (FAR) came two years later, with a bylaw limiting the floor area of multifamily housing to the area of the lot. The idea of FAR was raised in New York City during discussions leading to the adoption of the 1916 zoning resolution, but it was not put on the books until 1961 (Fischler, 1998a). The FAR regulation was left outside Bylaw 190, “Building by-law of 1909, January 4, 1909 (City of Westmount Archives), as were regulations on building lines, which were part of the homologated street plan.

5. The first spatially comprehensive zoning code in a large American city was that of Los Angeles. Adopted in 1908, the ordinance divided the whole municipal territory into residential and industrial zones. But it did not contain the spatial standards on building volumes, land coverage, and setbacks that Westmount and New York City adopted in the following year and was therefore not comprehensive in that respect.

6. The principle of differentiated regulation by means of unequal standards was first accepted by the US Supreme courts in 1909, in *Welch v. Swasey*, a case on the two height districts that Boston had instituted in 1904 (Holleran, 1998).

7. In 1961, a thoroughly revised zoning code took the monolithic tower on a plaza, as then proposed by Mies van der Rohe and other Modernist architects, as the new model to emulate (Whyte, 1988, Ch. 16).
8. Because these provisions of planning law are often used in NIMBY (Not In My Back Yard) fights, the Québec government has recently curtailed their application. Municipalities may now declare some areas where significant redevelopment is expected to occur as areas where these provisions do not apply but where all projects must be subject to public consultation.

9. In New York City, the intent had been to set up a Planning Commission at the same time as the zoning ordinance was being adopted; in fact, the city’s Department of City Planning was created only in 1938, and the city’s first Plan for New York City was adopted in 1969 (Scott, 1971; Fischler, 2018). In Montréal, a planning department was not put in place until 1941, the first Plan d’urbanisme was not produced until 1992, when the vast assortment of area-specific zoning regulations were finally consolidated into a comprehensive zoning code (Fischler, 2014).


2. For a thicker discussion of antitax and antitrust laws targeted at chain retail in the 1920s and 1930s, see Lebhar and Shaw (1963), pp. 46–48.


1. Rural economic development programs are a critical part of US rural planning policy and focus on addressing poverty, housing, utilities, and business development. These programs are usually not linked to zoning—the subject of this book—and thus are not included in this discussion.

2. In 2004, 61% of Oregon voters supported and passed Measure 37, a statewide property rights law that allowed landowners to claim compensation for property value reductions caused by land use regulations such as UGBs. The poster child for Measure 37 was Dorothy English, an elderly widow who sought to subdivide her 20-acre property outside the UGB into eight home sites for her family. However, in a 2007 special election, Oregon voters passed Measure 49, reducing many of Measure 37’s impacts and illustrating the contentious nature of rural land policy in the state.

1. Targeted-use zones, like industrial business zones, however, can sometimes be part of a comprehensive land use planning process.

2. See Sbragia (1996) for an excellent review of the history of special districts and public authorities in the US.

3. Some sources claimed there to be more than 1,000 in the US (Briffault, 1999); it is difficult to verify the exact number because there is no official count.

4. Consensus under these conditions is considered impractical.

5. It is important to note that, theoretically, BID membership is voluntary. Under assumptions of costless mobility, property owners could sell/leave if they did not want to join the BID.

6. Unlike commercial properties around a retail or office corridor, the interests of property owners may not be aligned enough to initiate the district when it comes to residential, school, or park services.

7. This feature of BIDs has been subject to legal scrutiny, and has been upheld due to their special district status; that is, they are not presumed to be general-purpose governments and are therefore not subject to the same democratic rules (Briffault, 1999).
8. There are examples of TIFs that can spend their money outside of TIF borders, for example, on affordable housing. Several cities in Wisconsin have done this (Witenski, 2018).

9. The state does impose restrictions on how the locality can use TIFs and sets out guidelines for their purpose and formation (Briffault, 2010). The administration of the TIF (i.e., how rigorous the redevelopment plan is), however, is at the discretion of the municipality. Many plans set forth by the state have proven to be formalities more than anything (Weber, 2013).

10. For excellent reviews of TIFs, see Weber (2013) and Merriman (2018).

11. Since TIF legislation is state-specific, there can be other requirements that vary, such as leeway in the blighted requirement or restrictions on the span and location of the district (Weber, 2013).

12. Briffault (2010) notes that due to these concerns around public participation and transparency, many measures have been implemented to improve public outreach and formalize neighborhood representation and greater reporting of TIF budgets, to name a few.

13. See Weber (2013) for a detailed description of how “front funding” is implemented.

14. TIFs have been terminated time and time again due to unrealized financing plans (Merriman, 2018).

15. The municipality often bears the burden, as it still needs to come up with money to fund those schools. States increasingly require notices and impose other restrictions related to the overlapping districts.

16. Enterprise and empowerment zones are, for all intents and purposes, the same thing. Different political parties use different terms to describe essentially the same policy: Republicans tend to refer to them as “enterprise zones” and Democrats as “empowerment zones” (Malpezzi, 2013).

17. Unlike BIDs and TIFs, layers of oversight are written into EZ legislation. However, compliance with the hiring requirements is very difficult to ensure, especially from where the federal administrators sit. Therefore, EZs have been known for rampant abuse of funds, as employers hire outside the mandated zones or employee criteria.

18. As of the writing of this chapter, the specific rules and funding opportunities had not been released.

19. Special economic zones (SEZs), not discussed in this chapter, are a version of these incentive-based zones. They almost exclusively exist outside of the US. They typically interface with macroeconomic systems, such as trade, and are influenced much more by national development policies (rather than state or local ones). SEZs are formed and managed under different circumstances and motivations than the submunicipal zones discussed in this chapter.

1. Courts have held that there must be a rational nexus between a development exaction and the development’s impacts. In other words, the condition that is being placed on the development must be related to mitigating the impacts that would be created by the new development. Additionally, there should be “rough proportionality” between the impacts generated and the exaction being demanded (Nolon, 2013). The theory of development exactions is that they should prevent the existing community from having to pay to accommodate new growth (Evans-Cowley, 2006). If a municipality is working toward a particular renewable-energy goal—especially one that it has articulated in its comprehensive plan—then new development dependent on fossil fuels would make it more expensive for the municipality to reach its goal. If, on the other hand, new development was required to provide enough renewable power to meet its share of
The goal or pay funds that allow the municipality to do so, the additional cost of the new development in terms of renewable energy service would be neutralized. Municipalities may wish, therefore, to consider the percentage of renewable energy that has been articulated as a townwide goal to be the ceiling for what they can require in exactions from new development. As long as the exactions are under this ceiling, however, mandates should withstand legal challenges.


2. “Below-market-rate” units limit the price or rent that can be charged, with the aim of making them affordable to lower-income households. The terms below market rate and affordable are used interchangeably in this chapter.

3. My data set includes information on inclusionary zoning policies in 79 of the 146 most populous US cities. Data were collected in late 2016 and early 2017 through a survey of local officials and a comprehensive review of ordinances, policy documents, plans, and program descriptions. The cities in the data set are comparable to the 146 most populous cities across a range of demographic, budgetary, economic, and housing indicators.

4. Montgomery County’s Moderately Priced Dwelling Unit (MPDU) program is one of the oldest, most productive, and most well-researched inclusionary zoning policies in the US. (Levy et al., 2012).

5. Loi n°2000 1208, or Loi sur la Solidarité et Renouvellement Urbain, the same law which also redefined French municipal zoning, replacing the classic POS (Plans d’Occupation des Sols) with the more flexible PLU (Plans Locaux d’Urbanisme), through which municipal housing, transportation, and environment goals are implemented.

6. Municipalities with at least 3,500 residents, within a metropolitan area of at least 50,000 residents that has at least one city of 15,000 residents.

7. We can list among outlaw municipalities paying the highest fees Le Cannet (Alpes-Maritimes), with only 7.32% of its housing stock dedicated to social units, therefore paying an annual fee of €1,373,586, or Nogent-sur-Marne (Val-de-Marne) with 12.55% social housing units, and an annual fee of €637,653.

8. Under a provision of the US Constitution known as the “takings clause,” it is illegal to seize private property for public use without fair compensation. Several court rulings on inclusionary zoning have referenced the importance of cost offsets in ensuring that such programs have a valid legal foundation (Mallach & Calavita, 2010).

9. Results are from a multivariate logistic regression. Data were drawn from my data set of large cities. The dependent variable indicated whether the city had an inclusionary zoning program. The independent variables were the percentage of households that were rent-burdened, the log of population, the log of median housing value, and the percentage of the population that rents (all drawn from the 2011–15 American Community Survey); the level of community pressure to address affordability and displacement (from my survey of city governments); the state regulatory context regarding inclusionary zoning (from Grounded Solutions Network, 2018); and an index that included the percentages of the population aged 18 to 44; individuals living alone or with nonrelatives; same-sex partner households; women in the workforce; residents in professional, technical, educational, creative, or knowledge-based jobs; the workforce that bikes or walks to work; and residents older than 25 with a college degree (drawn from the 2011–15 American Community Survey).
1. Arguably, part of the gap on larger-scale research on practice stems from practical constraints; information on current zoning is often hard to access for one city, and in the US, for example, no national database maps and minutes of how zoning occurs across cities (Hirt, 2013).

2. These are similar to “nonreformist reforms,” conceptualized by Nancy Fraser as actions that “spark transformations . . . by immediate institutional intervention, but also . . . by changing the terrain on which future struggles . . . are waged” (Fraser & Honneth, 2003, p. 82).

3. For an excellent discussion of how the pragmatist tradition in planning thought—in which action is foregrounded—can complement an institutionalist approach, see the volume edited by Willem Salet (2018).

4. Much literature in development studies focuses on analyses of land tenure: the systemization and security of claims on a parcel. Land registries can feed into a cadaster, which maps ownership and boundaries. Cadasters enable, and are reproduced by, land-valuation and taxation systems. While critical for local revenue, investment and many more development indicators, these are distinct from zoning, which is a layer of permitted uses, bulk, form, or outputs, created by the state, generally with the goal of ordering urban growth toward a set of goals.

5. Paradoxically, “rotating” officials in and out of permitting positions is also a frequent recommendation to decrease corruption in zoning.

6. A prolific planner whose firm developed masterplans and detailed land use proposals for dozens of cities across the world from the 1940s to the 1970s, including Islamabad, Detroit, Rio de Janeiro, Baghdad, Caracas, Athens, Khartoum, Tema, Lusaka, Aqaba, Homis, Damascus, and Philadelphia.

1. This study was first described in Whittemore (2017b) and Whittemore (2018).

2. Rejected upzonings for industrial and heavy commercial uses were too seldom to warrant analysis. The first publication to report these findings (Whittemore, 2017b) only considered racial and income characteristics.

3. A more recent case, Texas Department of Housing and Community Affairs v. Inclusive Communities Project (US Supreme Court, 2015) sidestepped the question of discriminatory intent, finding that the Texas Department of Housing and Community Affairs had violated the 1968 Fair Housing Act because its policy of concentrating low-income housing in high-minority areas had a disparate impact on different racial groups. This may have implications for exclusionary zoning practices.

4. I also used the population of each tract as a weight so that my averages did not over- or underemphasize the experiences of residents living in low or high population tracts, respectively. There was one important sample restriction: because Durham expanded from 15.5 to 108 square miles over the period of investigation, many residential up-zonings reflect the initial urbanization of land on the city’s urban fringe. Exclusionary decisions, however, tend to happen when residents in established neighborhoods want to avoid sharing services, infrastructure, and amenities with newcomers (Babcock, 1966; Pendall, 2000b). To keep the focus on the areas where this type of activity was happening, I only considered residential decisions occurring in areas of more than 500 persons per square mile, these constituting “urban areas” as defined by the US Census Bureau (2002).

5. Historically, and across the US, there are many examples of public housing location reinforcing racial segregation (Vernarelli, 1986).

1. Under Section 197-c of the New York City Charter, ULURP is required when private or public actors initiate changes to the city map or to zoning districts, as well as for site selection for capital projects, certain urban renewal plans, franchises for city property, and the plotting of sanitary or waterfront landfills, among other unique changes to the city’s urban fabric.

2. The community board is the most local of governance mechanisms in New York City; of its up to 50 unpaid members, the borough president appoints half, and the local city council member recommends the other half (Mayor’s Community Affairs Unit, 2018).

3. As of January 2019, ULURP had reached Community Board 1 in Staten Island, where the proposal was rejected in a 37–3 vote (Spivack, 2019).

4. The analysis includes average figures for the 12 census tracts impacted by the rezoning in East Harlem and the anticipated 7 impacted census tracts in Gowanus. The census tracts in Gowanus represent just over 10,000 households, whereas the census tracts in East Harlem represent nearly 28,000 households.

5. Note that this chapter covers the activities around the rezoning and reflects its timeline as of mid-February 2019.

1. All authors contributed equally to the production of this chapter.


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