

Updating the Zoning Code - Issues and Considerations

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Introduction

The recent explosion of development in California sparked by economic vitality has highlighted the shortcomings of zoning codes throughout the state. The many inadequacies of outdated and poorly patched codes have become painfully apparent in communities that are not achieving the quality of development they want. At the same time, however, increased local government revenues from the economic boom have provided the funding for many communities to update their zoning codes. To assist in making these efforts most effective, this article provides an overview of the typical components of zoning codes, and discusses a variety of the issues that are useful to consider when a zoning code is updated.

California law makes the general plan the centerpiece of each community's planning program, but the zoning code is, in many ways, a more significant determinant of community form and character. The general plan is intended to provide broad-brush guidance for how and where the community will accommodate physical growth and change. Even though California cities have included ever increasing detail in their general plan policies and standards over the past 20 years, general plans remain conceptual in comparison with the tools used to implement them. Implementation occurs through specific plans, zoning codes and subdivision ordinances, and capital improvement programs; but zoning codes have more day-to-day effect on the built environment than all the others.

As the primary tool for general plan implementation, zoning codes are comprehensive "cookbooks" for day-to-day development decisions within each community. They expand on the information in general plan maps and text by providing parcel-specific regulations for the location of different land uses, and detailed specifications for the site planning and design of proposed development.

Zoning Code Components

A zoning code regulates development through its five major components. These include: a zoning map that divides the community into separate zoning districts; a list of the types of land uses that may be allowed in each zoning district; standards for site planning and development; rules and procedures for obtaining City approval for development and new land uses; and rules for zoning code administration, including establishing the authority for decision-making, interpretations, and enforcement. Each component is described below.

Zoning map

The zoning map divides the community into the separate zoning districts established by the zoning code text, consistent with the land use diagram of the general plan. Zoning districts and general plan land use categories typically segregate land uses by type, such as residential, commercial, and industrial. City zoning codes and their maps often have several different residential, commercial, and industrial zoning districts, as well as others serving special purposes (for example, "Public Facilities," or "Open Space"). The distinctions between different zoning districts in the same major category (such as residential) are usually the different types of land uses are allowed within them. (For instance, apartments are not allowed in a single-family residential zone, but are allowed in multi-family residential.) The zoning map is important because it shows where in the community different zoning requirements apply to specific parcels; but the requirements themselves are found in the zoning code text.

Over the past 20 years, urban communities have become increasingly aware that the standard zoning practice of rigidly segregating land uses by type can have undesirable side effects. Primary among those effects are residents and workers being dependent upon the automobile for

transportation. This is because segregated zoning has produced cities that are not "walkable," and are also too dispersed to support economically viable transit. In response, many cities have updated their general plans and zoning codes with increased emphasis on opportunities for mixed-use development, combining commercial and residential uses. They have also provided for higher densities in residential areas near downtowns and other commercial districts, to make it easier for people to walk for convenience shopping, other errands and, where possible, employment.

Other responses to this problem include those developed by the New Urbanists, who recommend an entirely different approach to regulating the distribution of land uses. Rather than using single-use zoning districts as the "regulatory geography" of a city, the New Urbanists divide a community into "neighborhoods," "districts," and "corridors." Neighborhoods are always mixed-use, contain activity centers of civic and commercial uses, outdoor public spaces such as squares or greens, and also provide a range of residential densities, for more choice in housing types than typical monolithic subdivisions of single-family homes. Districts generally focus on specific interrelated activities such as entertainment centers, downtowns, or manufacturing areas. Corridors are the connections between the neighborhoods and districts that may emphasize commercial or residential activities, but are also intended to be mixed-use. Actual land uses are then regulated not by land use type, but by the type, mass, and form of the buildings. This approach to regulating development has been most often used in new towns and other large-scale developments on vacant land. It can be difficult and complicated to apply to an existing built community, where its full realization will only occur over time as infill and redevelopment occur. However, all principles of New Urbanism should be considered in any zoning code update, because of their potential to significantly improve the efficient use of land, and overall community livability.

Zoning districts, allowable land uses and permit requirements

The zoning code provisions that determine how individual parcels may be used include three key parts. First, the purpose of each mapped zoning district is described, including the categories of land use that are appropriate, and how each district relates to the land use designations of the general plan. Zoning codes then list the land uses that may be allowed within each zoning district. Finally, these "allowable use" lists note the type of City approval required to establish each use. The zoning district designations and the land use lists together implement the vision of the general plan for each area of the City.

The purpose of listing uses is to classify and identify the activities that the community desires in each zoning district, and by exclusion, the uses the community does not want. Land uses are normally listed as "permitted" if they reflect the primary purposes of the zoning district, and if their possible adverse effects can be mitigated by the development standards of the zoning code. Permitted uses are typically allowed without the need for any City approvals other than building, grading, or other construction permits, although design review may also be required for certain permitted uses in cities that have a design review process.

Other uses that *may* be appropriate in a zoning district are listed as "conditional." Conditional uses may be compatible with, and supportive of the permitted uses and the overall intent of the zoning district, but they are not simply "permitted" because the severity or undesirability of their possible side effects (e.g., traffic, size, hours of operation, noise, etc.) may vary according to the location and characteristics of the site, and the nature of surrounding land uses. Therefore, conditional uses cannot be assumed to be appropriate on any given site without some public, discretionary review to verify "compatibility," and the ability for the City to hold the development accountable for its potential adverse impacts through required compliance with conditions of project approval. This review is typically through a conditional use permit, or other similar discretionary review and approval process.

Defining zoning districts, the land uses allowed within them, and the type of City approval required for each use is one of the most important tasks in a zoning code update. The mixture of land uses allowed in each zone will shape community form and character, determine how different activities in a city relate to one another, and thereby whether the community will be sprawling and auto-dependent, or compact and pedestrian-oriented. The types of commercial uses allowed, or not allowed, will also affect the economy. The designation of some uses as permitted and others as

conditional will determine the extent to which the public may be involved in the City's decisions on individual development projects. It will also affect the workload of the decision-making bodies, and the amount of time required for a developer to find out whether the City will approve, deny, or require modifications to a proposed project.

Development standards

All zoning codes establish development standards for the allowable location on a parcel and size of proposed structures, in addition to regulating many other aspects of development project planning, design and operation. Zoning codes contain three types of development standards: zone-specific standards, use-specific standards, and general standards that apply to a variety of land uses in different zones.

Zone-specific standards establish the scale and character of development unique to each zoning district. These standards can address a wide variety of project location and design details, but the most common zone-specific standards include setback requirements, height limits, site coverage and floor area ratio restrictions, and residential density limitations. Setback requirements determine the distance, if any, by which certain structures must be separated from the street, other property lines, and/or other structures. Height limits specify the maximum allowed height of new structures, identify how the allowed height must be measured (e.g., from the street curb in front of the site, from the highest point on the lot, across the entire lot in an imaginary plane parallel to the surface of the lot, etc.), and sometimes provide for exceptions to the height limit for architectural features such as chimneys, towers, steeples, and certain roof-mounted equipment. Site coverage requirements specify the maximum percentage of the site area that may be covered by structures (and in some cities, by structures and pavement). Floor area ratio (FAR) standards determine how much floor area a building may have in relation to the area of the site (for example, a FAR requirement of 0.50 would allow a 10,000 square foot site to be developed with a 5,000 square foot building ($10,000 \times 0.50 = 5,000$), provided that the building also satisfies any applicable height limit, setback, site coverage, and other zoning code requirements such as parking). Residential density requirements determine the number of housing units that may be developed on a site based on its size.

Use-specific standards apply to the development and operation of particular land uses that are known to have the potential for similar adverse effects regardless of their location. The most common use-specific standards found in zoning codes address: adult entertainment businesses, animal keeping, bed and breakfast inns, day care facilities, drive through facilities, home occupations, outdoor uses (such as merchandise display and sales, and storage), service stations, and wireless telecommunications facilities. Each city is likely to have other specific land uses that have proven problematic in the past, which the community would like to more effectively control. The substance of use-specific standards can range from the same issues addressed by zone-specific standards (for example, requiring a large landscaped setback for office parks that supercedes the minimum front setback required by the zoning districts), to limitations on hours of operation, or detailed standards for the site layout and facilities associated with a particular use. An example of the latter can be found in zoning codes that provide standards for multi-family projects, such as the minimum area of private outdoor space for each unit, and/or the minimum area of common outdoor space based on the total number of units.

General development standards are those that apply to a variety of land uses in different zones. They include such topics as off-street parking and loading requirements, sign regulations, landscaping requirements, hillside development standards, tree removal regulations, affordable housing requirements and incentives, and other topics.

Zoning code updates often include both subtle refinements and wholesale revisions to their development standards. The objectives of these changes are typically to ensure that new development is a good "fit" with surrounding land uses and the community, and to work toward positive shifts in the character of particular areas of the community. An example of the latter is where zoning standards are revised to provide for development with greater pedestrian orientation in commercial and residential areas, or to respond to economic changes that have caused

unexpected shifts in demand for certain uses, such as a proliferation of offices occupying ground floor space in retail areas.

Permitting and development review procedures

The permitting and development review procedures within a zoning code include provisions for the preparation, filing, processing, and evaluation of land use permit applications by City staff. The procedures then provide criteria for the approval or denial of the permit applications by the assigned decision-making body (for example, a planning commission or zoning administrator). These procedures usually address each type of land use approval separately, with individual chapters or sections on conditional use permits, variances, and design review.

There are a number of variations among cities in how specific types of approvals are handled. For example, some cities have both "use permits," and "*minor* use permits." The difference between the two is typically that a use permit is subject to a public hearing, and approval or denial by a planning commission, while a minor use permit is "heard," and approved or denied by a City staff person designated as "zoning administrator." Some cities use a similar arrangement for variances (variances and minor variances).

The "minor" version of the use permit is provided for situations where the City has determined that a particular type of land use needs discretionary review, but that the issues an individual project will raise are likely to be not significant or complicated enough to warrant planning commission involvement. Otherwise, the minor use permit process is identical to the use permit in terms of public notice, a hearing, and the extent of discretion that may be exercised in the decision. The advantage of this approach is for cities that are interested in streamlining their land use permit review process. The capability for a zoning administrator to review and act upon some discretionary land use permit applications can shift workload from an overloaded planning commission, and provide for greater flexibility in the scheduling of public hearings on the "minor" applications.

Rules for zoning code administration

The last major component of a zoning code (other than a glossary containing definitions of the technical terms and phrases used in the code) is a series of rules for the administration of the code. These provisions include procedures for public hearings and appeals, zoning code interpretations, property rezonings and amendments to the zoning code text, code enforcement, and regulations for nonconformities. With the exception of nonconformities, the substance of these provisions is significantly influenced by state law requirements, and tends to be similar in different cities.

Regulations for nonconformities play a unique role in zoning codes. Nonconformities are land uses and structures that were legally established and/or constructed in compliance with the zoning code requirements that applied at the time, but would not be allowed today in the same way (or in some cases, at all), because of intervening zoning code amendments that changed the rules. Depending on the preferences of a city, regulations for nonconformities either: allow them to continue indefinitely as long as they are not changed, and until they are voluntarily removed or discontinued by the property owner; do not allow them to be re-established after involuntary destruction; require them to be phased out over some specified period of time; or a combination of all of the above. Because any change to the allowable uses or development standards of a zoning code can create nonconformities, proposed zoning code changes should also be evaluated to ensure that these effects are understood. Then, the regulations for nonconformities can be adjusted as needed to either relax or maximize the effect of the changes on existing uses.

Zoning Code Update Issues

Primary concerns

The scope of substantive changes in a zoning code update should be defined through several means, each of which will contribute important insights into the adequacies and inadequacies of the existing code. First, regular users of the code should be consulted for input about their experiences working with the current standards and procedures. This feedback can provide valuable perspectives on how users with different objectives feel about the effectiveness, clarity, and ease of use of the current code. These participants should include: staff who administer the existing provisions; decision-makers; project designers, developers and other zoning permit applicants; and the general public.

A thorough, multi-part analysis should then examine the details of the code. One part of the analysis should review the current code in relation to the policies of the general plan, current state law and case law requirements. This review will determine whether all applicable plan policies and legal requirements are effectively addressed by the current code.

The analysis should also evaluate current zoning code provisions by comparing them with a sample of existing development projects. The projects should be chosen to represent both those regarded by the community as desirable and successful, and others that are generally seen as undesirable, no longer appropriate, or otherwise problematic. This component of the analysis will highlight current standards that have been ineffective in producing desirable development, and also those that are working well.

Finally, in cases where the code update is expected to involve new or revised standards for infill development within existing neighborhoods, the analysis should include a detailed inventory of existing conditions within the areas to be affected. "Existing conditions" should include the quantifiable features of existing development that define neighborhood character. An example of this would be where a City intends to reconsider its building setback requirements and height limits as they affect an existing neighborhood, or where citizens have noted that new homes in an older area are insensitive to neighborhood character. In this case, the inventory should measure, document, and analyze existing development to identify the "on-the-ground" patterns and rhythms of street setbacks, separations between buildings, and heights from one lot to the next; or at least should document those features from a "sample" of representative lots within the neighborhood. Then, as new standards are considered, their effectiveness in replicating existing neighborhood character, and hence their desirability, can be assessed.

The results of the above analysis should provide an understanding of:

- How well existing zoning requirements are working;
- Whether new land use issues have emerged in the community that are not addressed by existing requirements and need new standards; and
- What existing standards and procedures need to be changed, augmented, or discarded.

The actual revision work can then begin. A variety of resources can then be drawn upon to provide source material for revisions. These include: reviewing the zoning codes of other communities; using zoning and land use consultants experienced in drafting standards to address issues that have not been covered by other communities; and taking advantage of insights and inputs from City staff on how to address land use regulatory issues in ways that will work within the community's social and political framework.

Usability issues

A zoning code update should also focus on document usability. It is important that zoning information be readily accessible and understandable to all users. The following are some important format and content features that zoning documents should include to improve ease of use.

- **Logical organization** - The table of contents and the internal structure of chapters should be organized to reflect the sequence in which code users most commonly need to find specific information. For example, the fact that many existing codes place their "Definitions" at the beginning of the document would appear to suggest that users will routinely read the definitions before any other portion of the code, which in fact rarely occurs.

While keeping the definitions at the front of a zoning code makes sense if maintaining the same format in all segments of a municipal code is considered important, a primary question to ask in deciding how to organize a zoning code is "Where will users most intuitively expect to find specific information?" People working with zoning documents tend to be interested in first finding whether particular land uses are allowed in particular zones, then the regulations and standards that apply to the design and development of a use, and finally the details of the required approval process. The code should be organized to reflect these procedural sequences and the order in which decisions about the applicability of provisions must be made.

- **Clear language and readability** - Zoning documents must be clearly written, avoiding ambiguity, jargon and lengthy narrative, and use the simplest terms possible to describe their requirements. Regulations should be consolidated into easy-to-understand tables whenever possible. Overall, the format should employ effective graphic design and page layout techniques to enhance readability.
- **Navigation tools** - Zoning code users need to be able to easily find their way around in the code, and readily identify the code provisions that apply to their project or otherwise affect their interests. Therefore, a zoning code should include, at minimum, the following "navigation" tools.
 - **Informative table of contents.** Chapter and section titles should be descriptive, as in "Standards for Specific Land Uses" rather than an ambiguous "General Provisions," so that the table of contents can be easily scanned to identify provisions of interest.
 - **Cross-references.** While reviewing regulations on a particular topic, code users must be made aware of other related regulations that may affect their interests. A zoning code should include cross-references to its other relevant provisions, as well as references to potentially-applicable regulations (e.g., building, environmental, grading, subdivision, etc.) in other portions of the municipal code, where appropriate.
 - **Headers and footers.** Each page of the zoning code should provide headers and/or footers that identify the first section number on the page, and the section title, to allow easy browsing.
- **Extensive use of graphics** - A zoning code should use graphics to assist in illustrating the applicability and/or effect of regulations wherever illustration can improve understanding.
- **Formal procedure for interpretations** - The administration of zoning documents inevitably involves the need for interpreting their provisions, where the applicability or effect of a particular requirement may be uncertain in a situation that was not anticipated when the code was drafted. These situations often include new land uses that did not exist when the code was prepared (e.g., video game arcades in the case of codes drafted in the 1960s). A zoning document must clearly define the authority for interpretations, include a formal procedure for all types, and provide a definitive means for incorporating them into the code

through amendment, or otherwise ensuring that they will be effectively recorded for future retrieval and use.

- **Simplified permitting procedures** - A zoning code should employ the least complicated permitting procedures possible, consistent with State law requirements and the need to ensure effective project review and proper implementation of the general plan. Discretionary permits may not be necessary if clear development or performance standards can effectively address all community concerns about a particular land use through a ministerial permit process.
- **Organization to accommodate changes** - Code chapters and sections should be organized and numbered to accommodate amendments without the need for extensive renumbering of existing sections. The initial drafting of the code should anticipate the need for additional regulatory topics in the future, and provide space in the numbering system for their later inclusion.

The Importance of a Zoning Code Update

Communities secure the type and quality of development they want through three key means: 1) they clearly communicate their expectations for development; 2) they ensure their professional planning staffs are skilled in working with project applicants to assist them in understanding and fulfilling the community's expectations; and 3) their decision-making bodies rigorously follow through by approving only those projects that meet, or are revised to meet their expectations. These three means interact as a system, and each must perform adequately if the local development review process is to be successful. As the primary, and most often consulted tool for communicating the community's development expectations, zoning codes play a critical role in determining the form and character of the community. Updating the zoning code is, therefore, one of the most important planning-related tasks a community can undertake.

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