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## **Zoning INTRODUCTION**

*Planning* is a process for defining problems and identifying solutions. *Zoning* is a tool (law/ordinance) communities use to implement the decisions that were made through the planning process.

Zoning is the strongest land use tool; it regulates the use of land and the density and siting of development. Zoning legislation commonly consists of two components:

- *A zoning map*, which divides a municipality into various land use districts, such as residential, commercial, or industrial districts. The intensity of development, or density—such as how close together or how tall individual buildings can be—can vary within uses. For example, a zoning regulation might have low-, medium-, and high-density residential districts. Or, higher density in a mixed-use district, with retail and services conveniently close by, can benefit various population groups, including many older adults who have experienced aging-related or other frailties or who have stopped driving.
- *The text of zoning regulations*, which describes permissible land uses in each of the zoning districts identified on the zoning map. This includes dimensional allowances, such as height of buildings, minimum distances from buildings to property lines, and the percentage of the lot that may be built upon. Zoning regulations also set the procedure for obtaining approval for the uses permitted in each zone.

Zoning is an effective means for implementing the intent and goals of a municipality's many planning efforts; for example:

- Zoning can be used to require various affordable housing choices, such as accessory apartments, a cottage community, or a shared living residence, to benefit older adults, individuals with disabilities, residents of modest means, domestic workers, middle-income families, caregivers, and others.
- A municipality can zone for an array of innovative housing options that have only recently begun gaining in popularity, such as mixed-age cohousing, grandfamilies housing, or "small house" nursing homes.
- A municipality can use a zoning ordinance to allow for the division of large houses or underutilized accessory buildings for rent, which can provide additional income for owners, enabling them to remain in their homes longer. Family members, home health aides, or domestic workers could live on the property while providing care and security for older adults or family members with disabilities. This also has the added social and emotional benefits of multi-generations living in proximity.

- Zoning can be used to encourage infill development in developed areas that have existing infrastructure, while discouraging leapfrog sprawl on the fringe.

While municipalities are not required to be zoned, a benefit of having a zoning ordinance in place is that property values are maintained and land-use conflicts are minimized because property owners can predict what land uses will be allowed in the future and new buyers know, before purchasing decisions are made, what the future impact on their property will be.

In many communities, zoning ordinances have been in place for a long time and are now outdated, rendering them inflexible and unable to allow development that reflects the community's changing demographic profile, the evolving needs and preferences of residents, or innovative models and solutions that have emerged.

#### *Home Rule:*

In New York, a great deal of authority to regulate land use resides at the local level. One of the reasons for this is *Home Rule*, and local governments may use the authority of Home Rule to confront some of the land-use challenges that are not currently addressed by the State's general statutes.

Home rule refers to the constitutional and statutory authority given to local governments to enact local legislation to carry out and discharge their duties and responsibilities. This grant of power is accompanied by a restriction (under the authority of the State Legislature) to enact special laws affecting a local government's property, affairs, or government. However, the local legislation enacted cannot be inconsistent with the State's constitution or general statutes.

Home Rule authority is a source of zoning and planning power that gives local governments great flexibility in dealing with the local regulation of land use, including the ability to adopt creative new regulatory techniques before such techniques have been specifically authorized by the State Legislature. For example, Home Rule allows local governments to address issues related to "aging-in-place" that are not currently addressed by the State's general statutes. Home Rule ensures that local community design is determined by the local residents most affected by the outcomes; it encourages a bottom-up process of land-use planning that is sensitive to local needs, political cultures, and values; and it encourages local advocacy, which promotes inclusive and democratic government decision-making and involves many people in the local planning process.

However, Home Rule can also lead to the defeat of good, sustainable, neighborhood-friendly development projects by a vocal minority of residents who live near a proposed project, even if that project may be good for the overall community, society, the country, and/or the planet. For example, a compact transit-oriented community project may satisfy the larger mobility and environmental goals of the overall community, but may be opposed by nearby residents who fear density and multi-family housing. Or, while zoning can be used to protect the character of a neighborhood, municipalities can sometimes

inadvertently engage in exclusionary zoning practices, prohibiting a variety of models and solutions that are effective options for a community's various population groups, such as single adults, older people, young families, grandparents raising grandchildren, people with disabilities, and others. Thus, Home Rule can lead to land-use decision-making that is driven by a small group of residents, rather than by the overall well-being of the community.

Municipalities possess many zoning tools that can permit and provide development incentives to achieve community goals. Section I.2 (Zoning) provides descriptions and resources for many of these tools.

*Zoning statutory authority:*

- Grant of specific powers: General City Law §20.
- Grant of Power; appropriations for certain expenses incurred under this article: Town Law §261.
- Adoption of zoning regulations: Town Law §264.
- Grant of power: Village Law §7-700.
- Adoption of first zoning law: Village Law §7-706, §7-708, and §7-710.

*Resources:*

- Sheldon Damsky and James Coon (1993; 2000; 2005—4<sup>th</sup> Edition), *All You Ever Wanted to Know About Zoning*. Watervliet, NY: New York Planning Federation. The most widely used source for zoning information for New York State, including key legislation and case law through the 2004 legislative session. For pricing and ordering information: New York Planning Federation Book Store: <http://www.nypf.org/editable/bookstore1.html>. Or, Amazon: <http://www.amazon.com/Ever-Wanted-Know-About-Zoning/dp/0811349500>.
- James A. Coon (May, 2007; updated June, 2011), *Guide to Planning and Zoning Laws of New York State: James A. Coon Technical Series*. Albany, NY: New York State Department of State, Division of Local Government Services. [http://www.dos.ny.gov/lg/publications/Guide\\_to\\_planning\\_and\\_zoning\\_laws.pdf](http://www.dos.ny.gov/lg/publications/Guide_to_planning_and_zoning_laws.pdf).
- Karen Strong (2008), *Conserving Natural Areas and Wildlife in Your Community: Smart Growth Strategies for Protecting the Biological Diversity of New York's Hudson River Valley*. Albany, NY: New York State Department of Environmental Conservation; Ithaca, NY: Cornell University. <http://www.dec.ny.gov/lands/50083.html>: Scroll down to Chapter 9.
  - Chapter 9: *Zoning and Project Review*, pp. 55-60: [http://www.dec.ny.gov/docs/remediation\\_hudson\\_pdf/hrebch9.pdf](http://www.dec.ny.gov/docs/remediation_hudson_pdf/hrebch9.pdf).
- *New York State Zoning and Land Use Regulations*. Albany, NY: New York State Department of State, Division of Local Government Services. For an alphabetical list of publications, including those on zoning, planning, and land-use regulations: <http://www.dos.ny.gov/lg/publications.html>.