

Land Use Planning and Zoning as Key Tools in Sustainable Local Development in the United States of America

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Abstract The pattern of local land use and development has a large influence on both the economic and environmental sustainability of future development. Patterns of land use that require separation of employment opportunities from housing require longer commutes to work that create greenhouse gasses, or as an alternative require higher and more expensive investments in public transit to reduce those greenhouse gas emissions. They also limit housing choices for those who could and would live closer to their places of work and increase the total cost of housing and commuting costs, which tends to drive up labor costs and make local economies less competitive. As an alternative to creating these types of barriers, local planning and zoning controls can offer incentives such as increased development density, height, or land coverage, to new projects that incorporate mixed residential and non-residential use, particularly if those developments attract or incorporate new businesses in areas where the community has a natural competitive advantage. The United States' decentralized system of land use regulation has both advantages and disadvantages in achieving more sustainable development. Advantages include wide latitude for its hundreds of thousands of local governments to innovate in the design and implementation of land use controls; disadvantages include the relatively weak power of the federal government to mandate preferred sustainable development patterns. This chapter reviews the use of land use controls to achieve sustainable development goals in a decentralized system, and the impacts that trends toward global economic integration, greater public sector efficiency, and increased public participation in land use decisions have on those local efforts.

Keywords: • land use • zoning • local planning • sustainable local development

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1 The U.S. governmental framework for sustainable local development

In the United States, sustainable local development is primarily a function of local government initiatives. While the federal government offers grants and loans to city and county governments to implement policies it favors, there are never enough federal funds to meet local demands, and those funds are declining over time. In addition, the federal government does not have general powers to regulate the use and development of land in the states or cities. Federal protections for civil rights (such as the Civil Rights Act of 1964, Pub.L. 88-352, 78 Stat. 241 (1964)) and for the environment (such as the Clean Air Act, 42 U.S.C. §7401 et seq. (1970) or Clean Water Act, 33 U.S.C. §1251 et seq. (1972)) limit some land use and development activities, but in general the government in Washington only tells states and cities what they cannot do in these areas – it does not tell them what they can or must do on or with the land in their communities. In short, there is no national system of land use planning or regulation that ensures that local cities and counties manage and develop their land to help achieve national economic or social priorities. The power to regulate private land in the U.S. is almost exclusively held by state and local governments.

While some of the 50 state governments in the U.S. have a state-mandated system of planning and zoning (i.e. one in which cities and counties must plan and regulate use and development to implement state priorities), many other states do not have such a system. Statewide planning systems typically (1) establish several statewide planning goals (for example, to allow for the provision of housing for all citizens reasonably expected to live in the community), (2) require that cities and counties prepare periodic land use plans that reflect those goals, and (3) require that cities and counties then adjust their land use regulations to be consistent with those local plans. In some states, the state government reviews all local plans to ensure that they are consistent with state goals, but in other states the local plans and regulations are presumed to be consistent with statewide goals unless someone complains and asks for a state-level review. In both cases, however, there is usually wide latitude for cities and counties to decide how and to what degree they want to implement state priorities; only those plans that clearly ignore or are clearly inconsistent with state goals are required to be revised.

In the majority of U.S. states, however, there is no statewide planning system or regulatory review procedures, and most powers to plan and regulate land development are given to local governments. In “Dillon’s Rule” states, cities and counties only have those powers that are explicitly granted to them by the state government, while in “Home Rule” states cities and counties have all power to regulate land use and development except in specific cases where the state government retains control.

Like the federal government, many state governments offer grants and loans to support cities and counties that want to implement programs that benefit state priorities, but money is always in short supply, and grants often come with conditions that make them

less attractive to local governments. While the United States federal system of government provides some of the explanation for why land is controlled at the local level, there is another key factor. There is a strong belief that neither the federal nor the state government has the detailed knowledge of local economic and political realities or opportunities to make the nuanced choices necessary to make local economic development successful. For all of these reasons, in the U.S. almost all decisions about how a city or county regulates private land are made at the local level.

2 The role of zoning and land use regulations in sustainable local development

Local land use controls are a critical element in promoting sustainable local economic development. If local regulations prohibit a land use for which there is market demand, or impose too many conditions and restrictions on that type of use or development, or allow development to be completed with unsustainable materials and technologies, they inhibit the very type of economic development they probably want to promote.

Most local land use regulations are contained in zoning controls adopted at the local level. Zoning controls what can be built, and what activities can occur, on land in each “zoning district”. A local government can adopt as many zoning districts as it likes, but the zoning regulations are supposed to treat all similar properties in a specific zoning district similarly. For example, all office buildings in a particular zoning district are intended to be controlled by generally similar regulations for the height and size of the building, its location on the lot, and the allowed uses of the property.

U.S. cities and counties that want to promote environmentally and economically sustainable development need to review their zoning regulations to identify:

- Barriers to development that can be removed;
- Incentives to sustainable development that can be offered; and
- New regulations that may be needed to ensure that future development is sustainable.

Barriers to sustainable development can include:

- Minimum land parcel sizes that are too large to be economic, and that are not needed to preserve intended character;
- Maximum building intensities or heights that prevent economic development, and that are not needed to preserve character;
- Automobile parking requirements that are higher than needed to prevent traffic congestion – particularly for new and creative forms of development;
- Required building design features that increase the cost of development more than they contribute to the positive image of the surrounding area; and
- Requiring renewable energy features (such as solar or wind facilities) to be set back from property lines at least as far as the primary building.

Most local governments have the ability to offer incentives to encourage types of building and land use that are more supportive of local planning goals. Incentives can include:

- Allowing taller buildings for projects that include affordable housing, or mixed use development, or that provide more space for community meetings, training events, or preferred land uses (such as child care);
- Allowing the builder to provide less automobile parking if the builder agrees to implement Transportation Demand Management (TDM) tools to reduce auto and truck traffic to and from the development; or
- Allowing buildings to have a lower level of architectural detailing or material quality in return for commitments that the space will remain occupied by priority commercial or economic activities.

If these types of incentives are offered, it is important to “test” them for economic reality – to ensure that the costs of providing the required benefit to the city or county does not exceed the value of the incentive to the builder. Investors will not apply for or use incentives that do not pass this test.

Even after removing barriers and providing incentives, however, it is sometimes necessary to adopt new regulations to ensure that new development and redevelopment are both economically and environmentally sustainable. Examples of new regulations that can promote sustainability include:

- Requiring that new development be oriented on an east-west axis to the maximum extent practicable in order to maximize solar orientation;
- Limiting the number of automobile spaces provided on-site in order to avoid creation of large expanses of parking that will seldom be used, will create stormwater runoff, and will make it more difficult to walk or bicycle between uses;
- Requiring the preservation of all large mature trees to the maximum extent practicable, in order to preserve the site’s ability to absorb carbon dioxide emissions;
- Allowing expedited review and approval procedures for projects that will create or preserve desired economic activity; and
- Requiring that all landscaping installed on the site be water-conserving.

These three categories of action overlap. For example, some goals that can be achieved by adopting new regulations can also be achieved by offering economically realistic incentives. The choice of which approaches to use, and in what combination, is almost always up to the local city or county government. Carefully evaluating the land use, development, and redevelopment needs in target economic sectors, and then revising zoning regulations to make it easier to build and operate facilities in those sectors, is a key element of sustainable local development. In fact, the failure to use these tools and to align them with the community’s sustainable development goals is generally one of the first items mentioned by the private sector when questioned as to why desired economic development is not happening.

3 Three cross-cutting challenges

As the United States' local governments strive to align their existing zoning tools with their sustainable development goals, they face three complicating factors:

- Global economic competition;
- Pressures for efficient public administration; and
- Desire for more, and more effective, citizen participation.

Global economic competition affects local government efforts at zoning reform because many types of jobs and economic activities can now be conducted over the internet, and tend to be performed wherever the skills necessary to perform the job are available at lowest cost. Even when large companies are subject to reviews or penalties that discourage or prohibit them from “outsourcing” work to other cities or countries, those regulations rarely apply to the type of small businesses and entrepreneurial start-ups that most cities and counties want to encourage. Regulations that add to the costs of developing or redeveloping land or buildings run the risk of encouraging “portable” economic activities to be moved elsewhere. To avoid this result, cities and counties tend to focus on the creation of local economic activities that:

- Rely on resources that are only available in their area; or
- Take advantage of a local concentration of businesses that can serve as suppliers to, or customers for, that specific good or service; or
- Do not involve the types of general information or data management skills that can easily be relocated to another community.

These constraints significantly narrow the types of sustainable economic development pursued by local governments.

A second trend (not just in the United States but globally) is the pressure for local governments to perform their functions more efficiently. Local governmental employees are supported primarily by local taxes, and the costs of public employees and their related pensions and benefits are by far the largest expense of city and county governments. As a result, there is continuing pressure on U.S. local governments to (1) replace workers with technology or equipment, (2) not replace workers who retire, and (3) not hire additional workers if their work can be performed through investments in technology or equipment. This also limits the types of sustainable local development that cities and counties can consider, because most new programs or approaches to sustainability that require additional staff will be disfavored. Two examples are listed below:

- In many cases, stormwater water pollution from streets can be significantly reduced by having that water flow into bio-swales or vegetated areas, or by using “pervious pavers” that allow water with road pollutants to enter the soil rather than streams and rivers. However, these techniques require periodic mowing and cleaning of the small areas of pervious surface to keep them functioning well, and many local

governments do not want to hire the additional employees needed to perform that new function.

- Since most economic growth in the U.S. is created by small businesses¹ (even though many small businesses fail), some communities have created “incubators” or “startup spaces” to encourage local entrepreneurs to form new businesses. Incubators are most effective, however, when there are professional staff available to advise those starting new businesses about how to form, grow, market, or finance those ventures. Because of the high rate of small business failures, however, local governments are often reluctant to hire the new employees needed to make incubators effective.

A trend (also global) complicating sustainable local development is the desire to incorporate more meaningful, citizen involvement into local government decision-making. Because the U.S. system of land use regulation operates primarily at the local level, and with relatively few constraints from the state or federal level, citizens often expect to have a large role in local decisions – and that desire appears to be growing. Over time, most local governments have become fairly skilled at conducting effective public involvement in both site-specific and community-wide land use decisions, and citizens have become used to a system in which their input is solicited and respected, but their suggestions are not always accepted. However, the process requires significant time and effort; time to organize meetings, notify nearby residents and stakeholders in a variety of ways, provide background documents, conduct the meetings, and then review public input to determine which parts of that feedback do not conflict with the community’s long-term development goals. One side effect of conducting significant, effective public involvement is that many decisions of city- or county-wide importance (for example, identifying a site for a new targeted economic use that will produce significant traffic) become local. While acknowledging the importance of the effort, citizens near the proposed site object to that specific location – and the same would probably be true in most proposed locations where the new use could operate. So at the same time that local governments are under pressure to operate more efficiently, they are often under pressure to allow more time for wider notice and more public input events before making a decision, even though the results of that public involvement is likely to make the decision more difficult.

4 **Denver's efforts to align planning and zoning with sustainable development goals**

Denver, Colorado, is a city of almost 700,000 people within a metropolitan area of 2.2 million. Located where the U.S. Great Plains meets the Rocky Mountains, Denver is well-located to serve as a center of trade and is the largest metropolitan area between Chicago and California. Although Denver's airport was already one of the busiest airports in the nation in the 1980s, the city undertook a very ambitious project to build a newer and much larger Denver International Airport, which opened in 1995. Although the Denver metropolitan area is the 16th largest in the U.S., the airport is the 6th busiest in the nation and (unlike many other airports) has lots of land available to expand as air travel and trade continues to rise. Since the United States recovery from the recession of 2008, the Denver metropolitan area has been one of the fastest growing – both in terms of population growth and job growth. By 2018, housing vacancy rates and unemployment rates were at historically low levels (both below 5%). Because of favorable weather and a variety of outdoor recreation and entertainment activities, Denver has been able to attract many young and relatively high-skilled workers, which in turn make the city more attractive for more job creation and relocation from other cities.

Denver's experience tends to reinforce one of the key messages in Richard Florida's influential book *The Rise of the Creative Class*²; that investments to make a more attractive and interesting city tend to attract the "creative class" – which in turn attracts other types of economic growth. In order to promote economically and environmentally sustainable growth, Denver and its suburbs (either alone or collectively) have taken the following steps:

- A. Invest in Public Transit. Although the western United States is generally very "auto-oriented" – most residents use private automobiles for most or all of their trips – it has proven impossible to expand road infrastructure as fast as population growth requires. To provide an alternative, Denver and its neighbors created a Regional Transportation District (RTD) that provides bus and rail transportation services in a seven county area. Although it only operated busses for several decades, in 1992 RTD began to build a light rail system and the voters have approved an additional \$5 billion to expand that system quickly over time. In 2016 RTD also began operating heavy rail transportation services to Denver International Airport, and the heavy rail system is also expanding. Since 2010, the city has also expanded its investment in protected bicycle lanes, even though the city's bicycle commuting rates are still lower than the national average. While necessary for general population mobility (and to reduce the frequency and length of automobile trips and related greenhouse gas pollution), the expanding menu of transportation services offered by RTD helps Denver attract the growing number of young, high skilled workers who do not want to own a car or want to use their car as little as possible.
- B. Grow the Housing Stock Near Transit Lines and Stations. In 2010, Denver adopted a new citywide land use zoning ordinance that exerts more control over the types of

- buildings constructed in different areas of the city but allows significant flexibility in how those buildings are used. As part of that change, the map that accompanies the new ordinance tends to promote development and redevelopment in areas that are close to public transportation routes and stations by allowing larger and taller buildings in those areas. The new ordinance also allows for many of those areas to include a mix of housing and business uses, which allows households more opportunities to live closer to their workplaces if they want.
- C. Strengthen Neighborhoods. Businesses form and expand where they think they can find good employees, and employees with higher skill levels want to live in strong, vibrant neighborhoods. While Denver has long had a program to plan for neighborhood improvements, that program did not cover all of the city's neighborhoods. So the city recently initiated a Neighborhood Planning Initiative that aims to produce an effective improvement plan for every residential area of the city over the next 15 years.
 - D. Promote Affordable Housing. Although private companies have moved to use the new zoning ordinance to build more housing very quickly, they have not been able to keep up with the influx of new Denver residents. As a result, housing prices and rents have risen quickly, which has displaced lower-income households and made it difficult for many companies to hire the employees they need because there is no housing available nearby at their income levels. As a result, Denver has begun to offer development incentives (allowing taller buildings) in return for legal commitments by builders to keep prices and rents down in a percentage of the units they build. In addition, the city recently moved to repeal a law requiring all multifamily housing builders to build a percentage of affordable units and replaced that law with new fees on new development and a new tax that will raise \$150 million for affordable housing investment and subsidies over the next 10 years.
 - E. Encourage Tourism. Like all other large (and most small) cities, Denver wants more tourism – because tourists take money earned elsewhere and spend in the cities where they choose to be tourists. To ensure that it can host all but the very biggest conventions, Denver replaced its old convention center with a bigger one in 1990, and then expanded that new center twice over the next 25 years. A third expansion is currently being planned. In addition, Denver' land use regulations make it easy to convert existing downtown buildings into hotels to serve the rapidly growing tourist market.
 - F. Invest in Art and Culture. Area political and business leaders have supported the creation of a Scientific and Cultural Facilities District (SCFD), which imposes a small additional sales tax on an area that includes 53 cities and seven counties to fund arts and culture. The majority of the funds go to major institutions (such as the largest zoo, art museum, and science museum), but a second tier of funding goes to medium-sized institutions, and a third tier of funding goes to small, innovative, entrepreneurial artists and venues.
 - G. Focus on Small Business Formation and Retention. Despite international perception that the United States is dominated by “big business,” the vast majority of U.S. jobs

– and the vast majority of new jobs created each year – are in organizations that have less than 50 employees (or even less than 20 employees). While small businesses are formed at a rapid rate, they also fail at a rapid rate, so Denver and other cities interested in job growth need to provide continual support to assist small businesses to survive and grow. The new Denver zoning ordinance takes a flexible approach towards business, institutional, and commercial land uses – it groups them into broad categories so that fewer permits or approvals are needed when a business property changes from one use to another. In addition, the new ordinance includes many “mixed-use” districts that allow both residential and non-residential uses to occur near one another. Those who want a quieter and more predictable housing environment may choose not to live in those areas, but a growing share of the population finds such areas attractive places to live. While the media focuses on new “start-up” ventures, the city needs to provide equal or greater attention to help existing small businesses find new products, markets, and ideas so they can continue to growth. To do that, Denver funds a Business Assistance Center, provides a clearinghouse where small businesses can learn about grants, loans, and support programs, and helps small businesses recruit qualified employees through the website www.Denverhelpwanted.com.

- H. Cooperate Regionally. In addition, Denver cooperates with 22 other surrounding cities and towns in the Greater Denver Chamber of Commerce to jointly market the economic benefits of the Denver metropolitan area throughout the U.S. After a business has been persuaded to locate or expand in the Denver area then individual members of the Chamber may compete among themselves to offer the best site or situation. Denver believes that its fairly flexible approach to land uses will allow it to compete well at this stage, even though some of its building quality controls are stricter than some of its neighbors.
- I. Clean Up Polluted Properties. In many cases, well-located commercial properties have been polluted and cannot be reused until the pollution has been removed or remediated. Denver and its neighbors operate a “brownfields cleanup fund” to assist new users in making these sites clean and safe to occupy. Again, a flexible zoning approach to business, commercial, and industrial uses tends to open up more opportunities for investors to find an innovative use for these properties.
- J. Offer Employment Services. In addition to working with business owners, Denver and its neighbors offer services to raise and tailor the skill levels of the workforce to match available job openings. They offer free job training services, job placement services, job training tax credits, and Denver operates five workforce centers. Flexible land use controls allows these types of facilities to be located in a wide range of locations in the city without the need for individual approvals. In many cases these services are offered in partnership with local businesses or non-profit enterprises, rather than by city employees.

5 Conclusion

The U.S. system includes very little federal regulation over land use – except for environmental regulations. Most cities and counties are given substantial authority to regulate the division, development, and redevelopment of land as they see fit – subject only to constitutional protections of property rights and fair procedures. Local governments are very active in using those land use powers, but have to do so in a world in which (1) global economic pressures, (2) domestic pressures for efficient government, and (3) growing desires for citizen participation in land use decisions constrain both the tools they use and the outcomes they can achieve. The Denver, Colorado, metropolitan area provides a good example of how local governments try to innovate and collaborate to encourage local development in ways that are both environmentally and economically sustainable over time.

Notes:

¹ See, for example: Neumark, David, Brandon Wall and Junfu Zhang. 2011. "Do Small Businesses Create More Jobs? New Evidence for the United States from the National Establishment Time Series." *The Review of Economics and Statistics* 93 (1): 16–29.

² Florida, Richard. 2011. *The Rise of the Creative Class*. New York: Basic Books.

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