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PRACTICE CODE OVERHAULS



Overhauling Your Zoning Code

By V. Gail Easley, FAICP

Where, when, and how does a local government start to update its zoning code?

The purpose of this issue of *Zoning Practice* is to provide a practical how-to guide to overhauling the zoning code.

INTRODUCTION

Land development regulations are as important as comprehensive planning—sometimes even more important. Both, however, are essential to effective local growth management. A comprehensive plan alone cannot ensure that a community will realize its vision. For decades, new and creative ways to regulate development and implement the comprehensive plan have been introduced. Despite this trend, the zoning code remains the cornerstone of most local government land development regulations. Smart codes, form-based codes, performance standards, and even the familiar planned unit development are some examples of best practices in land development regulation.

At the same time, many local governments have zoning codes that are years, even decades, old. These older zoning codes often contain none of the contemporary regulatory techniques. Officials and local citizens often want to keep the familiar zoning code. Yet they also want a more modern and effective set of regulations. To achieve this goal, planners must practice overhauling the zoning code.

WHAT KIND OF OVERHAUL IS NEEDED?

The most effective processes begin with the end in mind. In order to identify the desired end product, begin with a diagnosis. The project may begin with the idea that only a few minor changes—a tune-up—will improve the zoning code. Through diagnosis, you may learn that the problems are too great for just a tune-up. On the other hand, you may start the project with



the idea that the zoning code is headed for the recycling bin and should be completely replaced with a new code. Through diagnosis, you may learn that some parts are very workable if they are adjusted to meet modern development needs. More likely, you will find the expected outcome is somewhere between minor tune-up and complete replacement. The steps outlined below include a diagnostic to help you refine your initial idea of the outcome and focus your efforts on achieving the end product that your local government needs.

WHAT STEPS ARE NEEDED AND HOW CAN THE PROCESS BE EFFECTIVE?

Most planners are very familiar with a traditional planning process—collect and analyze information, identify and evaluate alternatives, select an alternative, assemble a plan, adopt and implement the plan. This is followed by an evaluation of the effectiveness of the plan and an update—starting the cycle over again. Overhauling the zoning code is similar, with a significant exception. The zoning code is tied to the plan as a primary means of implementation. Further, the goal is to overhaul a code that already exists, meaning that you are not starting with a blank

WHO ARE STAKEHOLDERS? PEOPLE AND PROFESSIONALS INVOLVED IN LAND DEVELOPMENT

- engineers
- surveyors
- builders and contractors
- architects
- land-use and zoning attorneys
- owners and developers of large-scale projects
- major businesses and industries
- agricultural interests
- public schools, colleges, and universities
- environmental interests
- civic groups
- home owners associations
- elected officials
- citizen boards
- local government staff

ASK THE AUTHOR JOIN US ONLINE!

Go online from January 19 to 30 to participate in our "Ask the Author" forum, an interactive feature of Zoning Practice. Gail Easley will be available to answer questions about this article. Go to the APA website at www.planning.org and follow the links to the Ask the Author section. From there, just submit your questions about the article using the e-mail link. The author will reply, and Zoning Practice will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of Zoning Practice at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA Zoning Practice webpages.

About the Author

V. Gail Easley, FAICP, has a national consulting practice in planning and growth management based in Crystal River, Florida. In 30 years of professional practice, she has written award-winning plans and land development codes, been an adjunct instructor at the University of Florida, University of South Florida, and Florida State University, and led workshops across the country for practitioners and citizen planners. She has written numerous books and journal articles on a variety of current planning topics.

slate to envision the future and craft a plan to achieve that future. The process to overhaul the zoning code is akin to the process of evaluating the plan in order to update it. With this in mind, what are the steps to follow in overhauling the zoning code?

1. Diagnose the problem.
2. Identify potential solutions.
3. Develop a detailed working outline.
4. Write, review, and rewrite.
5. Keep track of "leftovers."
6. Test the revised code against the diagnosis.
7. Adopt.
8. Review for unexpected "glitches" and make adjustments.

Diagnose the problem. At the very beginning, identify the stakeholders. Through one-on-one or small group interviews, ask these questions:

- What are the best features of the zoning code? It is important to hold on to what works.
- What specific issues—standards or process—must be changed? Be sure to ask why. It is important to understand the real problem leading to a call for change. Ask for examples, and probe for explanations of the problem.

It is best to handle this part of the diagnosis in face-to-face meetings rather than with questionnaires. Many respondents will answer these questions broadly when the actual issue is very narrow. For example, you might hear "setbacks are just not realistic and should be changed." Probing questions may reveal a clear problem—setbacks for infill in older urban neighborhoods are not related to the character of the area. The problem is not all setbacks or even all front yard setbacks. It is limited to a particular neighborhood. Through careful diagnosis, you will find that

the setback problem has resulted from a zoning code that has suburban standards, which are inappropriate for traditional urban settings.

It is very important during these interviews to listen, listen carefully, and listen completely. We all have a natural tendency to

TIP

Develop a simple tracking system to monitor the issues identified during the diagnosis stage along with the solutions you propose. It is often the case that not all issues can be addressed during a rewrite of your zoning code. However, you can provide assurance that issues will ultimately be addressed by tracking the issues and making sure that future work programs include additional discussions to solve the problems and address the issues. Stakeholders will benefit by knowing their issues were considered and why a change in the zoning code is not proposed. Often a simple matrix will work to compile and monitor progress on issues.

explain or defend the code and its standards and procedures. You must avoid this in order to receive honest and useful information. If the respondents know they are being heard, they will be more likely to partner with you in finding solutions, even if a pet problem is not corrected exactly as they envisioned.

Responses will overlap. This is where complete listening becomes crucial. Be care-

The range of choices is limited only by your willingness to be creative.

ful not to jump to a conclusion about the nature of the problem when the respondent begins to answer. As different stakeholders respond from their own perspectives, you will develop a more complete understanding of the problems to be solved. Even if the issues seem similar, the nature of the problem may vary from one neighborhood to another.

Identify potential solutions. First, do not assume that another version of what you are already doing will solve the problems. The range of choices is limited only by your willingness to be creative. While your jurisdiction may not want to be first to try a new approach, there are so many ways to achieve good design and development that you can often find a method that will work or can be modified to meet your needs. In this step you are not yet rewriting the code, but are identifying the areas that must be revised, replaced, or simply eliminated. You are also identifying the methods or approaches you will use to improve the zoning code.

While you may be tempted to create new zoning districts to meet specific situations, consider other approaches as well:

- Create an overlay district when a problem is limited to a particular neighborhood.
- Create different types of planned development districts, tailored to meet specific needs.
- Adopt standards for infill situations rather than a new zoning district.
- Adopt compatibility standards.
- Adopt standards for specific uses that apply no matter what zoning district is involved. Examples of specific uses that may result in impacts that are not well addressed by the

zoning district standards are vehicle sales lots, religious facilities, amusement centers and parks, golf courses, or commercial centers. Consider replacing the conditional use or special exception process with a comprehensive set of specific standards for specific uses.

- Create a hybrid zoning code by combining traditional zoning with contemporary best practices. Many of these practices are described at the end of this article.

If you have carefully diagnosed your needs, the potential solutions will typically be easier to identify. Look back at the solutions you have implemented in negotiating individual development projects and consider how to incorporate these solutions into the regulations. This will streamline the process, ensure that similar developments are treated in a similar fashion, and avoid the conflict that can be inherent in negotiating design requirements. Consider the approaches in other jurisdictions in your region. Finally, do not overlook publications from the American Planning Association and others—models, guidebooks, and other books are an excellent source of ideas to meet your specific needs.

Develop a detailed working outline. You have diagnosed the problems and identified likely solutions. Now that you know the desired outcome, you can develop a detailed working outline for the code. The outline also forms a table of contents for the code; adding details and annotations provides clear direction for the task of writing. At this step, it is helpful to present the detailed working outline to the reviewers to ensure that all of the issues are addressed. Each part of the outline becomes a separate writing task, so the outline also serves as a detailed expansion of the work program for overhauling your zoning code.

As you develop the detailed working outline, consider the organizational structure of the zoning code. This is a good opportunity to reorganize the various sections into a more orderly code. As the code is amended over the years, regulations on a particular topic may no longer be grouped together. Sometimes a simple change in the order of the sections will result in a document that is easier to use. During an overhaul you can accomplish both reorganization and an update or revision to the standards and procedures.

Write, review, and rewrite. It is easy to become mired in the writing and rewriting process. One good method is to divide the writing into manageable parts and a logical order. For

TIP

Here is a good sequence of events for writing and reviewing:

1. Prepare the first draft of part one (“part” is used as a general label for a chapter, article, or section, depending on the organizational structure of your zoning code).
2. Distribute the first draft of part one to reviewers. Reviewers may include other staff, planning commissioners, a citizens committee, or other working group. This is the group assembled to assist the writers in working out problems, ensuring internal consistency, and generally vetting the product.
3. During review of part one, prepare the first draft of part two.
4. Hold a reviewing workshop on part one. Compile the comments and hold for the later revision stage.
5. Distribute the first draft of part two to reviewers.
6. During review of part two, prepare the first draft of part three.
7. Hold a reviewing workshop on part two. Compile the comments and hold for later revision stage.
8. Continue these steps until all parts have been prepared in first draft, reviewed, and discussed in a workshop.
9. Prepare a draft to include revisions and to combine all parts into a complete document.

example, rewriting the definitions section of a code is better left to the end, while decisions about uses that are permissible in each zoning district should occur very early. Think about the organization of the code and cover the fundamentals first. Each time a major part is written,

TIP

In preparing the revised draft, consider the use of the “comments” feature in your word processing program. This is helpful to provide an immediate explanation to the reader as to the reason for the change or the need for further discussion or alternative approaches.

it should be distributed for review. Do not wait until the entire zoning code is revised to begin a review. Part two should be written while part one is under review. This will keep the process moving. Reviewers and stakeholders will also be encouraged by the continual progress toward completion and will be more likely to continue their participation.

It is very important to manage the revision or rewrite process carefully. Compile the review comments on each part, but do not revise and redistribute early parts until everything has been written and reviewed once. Too many versions of a document will result in confusion and frustration. Managing the document process well is an important ingredient for success.

When all parts have been prepared and reviewed, the revision process can begin. Combine all individual parts into a complete document and clearly identify the revisions. If the initial draft contains underlining and strike-through to show the changes, you need a different method to identify revisions in the second draft. A simple technique is double underlining and double strikethrough. While highlighting in color is useful, the color may be lost in the duplication process or color printing may not be available to all who receive the digital files.

Keep track of “leftovers.” As you revise, eliminate, and replace some or all of the zoning code, particular attention should be directed to the parts proposed for elimination. During the rewrite, it is common to find significant duplication of regulations and to eliminate them. You will also identify regulations that are outdated or possibly no longer lawful. Whatever the reason, some parts will be left over in the process. Before casting these eliminated parts aside, keep a digital folder of all eliminated text. When you reach the point where all parts are revised and combined into a complete code, review this file of leftovers to verify that everything in the file is properly destined for elimination. This simple step can help you avoid embarrassment or even disaster when a needed regulation is inadvertently removed.

Test the revised code against the initial diagnosis. Through the tracking system you devised, issues and problems should be constantly monitored as you write and revise the zoning code. However, at this step in the process, it is a good idea to return to the beginning and revisit the initial diagnosis. Check the list of issues against both the working

outline and the complete revised code. Have you addressed all the issues? If not, have you explained why the zoning code is not the place for a solution? Or have you proposed a future work program to continue the process until all issues have been addressed? This is another simple step to help you avoid embarrassment or disaster by overlooking an important issue that should be addressed in the rewrite.

Adoption process. Each local government has not only legal requirements for adoption, but also customary procedures, such as workshops to ensure participation by the stakeholders. Be sure to hold workshops to ensure that the planning commissioners, elected officials, and other stakeholders have ample opportunity to understand the new code before you begin the formal public hearing and adoption process.

Six months later—the “glitch” ordinance. You have carefully carried out a thoughtful and

In situations where the comprehensive plan contains a fairly detailed map of land-use districts, there is little distinction between the land-use map and the zoning map.

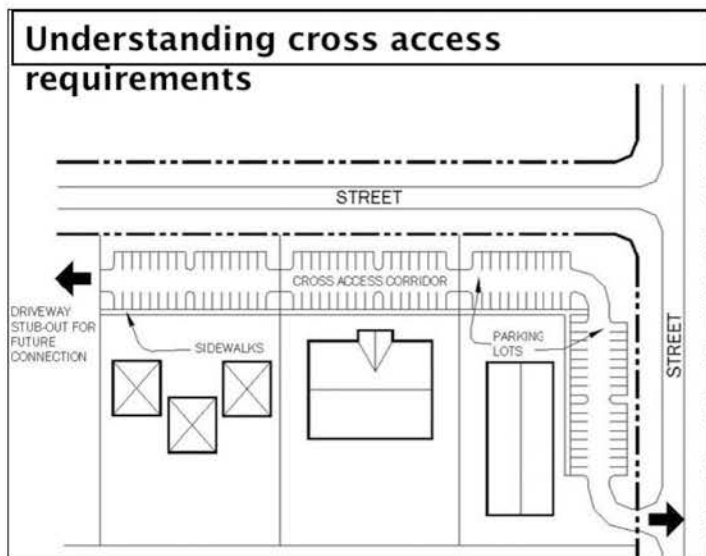
thorough work program to diagnose and solve the problems in your zoning code. However, sometimes a solution does not work exactly as you imagined. Sometimes a previously unidentified issue presents itself. No matter what the reason, you should expect to make adjustments a few months after adoption. This is not an indication that the rewrite was wrong or a failure. The more significant the overhaul, the more likely you will need to make adjustments a short time after adoption. Experience during implementation will show where adjustments

are needed. Anticipate this need. Early in the process, advise the stakeholders, planning commissioners, and elected officials that adjustments will be needed a few months after adoption. The need for a glitch ordinance should not come as a surprise.

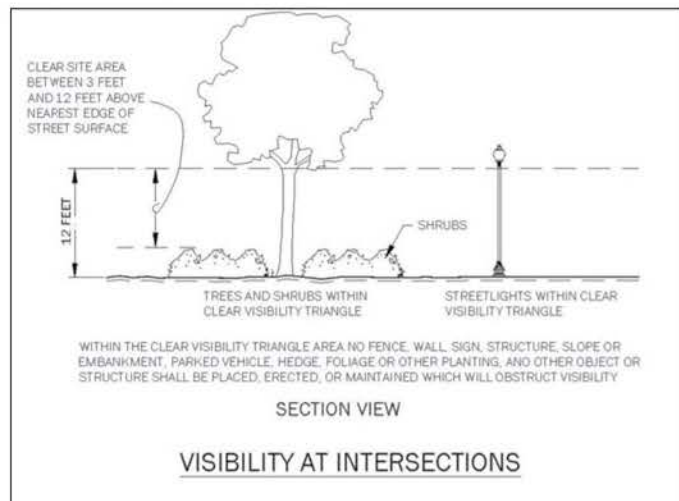
During the first weeks and months of implementation, keep track of the need for adjustments. After a few months, usually around the six-month mark, it will be time for what many people call a glitch amendment. Through this amendment, you can fine-tune and adjust the zoning code to be sure it is on track. In fact, occasional course corrections such as this will keep your code up to date. It is one more tool to make sure that growth and development are meeting the needs and implementing the vision of your community.

ALTERNATIVES AND BEST CONTEMPORARY PRACTICES

There are well-recognized shortcomings in traditional zoning. Over the years, planning practice has continually sought improvements that include such alternatives as conservation design, point systems, single-map systems, performance zoning, form-based codes, smart codes, new urbanism, traditional neighborhood development, transit-oriented development, planned unit development and other



Effective graphics are key elements in explaining regulations clearly to users of local zoning ordinances.



When your zoning ordinance breeds headaches and confusion among users, it may be time for an overhaul.



mixed use approaches, adequate public facilities requirements, green building design and low-impact development, and hybrid codes. One best practice that addresses organization rather than regulatory approach is the unified code.

Here are some of the best practices to consider.

Conservation design. Often associated with subdivision design, conservation design is a means of providing flexibility in lot size, setbacks, and building location to encourage or allow cluster development. It is a means of ensuring open space for protection of environmentally sensitive lands or agricultural lands and encouraging compact development.

Point system. Proposed development is evaluated on how well it meets criteria and standards. Standards are often performance-based. Development that achieves the required number of points may be approved. With more points, higher densities may be possible.

Single-map system. The traditional zoning code includes a map of zoning districts, each with a defined set of permissible uses. The comprehensive plan or land-use plan also contains a map of land-use districts, each with a set of permissible uses. In situations where the comprehensive plan contains a fairly detailed map of land-use districts, there is little distinction between the land-use map and the zoning map. It can significantly streamline the process to rely on a single map of districts to define permissible uses. Site design standards are adopted to regulate the design of develop-

ment for these districts, but there is a single set of districts on a single map.

Performance zoning. This technique controls the impacts of development rather than the specific uses and site design. Performance standards, such as maximum trip generation, may be adopted. A wide range of uses would be permissible so long as the standard is met. Coupled with compatibility standards and intensity standards, performance zoning encourages flexible use and design and streamlines the regulatory approach.

UNIFIED CODES

Regardless of the regulatory approach, a unified code is useful to address organizational structure and present the code in an orderly and easy-to-use format. A unified code combines all regulations—zoning, subdivision requirements, environmental standards, landscaping and tree protection standards, and any regulation that pertains to developing and using land—into a single document. Through the creation of a unified code, duplications are eliminated, such as repeated sets of definitions in each ordinance or procedures for issuing permits or other development approval. A unified code helps every user see how the regulations fit together for the entire development process and ensure that nothing is overlooked, thereby streamlining the approval process.

Form-based code. The focus of the form-based code is the development pattern, urban form, and building form rather than specific use. A form district is defined by the scale and character of development and may rely on prescriptive standards in a “regulating plan.”

Smart code. A smart code is focused on encouraging compact development, mixed uses, preservation of open space, connectivity and improved pedestrian movement, and improving predictability in development review. A smart code is the regulatory companion to smart growth techniques in a comprehensive plan.

New urbanism. Two development approaches are generally considered “new urbanism.” Traditional neighborhood development (TND) recalls the urban neighborhood of 50 years ago, focused on walkable scale, variation in housing type, mixed uses, and specific building and street designs. Transit-oriented development (TOD) describes a compact development type near and around transit stops. It is similar in many respects to TND, but may have even higher density and intensity consistent with its location near transit, particularly rail.

Planned unit development (PUD or PD).

This is no longer a new concept, but is an established approach to provide for flexibility in design and use and to plan and regulate a large area under unified control. Successful planned development approaches may be customized in a variety of ways to meet urban, suburban, and rural development needs.

Adequate public facilities or concurrency.

This is a timing mechanism that ensures the availability of public facilities and services (roads, water, sewer, etc.) to serve development. Development is postponed or carried out in phases if services and facilities are not available.

Green building design and low-impact development. Green buildings typically refer to energy efficiency and conservation of energy and water in the design, construction, and operation of the building. The purpose of green building design standards is to reduce environmental impact through energy-efficient materials, solar systems, and water conservation techniques. Low-impact development is often associated with stormwater management techniques, such as disconnected impervious surfaces, biofiltration beds, rain gardens, rain barrels to collect

roof runoff, and pervious pavements. Requirements for reduced and shared parking, green roofs, and low-energy lighting systems can also further energy-efficiency and low-impact goals.

Hybrid codes. Any of these approaches can be combined to meet a specific need. One or more districts may rely on performance standards; within the same code, another district may implement TND or other techniques. Adequate public facilities requirements are not dependent on the type of district or design standards. Green buildings and low-impact design techniques can be implemented with any regulatory approach for use and site design. In short, a hybrid code combines the practices that best meet the needs of your jurisdiction rather than a rigid, single-purpose approach where one size fits no one well.

CONCLUSION

A step-by-step approach is effective, easy to implement, and easy to explain to the stakeholders. Remember these steps and you will be successful in overhauling your zoning code. Begin with the end in mind. It is at the beginning that you decide what you want to achieve and diagnose the problems that must be solved during the overhaul.

An effective diagnosis relies, in part, on thoughtful interviews and probing questions with the stakeholders. All the people who use the code have a stake in the outcome and will become partners in the process when they are allowed to contribute to your understanding of the problems. Evaluating the range of solutions before beginning to organize and write will help you find the best solution—or combination of solutions—to meet your specific needs.

Prepare a detailed working outline only when you have diagnosed the code and identified solutions. This outline is the basis for the task of writing. Use the tools you have to track the issues, provide for review of each part of the code, and keep track of sections destined for the cutting room floor. Finally, recognize that the weeks and months after adoption will be a time of transition, learning, and, possibly, further modification. Expect the glitches, and do not see them as evidence of poor choices in the overhauling process. A successful overhaul of your zoning code will be the result.

NEWS BRIEF

HOME RULE CHARTER AMENDMENT ON PLANNING BENEFITS COMMUNITIES

By Lora Lucero, AICP

New Orleans voters have chosen to require that local development be consistent with the city's master plan. On November 4, they narrowly approved an amendment to the city's home rule charter that elevates the importance of the master plan and guarantees that the public and all neighborhoods will be an essential part of the planning process. Once the new master plan

The city council voted unanimously in July to endorse the amendment and place it on the November ballot. The amendment's language can be found in the August 2008 issue of *Zoning Practice*. Although a number of groups supported the amendment, including Citizens for 1 Greater New Orleans, the Downtown Development District, the Business Council, and some neighborhood associations, opposition was growing in the weeks before the election, primarily among African American community groups who questioned the idea of elevating the impor-

Development applications often were approved in an arbitrary and ad hoc manner. The home rule charter amendment ends this process, and establishes a new standard for good government that is responsible and equitable.

is adopted, it will play an essential part in the future land-use and development decision-making process.

Until now, the plan has not had the force of law, and decision makers were not required to follow it. Instead, development applications often were approved in an arbitrary and ad hoc manner. The home rule charter amendment ends this process, and instead, establishes a new standard for good government that is responsible and equitable and achieves the goals of local residents for their future.

tance of the master plan when it hasn't been prepared and the public hasn't reviewed it yet.

Communities around the country may be encouraged to follow New Orleans's example. The home rule charter amendment is a major step forward in the rebuilding and revitalization of New Orleans.

Lora Lucero is editor of Planning & Environmental Law and staff liaison to APA's Amicus Curiae Committee.

Cover designed from a series of three zoning maps courtesy of Lowndes County, Georgia, provided by county planner Jason Davenport. The maps, in ascending order, are from 2006, 2007, and 2008. Design concept by Lisa Barton.

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SHOWING ITS AGE?

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