

ZONING PRACTICE

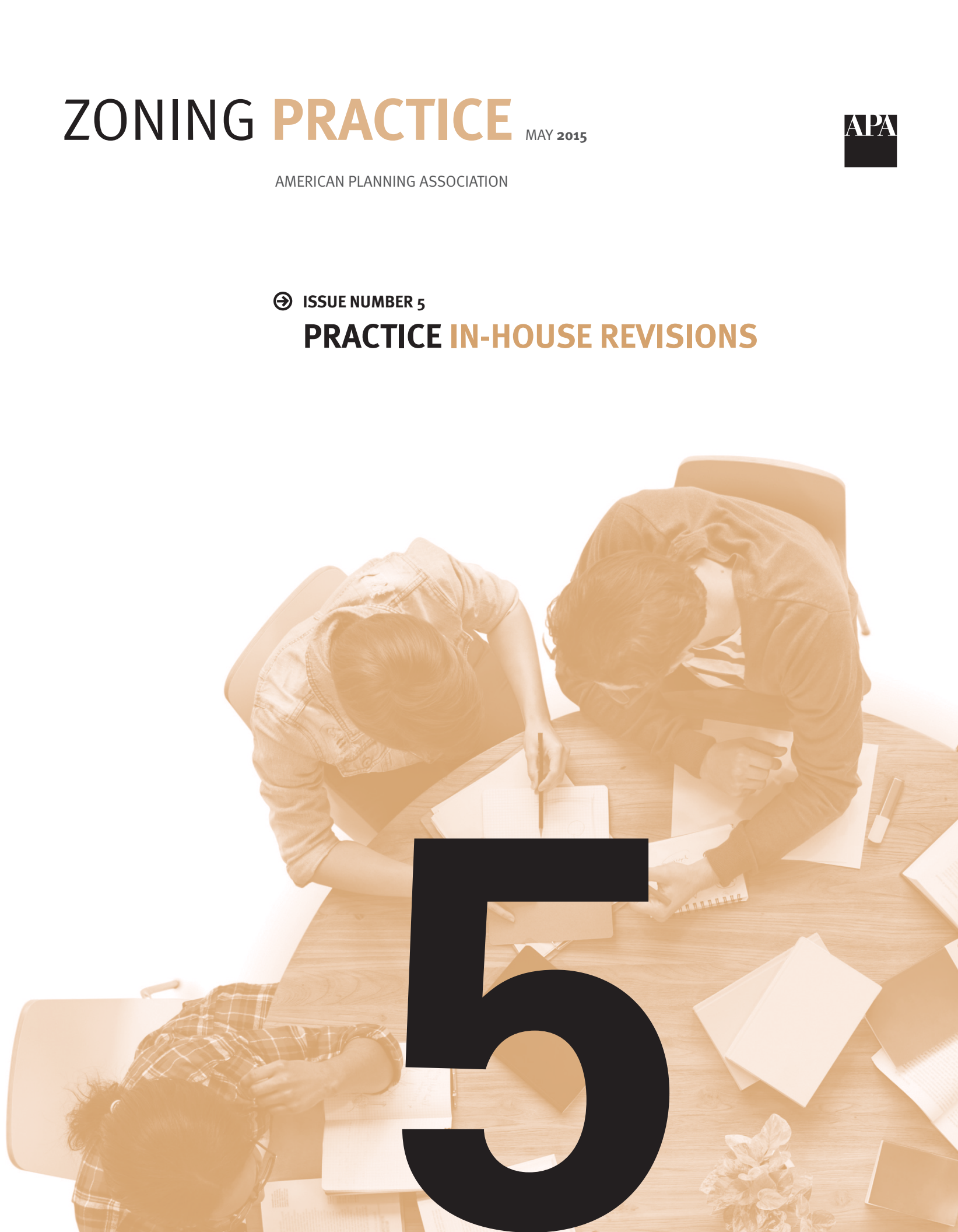
MAY 2015



AMERICAN PLANNING ASSOCIATION

➞ ISSUE NUMBER 5

PRACTICE IN-HOUSE REVISIONS

A high-angle, top-down photograph of three people sitting around a wooden table, working on papers and notebooks. The image is overlaid with a semi-transparent orange filter. A large, bold, black number '5' is centered over the bottom half of the image, partially obscuring the people and the table.

5

Lessons for In-House Zoning Revisions

By Somer Cross

A comprehensive zoning revision can be a contentious, lengthy, and expensive process.



City of Rockville, Maryland

➔ In-house revisions often make it easier to tap into institutional knowledge. In 2014, long-time staff members in Rockville, Maryland, were able to discuss mansionization policies considered during the 2009 zoning ordinance process with newly elected officials.

While there are many well-known and well-educated consultants across the country who specialize in updating zoning codes, there are numerous benefits to staff-led revisions.

Staff members have intimate knowledge of a community, including an understanding of which issues are driving the zoning reform, what changes will be palatable to the community, and what already works or does not work in the existing zoning ordinance. These are things that hired consultants would need to take time to learn and understand. At the end of the process, the staff's knowledge of the zoning process, the community's concerns, and the text of the document can be an important resource as the ordinance is imple-

mented. Also, in-house revision projects can be less expensive than hiring a consultant. For those reasons, when faced with outdated and confusing zoning ordinances, communities should consider the option of revising the document themselves, rather than hiring outside consultants.

This article uses lessons learned from specific in-house revision processes to highlight a series of recommendations for communities considering staff-led comprehensive zoning amendments.

GETTING STARTED

The process of an in-house zoning revision is similar to any revision done by a zoning consul-

tant, with multiple drafts created and reviewed by various interest groups. The difference comes in the amount of work produced to get to each draft. In communities with very active constituents and governing bodies, pre-draft informational sessions raise awareness of issues and provide drafters with guidance as to the particular issues of concern.

Getting the Decision Makers Involved from the Beginning

When decision makers are involved from the beginning of a zoning revision, staff will know in advance what types of policies will be palatable to the legislators who are going to adopt the ordinance. It is faster and easier to discuss broad policy issues than to take the time to draft actual legislative text that may never be used. These policy discussions can save time and effort in the long run by limiting rewrites and revisions.

In 2009 Rockville, Maryland, adopted a new zoning ordinance organized, drafted, and finalized by staff without any input from a consultant. The city started its zoning ordinance revision in 2005 knowing that local officials would want to have an active role in the changes. While Rockville had hired a consultant to lead the revision of its adequate public facilities ordinance (APFO) in 2004, the mayor and city council wanted to keep the zoning revision project in-house, knowing that this larger project would cost at least twice as much as the APFO rewrite (Mellander 2014).

To initiate the process in Rockville, both staff and council suggested problems to address in the revision, which then became issue papers to discuss. In total, staff created and presented over 11 white paper policy discussions to local elected officials. Topics ranged from broad issues, such as land uses and energy-efficiency requirements, to particular issues such as mansionization and sidewalk size.

ASK THE AUTHOR JOIN US ONLINE!

Go online during the month of May to participate in our “Ask the Author” forum, an interactive feature of *Zoning Practice*. Somer Cross 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 forum. From there, just submit your questions about the article to the active thread. After each thread closes at the end of the month, the archived questions and answers will be available through the Ask the Author forum.

About the Author

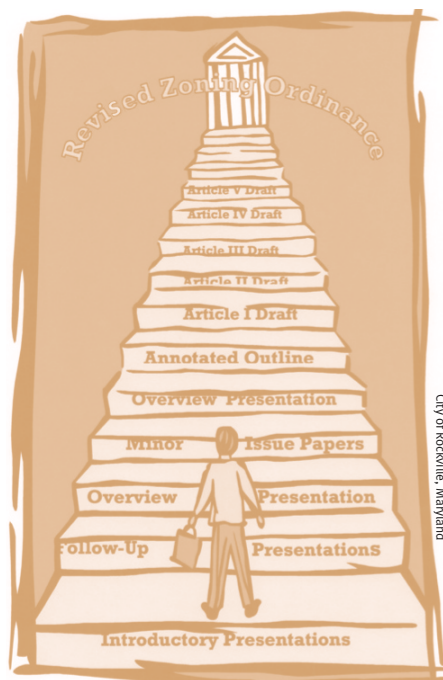
Somer Cross is a research attorney at the law firm of Miller, Miller and Canby, preparing land-use applications before various county and city boards and monitoring various jurisdictions' land-use legislation. Prior to that, she worked for Rockville, Maryland, as a staff planner drafting and facilitating their zoning ordinance revision.

Each presentation provided zoning considerations related to each topic, the staff's suggested changes to the code, and a request for city council recommendations on how to proceed with the initial draft. This method made the revision political from the beginning, rather than just a technical change. Overall, these presentations took over nine months, but the education and front-loaded political discussion with the mayor and council provided direction that limited the amount of rewrites necessary down the road.

Getting the Public Involved from the Beginning

Every community that engages in a major zoning revision will initiate some form of public outreach to ensure that the ordinance will be adopted. When staff takes the lead in the zoning revision, there may be more opportunities for public participation. In Washington, D.C., an in-house zoning ordinance revision led to three times as much public involvement as the district's previous consultant-led rewrite (Flanagan and Posorske 2014).

Both in Washington and in Montgomery County, Maryland, staff took on more public outreach than they might have under the guid-



➔ Rockville, Maryland, staff used this image to show how the zoning revision process would progress.

ance of a consultant. This outreach involved numerous working-group, task-force, and public-outreach meetings. Furthermore, both communities sent frequent project updates by mail and email, in addition to posting nearly weekly website updates, in order to ensure the transparency of the process.

Washington, D.C., has an uncommon regulatory relationship with the federal government. District officials must consult with multiple federal review and regulatory bodies, such as the Commission on Fine Arts, the Architect of the Capitol, and the Secret Service, before adopting any zoning revisions. It also has a system of advisory neighborhood commissions (ANCs) that are elected to represent every 2,000 citizens. Throughout the revision, staff has worked with the requirements of ANC legislative notice and review to keep neighborhoods constantly aware of the status of the zoning revision. Staff members found that their familiarity with the multiple layers of community players helped them to organize and obtain all the necessary public input and to develop the right review process for their city's needs (Lawson, Steingasser, and Vitale 2015).

	Montgomery County, Maryland (Ordinance adopted 2014)	Washington, D.C. (Ordinance still in progress)
Work Group Meetings	43	81
Task Force Meetings	32	41
Community Meetings	Over 100	132
Email Blasts	Regularly to over 600 recipients	To citizens, Advisory Neighborhood Commissions (ANCs) and other civic/community groups
Mailed notice	To everyone whose zone's name would change	To all ANC's and other group mailings
Twitter Town Halls	N/A	2
Separate Zoning Website	Yes—with updated documents and fact sheets	Yes—with links from other government sites
Public Hearings	10*	39
Public Meetings deliberating	56*	29
Other	3 rounds of open houses	Paper copies in every library; took out advertisements

*Includes both legislative body and planning board

Sources: “Frequently Asked Questions,” Montgomery Planning 2014; Dunn 2014; Lawson, Steingasser, and Vitale 2015.

Greater Staff Involvement Often Means More Community Outreach

To start the zoning revision process in Montgomery County, the planning commission chair chose a diverse panel of representatives, composed of citizens from various interest groups, to form the Zoning Advisory Panel (ZAP). Staff used ZAP as a sounding board for ideas throughout drafting stage. Many stakeholder groups, including community representatives, developers, land-use attorneys, architects, academics, and planners, had representatives on ZAP. Many of these mem-

COORDINATION WITH COMPREHENSIVE PLANNING

For some communities, the need to revise a zoning ordinance builds slowly over time; for others, it can be triggered by a state mandate to amend some or almost all of their law. Where it occurs gradually, communities often realize that some piecemeal amendments may be inconsistent with the locally adopted comprehensive plan or with other parts of the ordinance itself. Whatever the guiding factor, zoning regulations should be reconciled with the community's comprehensive and subarea plans. Sometimes the

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bers had personal and professional interest in revising the code and dedicated hours of time to focus on various topics. Key working groups focused on main issues, such as definitions, special exceptions, and approval processes. Their broad thinking helped the staff to take away new ideas and direction for the code (Dunn 2014).

Many contemporary zoning revision processes (whether led by a consultant or staff) adopt project logos to attract public interest. The visual branding of the process can help community members identify various notice documents, policy discussion documents, and drafts as distinctly part of the revision process. Logos can also convey a message of values or priorities to the public.

Both Montgomery County and Rockville adopted logos for their zoning revision processes. The Montgomery County logo used the words "Zoning Montgomery" underneath an outline of buildings that ranged in density from barns, to single-family housing, to multistory office buildings, showing the importance of every zone in the county—from the agricultural preservation zone to the high-density mixed use zones and everything in between. In Rockville, the logo included the letter "Z" for zoning surrounded by a puzzle piece. Planners chose the image to convey the importance of revising the text in a more user-friendly format and to emphasize the interconnection of the various parts of the city.

plan is recent enough to reflect current policy and interests of the community, but sometimes it still reflects older visions. In the prior situation, planners have an easier time coordinating their plans and regulations. In the latter, however, communities are faced with the challenge of how to draft the ordinance in a way that allows for future planning changes.

Plan First

Communities in states that mandate comprehensive plan and zoning consistency are clear as to how to modify their code; and where a very recent plan—reflecting current local policies and interests—is in place, the connection between the new zoning regulations and the plan is straightforward. For example, under Wisconsin's planning enabling law, all zoning amendments must be consistent with a locally adopted comprehensive plan. To help communities comply with this requirement, the state provides some financial assistance for local plan making and zoning reform efforts.

In 2009, the Polk County, Wisconsin, Board of Supervisors realized that to fully implement its new comprehensive plan, it would need to revise its zoning ordinance. The county and several of its municipalities had received state grants to fund their comprehensive planning and implementation work. Instead of proceeding with separate zoning reform projects, they decided to pool their funds to finance a full-time county planner to complete something that

could be used as a resource for each community. To ensure that the end users were involved in the process, the county asked each of its towns to send a representative to a citizen advisory committee. These representatives met monthly for over three years. The county eventually created a "menu" of regulations from which local jurisdictions could choose (Anderson 2014). To explain the different selections on that menu, the county created an Ordinance Policy Comparison chart that explains both the existing policy and the proposed policy for each section of the zoning ordinance, and also comments to further clarify how staff changed each section. The information on the proposed changes is intended to clarify to the public what changes are proposed. The information in the chart also helps to keep track of proposed zoning changes so that local jurisdictions will have a list of zoning changes in order to allow them to choose which elements are proper to incorporate into their own ordinances (Polk County n.d.).

Plan Later

Time and funding restraints often limit communities from being able to revise both their zoning ordinance and their comprehensive plans simultaneously, but this can lead to inconsistencies. Where there is not a state mandate to do one or the other, some communities have chosen to revise their plans after their zoning ordinance is amended. To do so, those communities must draft the legislation in a way that does not effectively plan without a comprehensive planning process, while also making it easy to amend in response to future changes to the community's plans.

Planners in Montgomery County realized that they could not update some of their outdated sector plans prior to the adoption of their new zoning ordinance. However, they also could not wait for the plan amendments before adopting their new ordinance. Instead, planners created a policy that the new zoning ordinance would be a continually changing document, to be amended as plans change. Staff felt that this was a continuation of a single zoning revision process, not one major rewrite followed by multiple updates, as other zoning ordinances are often modified. The long-term plan is to maintain the zoning revision staff and to continue their revision notice and procedures as these revisions occur. Staff had been, and will continue to be, involved in the zoning rewrite and were knowledgeable about which master plan amendments are

necessary. They therefore felt that this policy of adopting regulations that rely on master plans brought a comfort level to the community and helped the zoning ordinance adoption process go more smoothly (Dunn 2014).

Planners, however, faced a challenge in maintaining their “no planning, just drafting” policy when it came to mapping new zones. In order to place new zones on zoning maps, staff created strict conversion guidelines from existing master- and sector-plan recommendations. Residential zones mostly stayed the same, but commercial and mixed use zones had to follow guidelines based on current zoning height, floor area ratios, and the site’s proximity to residential zones. For example, if a previous general commercial zone site abutted a low-density single-family residential zone, it would be converted to a general retail zone; but, if a previously existing general commercial zone abutted a higher-density single-family residential zone, it would be converted to a mixed commercial and residential zone. In some places, it is clear that new zones may not be the best choice for a site, but to avoid actively planning as they rezoned, staff stuck to strict conversion standards (Dunn 2014).

KNOWLEDGE IS KEY

Once the in-house process is started, knowing where to find sources of information and ideas for changes is important. While there are many in-person and online classes and training sessions available to planners, it can also be helpful to simply ask fellow planners who have

undertaken similar initiatives. Also, knowing the concerns and support of the public will help to keep the revision on track and eventually adopted.

Ask Fellow Planning Professionals

Consultants often bring ideas to the table that are rooted in national trends, but some small communities are skeptical of specific approaches without local precedents. Discussions with planners from neighboring jurisdictions about what has worked and has not worked for them will help provide ideas for change and also maintain a regional development character.

Such was the case in McKinney, Texas, where staff relied heavily on discussions and examples from surrounding jurisdictions to draft a new zoning ordinance. Many communities in North Texas have zoning regulations that promote regionally common types of development. Together, these ordinances reinforce a regional character. Where the goal of local officials is not to break the mold, but to bring an ordinance into character with other similar jurisdictions, staff can review other neighboring communities’ regulations and talk to their peers (Quint 2014). While this may not have worked out as well as they hoped (see “Cautionary Tale” on page 6), planners in McKinney still felt that discussions and observation of neighboring localities significantly helped them draft the best regulations for their community.

In Washington, D.C., staff started with research into various zoning revision techniques. Working with a research consultant,

they identified 60 comparable cities and then narrowed them down to eight key innovative recent zoning revisions (DC Office of Planning 2008). Staff also sat down with planners from other jurisdictions to hear their war stories and lessons learned to get a better idea of what process and methods would work best for them (Lawson, Steingasser, and Vitale 2015).

Know Your Constituents

Regardless of who drafts a revised zoning ordinance, new provisions for residential districts are likely to be the most contentious. This is where local knowledge is the most effective. Having direct knowledge of the communities and the players involved minimizes the risk of drafting provisions that offend local sensibilities.

Montgomery County hired a consulting firm to write the initial draft of a new zoning ordinance in 2009. After an overwhelmingly negative response from the public regarding that draft, the county council elected to bring the project in-house. According to staff, it would have taken too much time to integrate a new consultant into the process, when the staff already had such an intimate knowledge of the code (Dunn 2014). Staff eventually removed the most contentious proposals from the zoning ordinance because they were not politically feasible.

Meanwhile, planners in Santa Monica, California, have been working for four years on a zoning amendment to implement a land-use element revision triggered by the addition of a new light-rail stop. Although a consultant had started the initial draft, planners felt it was



- ➔ Residents in Santa Monica, California, have been very active in the zoning revision process. After multiple public hearings on the revision, the city held an open house town hall on November 19, 2014. More than 200 people came to express their concerns and goals for the ordinance. Staff recorded the input they received at this meeting on this chart to ensure that the citizens’ comments coincide with the latest redlined version of the ordinance.

more useful to complete the zoning ordinance revision in-house. In their view, only planners with a long history in the city could understand the diversity of local architectural styles and the important role the existing zoning standards played in protecting the character of residential areas. For now, the zoning revision focuses on nonresidential neighborhoods, but having a staff-led process gives the city the option of revisiting the residential zoning standards after the bulk of the ordinance revision is already adopted (Misner and Kim 2015).

And Still There Will Be Battles

While in-house revisions will minimize some conflicts, staff-led revisions will not eliminate all points of contention. In Montgomery County there were serious debates about accessory activities and structures in residential areas, such as more lenient standards to permit residential chicken coops. Large portions of every public hearing addressed citizens' concerns and citizens' support of the allowance of backyard chickens. In fact, more people came out in support of residential chicken coops at these public hearings than any other topic; however, the county council ultimately rejected the new provisions sanctioning coops (Dunn 2014).

IMPLEMENTATION

Tweaks are always necessary when you are dealing with documents the size of a zoning ordinance, whether the document is created by a consultant or by staff. In a major zoning revision, where every page is changed in organization or substance, or both, there will likely need to be multiple amendments to fix typos, omissions, or problems not caught in previous drafts.

Staggering Allows Time to Contemplate

Montgomery County tested the waters by adopting its new zoning ordinance six months in advance of when it became effective. The purpose of this was twofold. First, because staff expected tweaks and changes, this allowed land-use attorneys and other interest groups to review the completed document and recommend changes (Dunn 2014). In fact, six months after adoption, the local legislative body passed a substantial text amendment making 86 pages of technical and clerical changes (Montgomery County 2014). This additional time also allowed county residents more time to accept changes and make productive corrections.

The second reason Montgomery County staggered their zoning ordinance adoption and effective dates was to allow local officials and staff to work on mapping. The mapping process

had been going on in the background of text changes for the entire five years of the zoning revision. As explained above, the county had directed staff to map master plan recommendations on a parcel-by-parcel basis (a tool that had not been previously available to staff). This meant staff had to review (and rereview) all 45 county master and sector plans. In some situations, there were master plan recommendations for a neighborhood and a preexisting zone classification whose standards did not coincide. Map recommendations then became a compromise between the two standards. The county council found it difficult to absorb both the full text and the enormity of the mapping changes. As a result, they adopted the text first and focused on the mapping separately during the six-month interval between adoption and the date the ordinance would take effect (Dunn 2014).

Polk County has also elected to stagger its ordinance adoption. After the county had completed its zoning ordinance revision process, Wisconsin changed its shoreland legislation. Those changes to state standards required revisions to the draft zoning ordinance. Since the county developed the menu of options, they are giving local jurisdictions one year to review the various regulations and adopt them—in whole or in part—depending on the needs of the community. The more time-sensitive regulations (like shoreland requirements) can be adopted separately, if the community so chooses (Anderson 2014).

Cautionary Tale

One key to implementation is to always remember that the legislative body is the ultimate deciding entity . . . and it can change its mind. A staff-led process can ensure that a revision process is not wasted if local officials rescind the ordinance. That is the situation in McKinney, Texas, where, after a two-and-a-half-year process, the mayor and city council adopted a completely revised zoning ordinance in 2012 and then repealed it in full in 2013 (Quint 2014).

Once the city implemented the new ordinance, the development community realized they would not have the right to develop single-family dwelling units on commercial land anymore (Quint 2014; McKinney 2013, p. 7). In light of this political problem, the city decided to return to the pyramidal use scheme of its former zoning ordinance, just a mere six months after adopting the revision (Quint 2014). Despite the 2013 repeal of the ordinance, local officials have given staff the responsibility to continue to draft piecemeal changes.



➡ Chicken coops in residential districts were a major point of contention in the Montgomery County, Maryland, zoning ordinance rewrite.

Montgomery County (Maryland) Planning Department

CONCLUSION

Whether the choice for an in-house zoning revision is due to a financial decision or a desire for substantial dedication of staff time to respond to community concerns, time and again staff involved in the revision process believe that in-house revisions is (or was) the best choice for their community. Washington, D.C.; Montgomery County and Rockville, Maryland; Polk County,

Wisconsin; Santa Monica, California; and even McKinney, Texas—where things did not work out the way the planners intended—followed that path. During the revision process, staff members in those communities felt they knew their jurisdiction's needs and the best way to implement changes. After the revision, staff's knowledge of how and why certain provisions are in the code can assist new legislators to understand

the reasoning and history behind the language. Staff's knowledge of the intentions of the drafters and adopters of the legislation also helps future interpretations of the requirements. While many consultants currently bidding on RFPs may disagree with this, the knowledge and time that staff put into a zoning revision can create a document that best fits the needs of their individual community.

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Cover: Rawpixel Ltd;
design concept by Lisa Barton.

VOL. 32, NO. 5

Zoning Practice is a monthly publication of the American Planning Association. Subscriptions are available for \$95 (U.S.) and \$120 (foreign). James M. Drinan, JD, Executive Director; David Rouse, AICP, Managing Director of Research and Advisory Services.

Zoning Practice (ISSN 1548-0135) is produced at APA. Jim Schwab, AICP, and David Morley, AICP, Editors; Julie Von Bergen, Assistant Editor; Lisa Barton, Design and Production.

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HAS YOUR COMMUNITY
CONSIDERED THE BENEFITS OF
IN-HOUSE ZONING REFORM?

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