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PRACTICE ENVIRONMENTAL JUSTICE



Zoning, Land Use, and Local Policies for Environmental Justice

By Ana Isabel Baptista

Land-use planning and zoning are often at the epicenter of fierce land-use conflicts that pit neighborhoods with higher percentages of residents of color and low-income households against polluting industries and the government entities that permit them. These neighborhoods, composed of a majority of people that are Black, Indigenous, of color, or low-wealth households, are often colocated in areas with high concentrations of a variety of environmental burdens. These demographic and land-use characteristics are often used to define an area as an “environmental justice” (EJ) community. EJ communities can be found in specific neighborhoods within cities, across an entire city, or dispersed across a region depending on the land-use and demographic patterns embedded in each area.

Zoning codes and land-use planning practices have historically had the effect of hardening disparities and expressing forms of racism sedimented in the built environment. These processes continue to jeopardize the health and safety of EJ communities throughout the country. If zoning and land-use policies got us into this mess, they have the potential to help get us out of it—to be harnessed affirmatively to redress these impacts. Indeed, looking to zoning and land-use policies to remedy local environmental injustices is critical, as state and federal environmental regulations do not address local siting decisions that help concentrate polluting facilities.

This article provides some insight into the relationships among zoning, land use, and environmental justice and highlights examples of local strategies that illustrate the diversity of approaches already in use in cities and counties across the country aimed at advancing environmental justice.

LAND USE AND ENVIRONMENTAL JUSTICE

In 1987, the Commission for Racial Justice of the United Church of Christ published a national study, *Toxic Wastes and Race in the United States*, which identified race as the

single most important factor in determining where toxic waste facilities were located in the United States. More than 30 years after this study, there is still a persistent pattern of disproportionate and cumulative impacts from pollution and noxious land uses in EJ communities (Bullard 2008).

How did it become the norm that people of color and low-income people live in close proximity to noxious land uses and suffer disproportionately from the cumulative environmental impacts related to where they live? These cumulative impacts are the result of a combination of multiple environmental exposures, public health, and socioeconomic conditions that, together, pose harm to EJ communities and are mostly overlooked in traditional environmental decision-making processes (CalEPA, 2010).

Some of the early academic debates about the existence of environmental injustice focused heavily on two theories, the “Minority Move In” hypothesis and the “Rational Market Forces” hypothesis (Pastor 2001). The first theory asserted that many of the locational conflicts in EJ communities were misplaced because communities of color “came to the nuisance” (Been and Gupta 1997). Researchers claimed that if communities moved in after the industry was already there, then they willingly participated in living near toxic uses and no fault could be placed on the industries or government entities issuing permits. In the Rational Market Forces theory, researchers posited that the location of noxious facilities was a natural outcome of market forces—that existing low land values, industrial zoning, and infrastructure attracted industries (Been 1992). Again, the researchers contended that this outcome was not the product of intentionally discriminatory acts; thus industries and government were off the hook for environmental injustice. These theories were challenged for their lack of attention to multiple forms of racism and the role that disparate impact (regardless of intention) plays in shaping injustice (Cole

and Foster 2001). Laura Pulido’s examination of the origins of environmental injustice in Southern California reminds us that the decision to locate in a black community is not a race-neutral market outcome, but rather a byproduct of historical, racialized processes that devalue Black spaces and accrue value to white spaces (Pulido 2000).

Additionally, industrial zoning practices have also contributed to impacts in communities of color historically. Juliana Maantay’s study of New York City’s industrial zoning history demonstrates how the city’s rezoning efforts over decades allowed affluent areas to become more residential and areas that were predominantly communities of color to become more industrial. The importance of zoning and land use can then be seen as relational—it matters where industrial uses are permitted, and where they are not, and how these differences persist and are exacerbated over time. As many of us live in increasingly segregated metropolitan regions with disproportionate concentrations of pollution in low-income communities and communities of color, it is critical to reduce these disparities in an effort to improve our collective well-being and achieve environmental justice (Massey et al. 2009).

STRATEGIES PROMOTING ENVIRONMENTAL JUSTICE THROUGH LAND-USE POLICIES

A variety of planning and zoning tools are available to local jurisdictions for the purpose of addressing environmental justice, including comprehensive planning, eliminating nonconforming uses, environmental reviews, or impact analysis, and making change through local boards and commissions (Salkin 2006). Cities and counties can also strengthen public health and building codes, utilize their enforcement powers, make targeted investments, set programmatic and agency commitments, conduct studies and public outreach, augment public review and notification processes, impose development fees, implement overlay zones

or special zone designations, or simply tighten existing zoning codes to make them more protective.

All of these approaches can form the basis of targeted interventions by local entities to help further environmental justice goals. The right balance of approaches for any given place will depend on local conditions and priorities, along with state law regarding the powers of local governments vis-à-vis land-use and environmental regulation. To achieve environmental justice, all these strategies are needed, and more. In the past decade, many localities have chosen to use their authority over local land use, planning, zoning, and public health to address environmental justice. These actions are a direct response to increased pressure from environmental justice advocates fighting to protect and improve their communities. In a national scan of local land-use, planning, or zoning policies related to environmental justice, a total of 40 policies were identified from 23 municipalities, three counties, two municipal utilities, and two model municipal ordinances. These policies have either an explicit focus or mention of environmental justice or are the result of local environmental justice advocacy and organizing. This scan is not meant as a comprehensive accounting of all relevant policies pertaining to EJ, but rather serves as a snapshot of approaches currently in use.

While each policy has distinct features, key policy characteristics allowed for categorization according to six distinguishing strategies used to address EJ. The 40 policies categorized along six policy types demonstrate the diversity of approaches that are possible to address EJ. The following sections take a closer look at each strategy in turn.

Proactive Planning

A variety of proactive approaches to land-use planning can serve EJ goals. Proactive planning tools can help communities guide future growth, institute new standards, target investments, or attract beneficial developments. Examples of these tools include comprehensive plans, overlay or special use zones, advocacy or community-initiated planning, or a new approach proposed by EJ advocates called “green zones.”

For example, Eugene Oregon; National City, California; Washington, D.C.; and Fulton County, Georgia, have all used their

comprehensive plans to set forth goals for achieving environmental justice (see Table 3). Additionally, California now requires local governments to identify EJ communities and include environmental justice as a comprehensive plan element ([Government Code §65302\(h\)](#)), so many more California communities will be instituting this approach in the future.

California environmental justice communities developed an innovative approach to address EJ through local land uses called “Green Zones” (CEJA 2020). Cities and counties typically create Green Zones through special overlay zones, where stricter land-use and zoning rules are implemented and where targeted investments are emphasized for improved public health and economic development (EYCEJ 2013). Elements of green zones include stricter regulation or enforcement, local involvement in land-use decision making, support for greening local businesses, increased green spaces, and green jobs and businesses (CBE 2020).

In 2016, Los Angeles adopted a version of the Green Zones called the Clean Up Green Up Ordinance ([Ordinance 184246](#)). This ordinance instituted a Clean Up Green Up overlay district for three pilot EJ communities: Boyle Heights, Pacoima/Sun Valley, and Wilmington ([§13.18](#)). The overlay sets development regulations that cover site planning, enclosure, fencing, distancing requirements, building height, yard setbacks, landscaping, parking design, noise, and storage of merchandise. This ordinance was preceded by the Clean Up Green Up Trust Fund Ordinance ([Ordinance 182596](#)), passed in 2013, which allowed the city to disperse funds for the development and implementation of Clean Up and Green Up strategies. This approval of funds directed the Department of City Planning to implement the Clean Up Green Up pilot in two phases that included preliminary research, mapping, and analysis, and the second phase established the Ombudsman Program to orchestrate and prepare a strategy for the business sector. The ombudsman position was set up to help local business owners navigate the new rules and provides training, tax credits, rebates, loans, and grants for business owners to implement better practices, such as energy efficiency. Other localities in California, such as Los Angeles County and Commerce, have also taken steps to implement the Green Zones

concept, as have some cities outside of California, such as Minneapolis (see Table 1).

At least two municipal utilities have used special initiatives to target investments for EJ communities. The San Francisco Public Utilities Commission adopted several EJ policies under its Environmental Justice and Land Use initiative (e.g., [Electricity Resource Plan](#) and [Resolution 09-0170](#)), and Seattle Public Utilities targeted investments explicitly for EJ through its Environmental Justice and Service Equity Division.

Bans

The right of communities to say “no” to unwanted, noxious land uses continues to be a catalyst for environmental justice struggles across the globe (Temper et al 2015). One of the most direct ways to mitigate these uses is to institute an outright prohibition or ban on specific land uses or industries deemed harmful to public health and the environment. Objection to locally unwanted land uses (LULUs) was initially derided by planners and government as a parochial expression of “not in my backyard” (NIMBY) sentiments by residents seeking to selfishly guard their property values over that of the public interest. But LULUs take on a different meaning in the context of EJ communities that have been historically sacrificed for development that benefits whiter, wealthier communities at their expense. In EJ communities, the right to resist LULUs exerts pressure on the racist formations underlying industrial development and the profit-seeking goals of industries that benefit at the expense of EJ communities (Lake 1993).

There are several ways for cities and counties to prohibit undesirable land uses under their general powers to protect human health and quality of life. A locality’s existing zoning code may be amended to identify those uses it deems incompatible within a particular zone or pass a stand-alone prohibition of particular uses it deems undesirable. Bans of particular categories of uses can sometimes be challenged in court by industries or overturned by states based on assertions that cities are preempted in regulating certain industries by state law (e.g., Texas prohibits municipal bans of natural gas fracking); that the locality’s ban interferes with interstate commerce; or that the ban represents a “taking” of property, which then requires cities to compensate

TABLE 1. EXAMPLES OF PROACTIVE PLANNING POLICIES

Jurisdiction	Year	Proactive Planning Policy
Austin, TX	1997	East Austin Overlay District (§25-2-169 & §25-2-645)
Commerce, CA	2015	Green Zones Working Group Action Plan; Phase I Implementation Plan (2018)
Eugene, OR	2013	Envision Eugene Comprehensive Plan (Policy 3.24)
Fulton County, GA	2016	2035 Comprehensive Plan (Environmental Justice Chapter)
Los Angeles	2016	Building Standards (Ordinance 184245)
Los Angeles	2016	Clean Up, Green Up Ordinance (Ordinance 184246)
Los Angeles County, CA	2015	Green Zones Program
Minneapolis	2017	Green Zones Resolution (Resolution 2017R-188)
National City, CA	2012	General Plan (Health and EJ Element)
San Francisco	2002	Electricity Resource Plan
Seattle	2005	Public Utilities Environmental Justice and Service Equity Division
Washington, DC	2011	Comprehensive Plan (Municipal Regulations §10-A625)

TABLE 2. EXAMPLES OF POLICIES BANNING (OR SEEKING BANS ON) SPECIFIC LAND USES

Jurisdiction	Year	Uses Banned
Baltimore	2018	Crude oil terminals (§32-1-218 & §32-1-304)
Chicago	2014	Coke and coal bulk material uses (§17-9-0117-B)
Chicago	2018	Manganese-bearing material operation uses (§17-9-0117-D)
Oakland, CA	2016	Storage and handling of coal and coke (§8.60)
Portland, OR	2019	Fossil fuel terminals (Ordinance 189807)
Seattle	2017	Fossil fuel infrastructure (Resolution 31757)
Whatcom County, WA	2016	Unrefined fossil fuel facilities (Ordinance 2016-039)

industries for the loss of economic value on their property. In many cases where cities have attempted to ban fossil fuel-related industries through their public nuisance codes, industries have mounted challenges using these arguments (Lynch 2016).

The vast majority of the policies under the category of bans focus on the processing, storage, or transport of fossil fuels or related materials and infrastructure such as coke and coal storage or crude oil terminals. In total, seven policies were identified around the country that explicitly used bans to address EJ (see Table 2). Successful ordinances limiting the expansion, proximity, and size of these operations were often contested by the fossil fuel industries seeking to locate or expand operations in these cities.

The successful passage of these ordinances and resolutions, even in the face of powerful industry opposition, reflects the power of local nuisance laws and the organizing by local residents who marshalled public support for the bans.

Environmental Review Processes

Environmental impact statements are typically required by federal and state environmental laws for permitting large new facilities (e.g., the National Environmental Policy Act requires an Environmental Impact Assessment). While these environmental reviews are not typically within the jurisdiction of local entities, a handful of municipalities have adopted similar environmental review processes as part of existing

development application processes. The policies in this category focus specifically on review processes that are meant to ensure that new or expanded developments do not exacerbate environmental injustices. In some cases, the ordinances not only give municipalities the ability to review the impacts of new developments, but also require additional conditions that mitigate and track those impacts.

Often, review-focused ordinances are the result of sustained struggles by communities challenging individual development applications one at a time without much success. Challenging applications before planning and zoning boards can be difficult on the basis of environmental impacts. If a development applicant conforms to the existing zoning, most boards may find it difficult to deny the application. Boards may also be reluctant to deny applications even for zoning variances if the economic benefits are perceived to outweigh environmental impacts. Local boards may not be well equipped to assess environmental impact information in order to determine whether a proposed development poses environmental or public health harm. Without better training of local boards and staff, clear legal authority to review environmental and health data, and vigilant community oversight, the review processes may fall short in protecting EJ communities from new polluting developments. Despite the difficulties, the ability to systematically review projects in the development process can provide some relief to residents responding to the constant flow of proposals in their communities. The additional public information generated by these reviews has the potential to heighten resident involvement and city accountability.

In 2009, Cincinnati passed an environmental justice ordinance requiring that each new industrial development application in the city include a list of substances expected to be emitted or stored by the facility and an accident risk analysis (Ordinance 210-2009). However, before the ordinance took effect, the city council voted to indefinitely delay implementation due to a lack of funding (Ordinance 34-2010). This policy, when it was originally passed, was among the only examples of local environmental review processes that required an analysis and consideration of environmental justice as a condition for new development proposals. Strong industry

opposition to the bill's implementation signaled the potential impact that such a review process may have had, and it served as a model ordinance for other cities that went on to adopt some version of this bill.

In 2015, Camden, New Jersey, passed a Sustainability Ordinance that required all new development proposals to submit an Environmental Impact and Benefits Assessment to be reviewed by the planning and zoning boards prior to approval (§739). The following year, Newark, New Jersey, passed an Environmental Justice and Cumulative Impacts Ordinance, which also required new development applicants in commercial or industrial zones to submit an Environmental Review Checklist detailing the potential pollution burden of the proposed development in relationship to the existing burdens within a mile of the proposal (§41:20).

Fulton County, Georgia, amended its zoning code in 2006 to require an Environmental Site Analysis for all rezoning, use permit, and combined rezoning-use permit requests and an Environmental Impact Report for all industrial rezoning or use permit requests (Appendix B §28.4.3). In 2008, San Francisco passed a narrow review requirement for new proposed power plants in specific manufacturing zones to obtain conditional authorization from the zoning board and thus undergo a more extensive review of potential impacts to nearby residents (Ordinance 282-08).

Target Existing Land Uses

EJ communities suffer from a long legacy of sedimented racism reflected in the built environment. This legacy has created a disproportionate concentration of impacts that are not easily undone by land-use approaches that mostly tackle new or future developments. EJ communities must also address the historic land uses that contribute to existing burdens. To address these existing land uses, some localities use targeted interventions, such as buffer zones, phasing out of noxious nonconforming land uses, or increased code enforcement. In some instances, cities can adopt moratoria on uses until proper public health or other regulations can be implemented. The targeted interventions in this category of policies begin to chip away at the legacy of environmental injustice in communities already overburdened by noxious land uses.

For example, in 2006, National City, California, updated its zoning code to authorize amortization to terminate nonconforming land uses (§18.11.100.D). This law allows the city to phase out legal nonconforming industries currently operating near sensitive use areas and sets up a process for the relocation of **top ranked nonconforming uses** when the amortization period is triggered.

Another approach to targeting existing noxious land uses is to incentivize pollution reduction efforts. In early 2016, Minneapolis adopted the Pollution Control Annual Registration Fee. This is an annual registration for business owners and property owners for equipment that creates pollution. The system was created to incentivize businesses and residences with four or more units to eliminate the use of outdated and hazardous equipment (§47.40).

General EJ Policies

Local governments can establish broad policies with the purpose of furthering environmental justice. These broad environmental justice policies can extend beyond land-use planning to long-term investments and interventions across multiple local

functions such as access to green space, improved public participation processes, capital projects, agency enforcement actions, or amendments to existing laws that can impact quality of life in EJ communities. At least three jurisdictions have adopted broad EJ policies or programs: New York City, San Francisco, and Fulton County, Georgia.

In 2017, New York City adopted legislation amending its Administrative Code to establish an Inter-agency Working Group on environmental justice and to design an environmental justice study (§3-1001 et seq.). Similarly, San Francisco instituted an Environmental Justice Program in 2000, with city staff and resources earmarked for a variety of programs, including a Community Health Plan, green space creation, and more than \$12 million in community grants to nonprofit groups serving environmental justice areas.

In Fulton County, Georgia, the Board of Commissioners voted to establish the Fulton County Environmental Justice Initiative in 2010. The county approved funding for an Environmental Health Planner position and began to collaborate with the Department of Health and Wellness on strategies to address public health issues using local tools. The

TABLE 3. EXAMPLES OF ENVIRONMENTAL REVIEW POLICIES

Jurisdiction / Publisher	Year	Environmental Review Policy
Boston University	2017	Model EJ Ordinance
Camden, NJ	2015	Sustainability Ordinance (§739)
Cincinnati	2009	(Unimplemented) EJ Ordinance (Ordinance 210-2009)
Fulton County, GA	2006	Environmental Reports Requirements (Appendix B §28.4.3)
New Jersey EJ Alliance	2011	Model EJ Ordinance
Newark, NJ	2017	Environmental Justice and Cumulative Impacts Ordinance (§41:20)
San Francisco	2008	Conditional Use Permits for Power Plants (Ordinance 282-08)

TABLE 4. EXAMPLES OF POLICIES FOR EXISTING LAND USES

Jurisdiction	Year	Existing Land-Use Policy
Huntington Park, CA	2001	Conditional Use Permit Standards (§9-2.1101 et seq.)
Minneapolis	2016	Pollution Control Annual Registration (§47.40)
National City, CA	2006	Amortization of Nonconforming Uses (§18.11.100.D)
San Francisco	2009	Public Utilities Commission EJ Policy (Resolution 09-0170)
Washington, DC	2009	Department of Energy & Environment Office of Enforcement and Environmental Justice (Fines and Enforcement)

TABLE 5. EXAMPLES OF PUBLIC HEALTH POLICIES

Jurisdiction	Year	Public Health Policy
Chicago	2014	Air Pollution Control Rules and Regulations
Denver	2017	Nuisance Odors Ordinance (§4-10)
Detroit	2017	Bulk Materials Ordinance (Ordinance 32-17)
Erie, CO	2018	Odor Emissions Ordinance (Ordinance 15-2017)
Richmond, CA	2020	Enclosure of Coal and Petroleum Coke Storage and Transfer Facilities Ordinance (§15.04.615)
San Francisco	2014	Enhance Ventilation System Ordinance (Ordinance 224-14)

initiative led to policy and planning changes, such as an Environmental Justice Amendment to the Zoning Resolution in 2013 (§4.18), the Pipeline Amendment to the Zoning Resolution in 2014 (§34.5.10), and environmental justice content written into the county’s 2035 Comprehensive Plan.

Public Health Policies

Local governments have a special role to play in the protection of public health and safety. Public health codes fall squarely under the police powers of cities and counties, giving localities the authority to regulate nuisance conditions and protect public health. One of the ways that cities and counties oversee public health is through the adoption of codes that enforce nuisance protections over things like noise, odor, dust, and light. Prior to the passage of federal environmental laws like the Clean Air Act, many cities and counties sought to curb these nuisances through public health codes that could shield residents from nearby industrial activities. While there are many public health codes that impact EJ communities, there are some codes that are the direct result of efforts by EJ advocates to address public health concerns in EJ communities (see Table 5).

Cities—including Detroit; Richmond, California; and Chicago—have adopted new public health codes that address facilities with the potential to produce windborne dust, particularly in EJ communities that host large bulk storage facilities. San Francisco passed a new public health code article to make enhanced ventilation systems mandatory in the construction of new buildings within an air pollution exposure zone, specifically in close proximity to highway infrastructure. Additionally, two cities in Colorado, Denver and Erie, passed specific odor ordinances to address land uses

emanating odors that local EJ communities raised as impacting their quality of life.

CONCLUSION

EJ communities suffer from a legacy of racially biased and expulsive land-use planning and zoning that has entrenched patterns of inequality for generations. While local land-use laws have cemented racial and income disparities, they can also be deployed to systematically dismantle these injustices. Moreover, local interventions to address environmental injustice can take diverse forms beyond those at the state and federal levels. The 40 policies highlighted above were largely adopted in the last decade and reflect a diverse set of policy interventions. This may signal an increased interest in local EJ approaches and an opportunity to innovate the ways in which local entities respond to community demands for EJ. Ultimately, the efforts of well-organized, sustained, and expert local environmental justice communities, together with allies in local government and planning professionals, catalyzed action at the local level. This localization of EJ efforts opens up the opportunity to hold local leaders and agencies more accountable to the demands of environmental justice communities and impacted residents close to the ground. The insights gained from these policies can help fuel a new era of planning and zoning interventions targeted to EJ goals. The recent adoption of many of these policies also opens up opportunities to learn from the challenges and successes of the implementation processes ahead.

Note: This article is based on a 2019 report entitled *Local Policies for Environmental Justice: A National Scan*, released by the Tishman Environment and Design Center at

The New School University. The report was prepared with support and review granted by the Natural Resources Defense Council in collaboration with the Chicago Environmental Justice Network, which includes Little Village Environmental Justice Organization, Southeast Environmental Task Force, Southeast Side Coalition to Ban Petcoke, People for Community Recovery, Ixchel and Blacks in Green. The full report can be accessed online at www.tishmancenter.org.

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DOES YOUR ZONING PROMOTE ENVIRONMENTAL JUSTICE?

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