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PRACTICE DYNAMIC ZONING



Dynamic Zoning

By Patrick Braga

The city of the future will not be one that adheres to a pre-designed projection of future urbanism. It will be one whose rules for managing change (whether growth, shrinkage, or stagnation) are best equipped to respond to a variety of potential outcomes. As American cities' demographics continue to change, zoning and development regulations have not always kept pace. By suppressing the production of new housing, many American cities are making existing housing options less affordable or typologically inadequate for different household preferences. In response, this article proposes *dynamic zoning* as a new framework for amending existing and designing new land-use ordinances and development regulations.

Dynamic zoning assembles and conceptualizes emerging land-use practices as a coherent palette of tools to make land-use change predictable and data driven. In the prevailing approach to zoning, adopted local laws either adhere to a singular, static vision of the future or create opportunities for local elected and appointed officials to implement standards unevenly. In contrast, dynamic zoning proposes that communities predetermine the *mechanisms* of zoning change based on agreed-upon indicators or decision triggers. Building on both contemporary and historic planning practices, this article will explain the need for dynamic zoning as a unified zoning practice, survey intellectual precedents, and outline categories of land-use planning tools to transform zoning into an increasingly dynamic toolkit for managing urban change.

THE NEED FOR DYNAMIC ZONING

Despite increases in economic opportunity and population, many cities across the United States have struggled since the Great Recession to allow housing supply to respond swiftly to demographic change. Old zoning codes may offer limited options for new construction, and they often project a static view of how future buildout will look.

Established neighborhood groups interested in preserving and increasing property values may oppose construction of different, denser housing types on the purported basis of neighborhood character. By shifting attention to potential formal contrasts between old and new buildings, the notion of character often appears as a shield to obscure current residents' apprehensions about how social behavior in the neighborhood might change (for instance, whether the introduction of affordable housing will attract crime, or whether student-oriented housing will generate late-night noise). Rezoning a district or even a parcel, therefore, becomes an energy-intensive prospect for a community, even where land uses have already changed, such as where formerly single-unit houses for families have largely become homes for unrelated adult tenants.

On the other hand, consider a city experiencing population decline but whose zoning code aimed to accommodate thousands more residents than the present reality. Loss in population, though, does not mean complete loss in demand for new housing because shrinking cities continue to experience economic and demographic change. Yet zoning may not adequately reflect strategies to link or stabilize neighborhoods in a shrinking city.

Zoning, as a local-government legal practice, frequently intends to implement a single scenario envisioned in a comprehensive plan. Yet in cities with extensive design review, site plan review, and environmental review processes, zoning almost becomes a contractual negotiation. In cities like Boston or Cambridge, Massachusetts, zoning variances have lost their original meaning of relieving hardship, a fact which even city councilors have bemoaned (Levy 2019). In many cities, variances instead become vehicles for granting discretionary waivers. Even in small cities like Ithaca, New York, projects that fully conform to zoning regulations and comprehensive plan visions are frequently encouraged to downsize in response to fear

of change in a densifying urban core (Crandall 2019).

In many places, then, zoning has become either a static set of laws controlling private property decisions or an unpredictable adventure in city hall negotiations. Dynamic zoning proposes a new attitude to zoning: a recognition that cities and their zoning districts can and should change in appropriate ways, that a shortage of baseline-quality housing has been a perennial struggle of the planning profession, and that scenario planning can become more action oriented.

THE DYNAMIC ZONING PROPOSITION

Consider if zoning ordinances responded actively to demographic indicators. What if certain neighborhoods or zoning districts could rezone automatically or systematically if certain conditions were met, such as if a summary statistic from the Census Bureau passes a certain threshold? What if more cities were required to revisit their land-use laws on a regular basis against stated comprehensive planning goals? What if zoning ordinances created built-in opportunities for learning from recent decision-making patterns? Or imagine if zoning treated shrinking cities not as *tabulae rasae*, but as vehicles of opportunity where the limited demand for new development can be sited in appropriate ways.

To achieve these goals, more zoning ordinances should adopt the techniques of automatic rezoning, threshold-based decision-making, and mandatory periodic review.

Several jurisdictions have already experimented with these practices across the United States. Yet heretofore few urban planners have approached zoning as an explicitly dynamic and data-responsive policy tool. In the same way that *growth management* has become a term of art in the profession, my aim is to assemble an umbrella term of *dynamic zoning*—a palette of tools, strategies, and precedents that deliberately make zoning codes more flexible

and responsive to market data and demographic data. As ruled in the 1954 Florida Supreme Court decision in *City of Miami v. Ross et ux.*, “in view of the change in character in the area, a change in zoning is no longer a discretionary matter; it becomes the duty of the city to do so” (ASPO 1955b).

Other authors have also arrived at the term “dynamic zoning” to describe distinct yet related concepts. Don Elliott (2009) suggested zoning methods that do not prescribe a goal-oriented future form *per se*, but rather allow for incrementally larger buildings in response to their physical context. Todd Litman at the Victoria Transport Policy Institute has approached the idea of a “dynamic city” specifically within the goal of providing more affordable housing (2021). Other authors have also used the term in different contexts, such as electric power operation (Yang, Wan, and Tang 2008) or responsive changes to forest management practices (Zollner et al. 2005). [Editor’s Note: Previous *Zoning Practice* authors have also proposed dynamic approaches to zoning. See the September 2011 and March 2020 issues for examples.]

Other intellectual precedents include the practice of scenario planning, which may inform a comprehensive plan but seldom translates into adopted language in the zoning ordinance; graduated density zoning as proposed by Donald Shoup, in which densification is contingent on landowner cooperation (2008); and performance zoning, which arose out of mid-twentieth-century critiques of whether zoning had lived up to its intended promises (e.g., Bair 1962).

AUTOMATIC REZONING

Automatic rezoning has three primary approaches: predetermined succession, automatic rezoning by petition, and data-driven rezoning.

Predetermined Succession

Predetermined succession establishes rules for a parcel’s zoning district to move up or down in measures of intensity over time. Succession clauses may establish a timeframe within which a neighborhood or corridor’s zoning district may increase in density, height, or lot coverage in a predetermined sequence at a particular future moment. This approach to automatic rezoning may offer a favorable alternative

to moratoria. Succession clauses in zoning codes are particularly applicable in cases where zoning codes have successional land-use intensities, such as codes where a “Business-2” district incorporates all uses in “Business-1” and “Residential-3”, and where “Residential-3” incorporates uses allowed in “Residential-2” and “Residential-1,” and so on.

Automatic Rezoning by Petition

To allow automatic rezoning by petition, a city would adopt rules by which a property owner may request that their parcel be allowed to transition across zoning districts by staff review and without a vote of the city council. In cities with a large number of zoning districts, this technique recognizes that more than one zoning district may be suitable for meeting a comprehensive land-use planning goal, and it may allow for an organic extension of prevailing development patterns over time.

In the 1950s, for instance, North Carolina General Statutes §160-173 used to “provide that [...] at any intersection of streets within a city or town [...] property owners may petition the city] to rezone the remaining corners in the same manner as the other corners for a distance not to exceed more than 150 feet from the property line of the intersecting additional corners” (ASPO 1955a). It would be wise for cities to establish clear boundaries within which automatic rezoning by petition may occur, such as by defining bounding parcels or intersections along a corridor.

Similarly, Oakland, California, in 1931 had a provision in its zoning code that would allow residential-zoned parcels located directly across from business parcels to be rezoned by petition of the property owner to be within the business zone (Comey 1933).

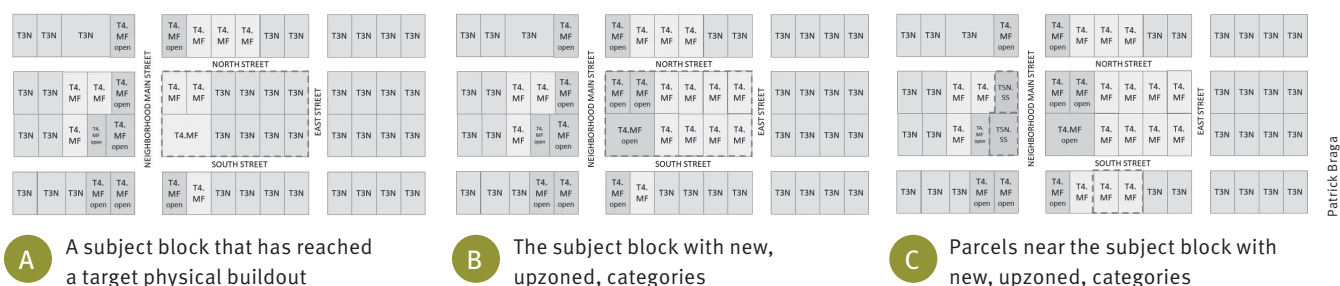
Data-Based Automatic Rezoning and Data-Based Rule-Making

With data-based automatic rezoning, planners would define a decision-making procedure for evaluating data and administratively modifying zoning districts. Ideally, these decision-making systems should not dramatically increase regulatory burden on planning staff implementing a land-use ordinance. However, because most urban planners in the United States are familiar

with data collected and communicated by the Census Bureau, referencing five-year American Community Survey (ACS) data may be a reasonable approach to measure intertemporal trends in a community’s share of renters and owners, vacancy rates, household composition, and rent burden.

Beyond housing units, a data-based approach can also be woven into other development regulations, such as parking requirements. After all, one perennial concern in older cities facing housing pressures is on-street parking availability versus how much off-street parking the city should require from new development. Here are two examples of building data-responsiveness into parking requirements. First, a planning commission may wave parking requirements if an applicant presents empirical evidence that car ownership is lower for a certain demographic group or in a certain part of the city than the zoning-prescribed standard (ACS table B25044 captures this). Alternatively, the developer can measure the existing parking capacity of a street by counting on- and off-street parking spaces, and then compare that to the number of housing units on the block. If the additional number of units the developer proposes can have their parking requirements accommodated by existing on-street parking capacity (if, given the ratio of cars per household, there are more on-street parking spaces than number of units), then less on-site parking might be required.

Suppose a city uses a zoning code similar to Cincinnati’s, with these zones of successive intensity: T3 Neighborhood (T3N, primarily detached residential), T4 Neighborhood Medium Footprint (T4N.MF, medium density, with an “open” subzone that allows more commercial uses), and T5 Neighborhood Shallow Setback (an even denser zone). Under a hypothetical automatic rezoning system, once a block (figure 1-A) reaches a target physical buildout (e.g., 70 percent of the maximum allowed by zoning) or a certain demographic indicator from the Census Bureau, it is automatically rezoned up the intensity ladder (figure 1-B). Parcels within a certain radius of the upzoned district can also be upzoned, whether according to a rule or by petition of the property owners (figure 1-C).



Patrick Braga



Figure 1. A hypothetical automatic rezoning scheme based on Cincinnati's land development code

Other Considerations for Automatic Rezoning

Whereas some cities apply burdensome and lengthy environmental review procedures at the parcel level during a development review process for new housing, automatic rezoning allows a community to define parameters of change where any external environmental impacts (e.g., noise resulting from temporary construction or changes in traffic patterns) are reasonably predictable at a neighborhood or corridor scale. Thus, automatic rezoning encourages planners and elected officials to think about land-use planning, increasingly, in terms of performance metrics, recognizing that different zoning districts may result in comparable or indistinguishable impacts on existing residents' quality of life.

The primary legal challenge to automatic rezoning is that some states mandate that local land-use laws implement identified future land uses in an adopted comprehensive plan. Thus, automatic rezoning should have clearly defined options, gradients, or limits. For instance, a future land-use designation of "middle-density housing" may have four or five different implementing zoning districts that would meet comprehensive plan goals. Thus, any automatic rezoning techniques (changing intensity in response to time, landowner petition, or data) may be restricted just to those few implementing districts.

Within that selection of implementing districts, a city could also encourage a "gradient" of change by establishing time limits for petition-based or data-based approaches. For example, after a parcel is upzoned through dynamic zoning, an ordinance may require neighboring parcels

to wait, say, six months before the higher-intensity zone can be "propagated" onto adjacent parcels.

Finally, limits may be geographic or regulatory. Automatic rezoning may be well suited for defining an increasingly urban neighborhood corridor under a dynamic zoning overlay district, for instance, where it may make sense for a local government to be more

permissive in the variety of uses allowed extending from a main local node over time.

Implementation Suggestions

For each suggestion in table 1, consider whether an inline amendment to existing base district rules or a new dynamic zoning overlay district would be the most appropriate tool to accomplish your goals.

TABLE 1. KEY IMPLEMENTATION QUESTIONS FOR AUTOMATIC REZONING

Questions	Suggestions
Do you have districts facing rapidly rising prices or other signs of development pressure?	Consider exploring whether that zoning district can expand outward to relieve some of that pressure, and whether a time-based, by-petition, or data-based succession might make sense.
Does development in your municipality seem to be "leapfrogging" over certain neighborhoods that have not seen as much investment as the community would like to see?	Consider identifying strategic nodes that could be desirably rezoned or upzoned, with automatic rezoning provisions for that desirable zoning district either to expand outward or cease to exist as predetermined development goals are achieved.
What kinds of demographic or socioeconomic pressures is your community facing?	If your housing supply has not been able to meet those needs, consider what kinds of indicators your planning staff can pick out from the American Community Survey every year, and how those indicators might either liberate or restrict certain development standards.
Does your zoning ordinance have any "magic numbers" (i.e. fixed, hard-coded numbers where the origin of or intent behind the number may not be clear? This may be true for FAR, parking requirements, setbacks, and lot coverage ratios, to name a few.)?	Change those fixed numbers into contextual, rule-based systems, such as contextual front setbacks. As another example, perhaps allow the planning board to permit deviations from fixed standards if the applicants demonstrate that their proposal falls within the first and third quartile of that pattern within their neighborhood or within 1000 feet of their property.

SUNRISES, SUNSETS, AND THRESHOLDS

To recognize the temporal nature of urban change, zoning codes should establish rules that are dependent on time-based boundaries (e.g., a specific policy beginning or ending on a certain date) and numeric thresholds (e.g., responding to the number of permits issued or an increase in vacancy rates).

Sunset Clauses With Thresholds

Sunset clauses are an effective regulatory strategy to pilot a land-use rule or in response to a public policy target. An effective example of this strategy is the Rosemary District of Sarasota, Florida. This district adjacent to the city's downtown core had been zoned for moderately low density (25 units per acre, which generates the residential density of a townhouse neighborhood) for some time. However, private development interest lagged, and vacancies were high. To incentivize development in an otherwise desirably located area, the city allowed a temporary increase in residential density to 75 units per acre until the neighborhood reached the earliest of 1,775 permitted units or the end of 2018. Thus, this sunset clause employed both temporal limits typically associated with sunsets as well as a data-driven threshold.

As a result of this experiment, the city learned that 75 units per acre can be desirable for the area. However, the absence of public space and other amenities in this neighborhood suddenly became noticeable, since the Rosemary District previously did not have as much of a residential presence. As a result, the city began exploring trading the higher per-acre unit density in return for public benefits. Thus, by deploying a dynamic zoning strategy, Sarasota was able to pilot a land-use strategy while creating an opportunity for more nuance in the city's development regulations.

Sunrise Clauses With Thresholds

In December 2020, I was invited to present to the City of Detroit's Housing Equity Council a vision for how the city government and the autonomous Detroit Housing Commission (the local housing authority) could collaborate to create high-quality housing in the city. Though Detroit is commonly known as a quintessential shrinking city with high poverty, shrinking cities do not immediately

indicate an absence of demand for new housing units. In fact, the contrary is true: in the face of dramatic demographic and economic change, much of Detroit's existing housing stock became increasingly unsuitable for meeting families' needs. According to 2019 ACS data, an estimated 68,000 families in Detroit are rent-burdened, and the housing quality in much of the city is not comparable to baseline modern standards set in other constituent cities of the metropolitan area.

Because an incredible amount of land in Detroit is publicly owned by a local land bank authority, I proposed an eight-part policy program that would encourage clustered disposition of land bank parcels along the city's highest-capacity and highest-frequency transit routes. I coupled this proposal with the notion that the city, housing commission, philanthropic partners, and private developers should partner to guarantee a certain level of housing units over time (implementing the idea of development guarantees from Owens, Rossi-Hansberg, and Sarte 2020). The land-owning public sector could contribute money or property directly into a project where private developers may otherwise hesitate to act, absent coordination among landowners to create a cohesive land-use vision.

Specifically, I proposed that once a certain percentage of parcels within a quarter-mile of bus stops received building permits, the next transit stop along the corridor would become "available" for

permitting and disposition, and affordable housing developers could have first pick of land to acquire. The ultimate goal was to use sunrise clauses (allowing disposition and permitting of public land at a specific moment in time) in response to data-based thresholds (a predetermined unit floor—a mirror of Sarasota's unit cap in the Rosemary District).

As demonstrated in both Sarasota and Detroit, the dynamic zoning practices of establishing temporal and numeric sunrises, sunsets, and thresholds can make local land-use laws more situationally responsive to a community's changing needs.

Implementation Suggestions

Table 2 presents a series of suggestions to help communities implement sunrises or sunsets with thresholds.

MANDATORY PERIODIC REVIEW

Within a dynamic zoning framework, laws may mandate that appointed commissions periodically review existing land-use laws or the results of discretionary and rule-based decision-making. The primary end goals of periodic land-use reviews should be to

- ensure that adopted land use legislation faithfully implements comprehensive plan goals or neighborhood area plans; and
- identify longstanding practices that merit reconsideration.

TABLE 2. KEY IMPLEMENTATION QUESTIONS FOR SUNRISES, SUNSETS, AND THRESHOLDS

Questions	Suggestions
Do you want to strengthen your community's automatic rezoning rules to produce more housing?	Consider using expiration dates or sunrise dates alongside housing production targets as thresholds for turning rules on and off.
Are there parts of your city where the community feels comfortable piloting a new density level or allowed use?	Consider using sunsets and threshold indicators to pilot a particular land use strategy without long-term commitment.
Is your community's economy not as strong, so that you want to avoid the risk of self-cannibalizing housing markets?	Use dynamic zoning strategies to encourage appropriately-timed new development around desirable amenities such as fixed transit routes, schools, job centers and shopping districts, or parks.
Does your comprehensive plan identify different outcome scenarios?	Use a combination of threshold indicators and automatic rezoning to make desirable scenarios legislatively possible.

For instance, a city could take advantage of a careful reading of its development regulations to interrogate whether its height limits, density controls, or required lot coverage hinder appropriate levels of housing production, or if these effectively create a proxy barrier to new housing. Either planning staff or outside consultants could conduct these reviews with the deliberate intention of identifying potential opportunities for zoning amendments to facilitate more housing production.

Reviewing Land-Use Laws

Currently, mandatory periodic reviews of land-use laws tend to emanate from the state level and are associated with state mandates for local comprehensive planning. Michigan, Florida, Minnesota, and Washington all require regular review of adopted land-use laws relative to policy established in the local comprehensive plan.

However, there are organic local government practices that offer reasonable examples of how municipalities can engage in periodic land-use review. For instance, when I served on the planning commission in Ferndale, Michigan, the board chair noted at a meeting how an increasing number of applications to the board of zoning appeals (BZA) is usually a good indicator that the comprehensive plan and zoning code need to be revisited. A staff planner in Ferndale in 2021 also convened a small working group of appointed volunteers from both the BZA and the planning commission to offer thoughts on potential amendments to and reviews of selected portions of the zoning ordinance with the explicit intent of identifying ordinance changes.

Dynamic zoning is particularly complementary to comprehensive or master land-use planning because it creates opportunities for multiple potential and desirable futures to become reality. Consider, for instance, how Michigan state statutes (§125.3833) define a master plan as projecting at least two decades into the future. Yet even within this long time horizon, the state requires that “At least every 5 years after adoption of a master plan, a planning commission shall review the master plan and determine whether to commence the procedure to amend the master plan or adopt a new master plan” (§125.3845). Similarly, Hawai’i’s statutes require that land-use regulations

be reviewed every five years to determine whether to initiate amendments (§205-18).

Reviewing Land-Use Decisions

The goals of reviewing the results of decisions by appointed bodies should be to identify

- a. patterns in board-approved deviation from underlying zoning;
- b. patterns in the kinds of deviation that applicants request; and
- c. spatial distribution of requests for zoning waivers or variances.

Commenting on zoning practice in Indianapolis in the 1950s and early 1960s, an attorney once wrote that “[t]he variance problem is not going to disappear [...] antique ordinances give rise to some variances, but strict new ordinances can also cause a surge of variance applications” (Caldwell

1962). Mandatory periodic reviews create a structured means for communities to treat requests for zoning deviations as crowd-sourced ideation for zoning amendments. The corpus of decision-making records (e.g., zoning board meeting minutes) can also serve as a barometer of whether adopted laws are implementing local public policy goals faithfully. Ideally, patterns identified would be communicated from planning staff to elected officials as recommendations for zoning amendments.

This practice recognizes that, as well-intentioned as they may be, zoning laws and development standards may be creating unnecessary barriers to housing production, even when the results of decision-making bodies suggest that other standards successfully further the health, safety, morals, and welfare of a community.

TABLE 3. KEY IMPLEMENTATION QUESTIONS FOR MANDATORY PERIODIC REVIEWS

Questions	Suggestions
Has your community recently adopted a new comprehensive plan?	Consider whether a committee, with the support of planning staff, should meet once a year to review the land-use laws implementing your plan for a given district or neighborhood, and whether any ordinances warrant amendments to implement that vision more faithfully.
When was the last time your community’s zoning ordinance was significantly updated? Is it time to reconsider longstanding provisions?	In either case, consider whether a mandatory periodic review process could help both make targeted changes to your zoning ordinance as well as reviewing the impact of ordinance changes after adoption.
Is your city council seeing more project-specific land-use petitions (e.g. planned unit development proposals) than district-scale discussions?	
Are you an elected official?	Consider requesting your planning staff to comb through recent BZA petitions or discretionary waivers by the planning board to identify recurring patterns. What kinds of zoning deviations do applicants request, and what kinds of deviations do the boards grant? Are these requests are originating in a certain part of your city?
Are you a staff planner or a citizen advocate?	Consider taking the initiative to do the above, and to report to elected officials any patterns observed and recommendations that emerged from your analysis.

Implementation Suggestions

When built into land-use law, the dynamic zoning practice of mandatory periodic review creates a statutorily required opportunity for cities to investigate a specific kind of data or data source (e.g. requests for PUDs and zoning waivers), which adds structure and legitimacy to the process of proposing zoning amendments. Table 3 presents a series of suggestions to help communities implement mandatory reviews.

CONCLUSION

Much like other emergent urban planning frameworks and techniques, dynamic zoning already has its roots in existing land-use practices. By assembling these strategies together and conceptualizing them as a palette of options, local governments can be more proactive about ensuring that cities are ready to respond to change dynamically. Cities that want to make their zoning more dynamic should adopt automatic rezoning, sunrises and sunsets, threshold-based rule changes, and mandatory periodic review of land-use and development regulations. These data- and practice-responsive tools, especially when combined with one another, have the potential to provide a framework for predictable urban change, implement scenario planning more directly, and ensure that data-driven decision-making is always at the core of local land-use planning.

ABOUT THE AUTHOR

Patrick Braga is an urban planner, real estate development professional, and classical composer based in metro Detroit. He earned undergraduate degrees at Cornell University, was a visiting student at the University of Oxford, and earned a Master in Urban Planning with Distinction at Harvard University. He currently works with Visum Development Group, a housing developer focused on urban infill in Upstate New York and Idaho, and he used to work for the Detroit Housing Commission. Braga has served on municipal boards in Ithaca, New York; Ferndale, Michigan; and Caroline, New York, and his music has been performed in four countries.

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10