

Land Use and Zoning Laws in the United States

Module Five, Alternatives to Traditional Zoning Laws

Introduction

In the first four modules of this course we examined the origins and history of land use planning, the development of zoning laws as tools of urban planning, and how developers work within the structure of comprehensive plans and zoning laws.

In this module we complete the course by considering alternatives to conventional zoning laws and practices, particularly the example of Houston, Texas, which has no formal zoning ordinance or comprehensive plan and smart growth urban boundaries, which attempt to help municipalities to cope with the pressures of population growth while minimizing physical expansion.

Are Zoning Laws Really Necessary? The Houston Experience

In the United States zoning ordinances have been in use for long enough that they have become the default means for regulating land use and urban planning in almost all municipalities. Only one notable exception remains, the city of Houston, Texas.

Houston has no comprehensive plan nor a zoning ordinance. Although at first this might seem to invite chaos in the city's land use, the city government has mostly avoided such an outcome by creating a planning department and enacting separate laws that, taken together, serve most of the essential purposes of a zoning ordinance. Local officials refer to this arrangement as "de facto zoning."

Houston uses an assortment of urban planning tools that are zoning in all but name, include population density restrictions in some parts of the city, building height and setback buffering ordinances, lot size limitations, and historic building preservation rules. Other tools that parallel local laws include those found in most other cities with zoning laws, such as developer-initiated deed restrictions and homeowners association rules.¹

In some places in the city, actual zoning laws apply for local development tax reinvestment and federally-mandated zoning in the vicinity of the city's airports.²

Although Houston attempts to emulate the effects of having a zoning ordinance without actually having one, the city's landscape exhibits some land use anomalies and problems that recall the problems that American cities experienced before zoning laws became prevalent in the 20th Century. One of these is the possibility that developers can erect high rise buildings close to residential neighborhoods, recalling the construction of the 38-story Equitable Building in New York City in 1914 that cast surrounding homes into darkness with its shadow and which was an important factor contributing to the enactment of that city's

¹ <http://blog.urbanleasing.com/five-ways-houstons-lack-of-zoning-affects-city-life/>

² <https://kinder.rice.edu/2015/09/08/forget-what-youve-heard-houston-really-does-have-zoning-sort-of>

first zoning law two years later.³ The construction of one such skyscraper in Houston led to a lawsuit against the developer and an award of more than a million dollars to nearby homeowners whose properties lost value as a result, but the lawsuit could not prevent the structure from being built.⁴

Houston's experience shows that municipalities can, in piecemeal fashion, duplicate much of the effects of zoning ordinances and regulations. What Houston's model cannot duplicate, however, is the effect of having a comprehensive plan to serve as a foundation for long-term urban planning.

Smart Growth and Urban Growth Boundaries

For decades following the 1920s zoning laws in the United States evolved mostly by inventing more types of zones than the original Euclidian residential, commercial and industrial classifications to include mixed, aesthetic, historical preservation, spatial, agricultural and other uses and integrating them into comprehensive planning. Adaptations of Euclidian zoning remain the most common form of zoning ordinances in the United States.

Beginning in the early 1970s a new approach to managing population and community growth – “smart growth” – emerged as an alternative to Euclidian zoning. No single definition of smart growth exists, but most descriptions include as a minimum the following elements: mixed land use zoning, encouraging redevelopment of existing communities, reducing the need for automobiles, and preserving surrounding open spaces and agricultural lands.⁵

Smart growth is one area of urban planning law in which the U.S. Federal government can become a participant, specifically in the form of the U.S. Environmental Protection Agency, but depending on circumstances the U.S. Department of Transportation, the U.S. Department of Agriculture, the U.S. Department of Housing and Urban Development and even the Centers for Disease Control and Prevention can be involved in providing guidance and assistance.⁶

Challenges to Euclidian Zoning

A fundamental object of smart growth is to encourage municipalities to increase their population densities before expanding their boundaries. In exchange, smart growth offers several quality of life benefits. In the following sections we will consider how smart growth urban planning attempts to overcome two modern quality of life challenges that modern urban planners, city officials, and city residents must face: population growth, and urban sprawl.

Can Traditional Zoning Cope with Population Growth?

The tripling of the population of the United States from 106 million in 1920 – which roughly coincides with the introduction of zoning laws – to more than 320 million today⁷ has witnessed an accompanying growth of urbanization. Today almost two-thirds of Americans live in municipalities, the total land area

³ <https://ny.curbed.com/2013/3/15/10263912/the-equitable-building-and-the-birth-of-nyc-zoning-law>

⁴ <https://www.houstonchronicle.com/business/real-estate/article/Ashby-ruling-allows-high-rise-to-go-forward-5447064.php?t=edb67c600d438d9cbb&cmpid=twitter-premium>

⁵ <https://www.epa.gov/sites/production/files/2014-04/documents/this-is-smart-growth.pdf>

⁶ <https://www.epa.gov/smartgrowth/about-smart-growth>

⁷ <https://www.thoughtco.com/us-population-through-history-1435268>

of which comprises about 3 percent of total US land space.⁸ Population growth and its shift to urban areas has resulted in municipalities having on average 45 times the population density as the unincorporated areas that surround them.⁹

Zoning laws are one response to the health, social, economic and other quality of life challenges that increasing municipal populations have posed. But over time the adequacy of what some call traditional zoning laws, based on the still widely-used Euclidian zoning model that features single-use zones, to meet those challenges without incurring increasingly undesirable side effects, has come into question.

Reducing the Effects Urban Sprawl

Under Euclidian zoning, as a municipality's population increases its usual response is to expand the municipal boundaries to add more residential and other supporting commercial and industrial zones. Particularly in the absence of a comprehensive plan to anticipate long-term growth, the resort to incorporating more land to relieve population pressure can result in what critics refer to as "urban sprawl," which is a collective reference to the potential problems below.

Environmental Damage

Potential harm to the local environment connected with urban sprawl includes:

- Air pollution from automobiles. Widely separating single-use residential from commercial and industrial zones results in municipalities that rely on automobiles.
- Loss of agricultural land.
- Destruction of wildlife habitats and disruption of biodiversity for local plants and animals.
- Increased risk of flooding. A significant contributor in this regard is the widespread use of paved surfaces.
- Increased water pollution. Rainfall can transfer pollutants from automobiles and other sources to runoff areas, threatening streams, rivers, and bodies of water.
- Depletion of aquifers. The same paved surfaces that contribute to flooding in some areas prevent the absorption of rainfall in underground aquifers.

Health and Safety Issues

Some of the urban sprawl contributors to environmental problems also increase health-related risks, notably air and water pollution. Over-reliance on personally-owned vehicles because of widespread single-use zoning is a safety concern, because it potentially increases the risks of automobile accidents and pedestrian injuries.

Inefficient Allocation of Infrastructure Costs

Municipalities that engage in urban sprawl tend to spend more money on roads and parking facilities, which precludes development of land for other purposes and which do not contribute to municipal revenues from taxes. Furthermore, the costs for installing and maintaining utilities like water, sewer and electric service for single-use and low population density zones are also more expensive than in high-density ones.

⁸ <https://www.census.gov/newsroom/press-releases/2015/cb15-33.html>

⁹ <https://www.census.gov/newsroom/blogs/random-samplings/2015/03/understanding-population-density.html>

Urban Growth Boundaries as an Alternative to Euclidian Zoning

One of the most common ways that communities implement smart growth policy is through the creation of urban growth boundaries. Urban growth boundaries are so integral to smart growth planning that the two terms are used almost interchangeably. For our analysis purposes here, urban growth boundaries are a feature of smart growth

Legal Authority for Urban Growth Boundaries

The purpose of an urban growth boundary is to establish physical limits to a municipality's expansion by establishing a boundary line around it, beyond which development is restricted or prohibited. A municipality can create its own growth boundary, or it can be subject to state law requiring one. The first example of an urban growth boundary was when the city of Lexington, Kentucky established one in 1958. At the state level, Oregon established the first urban growth boundary law in 1973 under which counties and cities must both participate. The states of Washington and Tennessee have also enacted statewide urban growth boundary legislation. Some municipalities that have enacted smart growth policies without enabling state legislation include Boulder, Colorado, Honolulu, Hawaii, San Jose, California, and Minneapolis-St. Paul, Minnesota.

Urban Growth Boundary Planning and Implementation

In a growing municipality, creating an urban growth boundary requires careful planning to ensure that development within the boundary will address the problems inherent in Euclidian zoning while providing a better quality of life for more residents not only in terms of population growth but also socially. Counties and municipalities that use urban growth boundaries do so as part of a comprehensive plan that forecasts for up to 20 years where and what kind of development can occur within the boundary. Municipal planning departments will review the urban growth boundary periodically to make short-term adjustments if needed, with the objective of maintaining a balance between avoiding overcrowding or making too much space available for development.

Planning challenges include reorienting residential neighborhood development to allow for more population density, and adapting the municipality's transportation network to promote residents to walk, bicycle, and use mass transportation instead of automobiles.¹⁰

Governments that implement urban growth boundaries must do so in accordance with the administrative laws and procedures that we examined in the fourth module of this course (for example, the need to provide for public hearings when making changes to the boundary). County and municipal authorities implement urban growth boundaries through an assortment of mechanisms.¹¹ Some of these are:

- Comprehensive plans that anticipate long-term requirements for supporting infrastructure, public utilities, social services and other needs. This, in turn, requires extensive use of mixed-use and high-density zoning with less emphasis on providing for automobile parking.
- Providing for the redevelopment of unused land, in particular closed industrial or commercial sites, and for reinvestment into older neighborhoods to support more residents and to improve their access to mass transit, trails and bike paths.

¹⁰ <http://sprawlwatch.org/ubg.html>

¹¹ <https://conservationtools.org/guides/48-urban-growth-boundary>

- Requiring prospective developers to undertake short and long-term environmental impact assessments of the proposed development, and further requiring those developers to pay for some of the infrastructure improvements needed to accommodate it.
- Establishing protections for land outside the boundary. This can include land purchases or arrangements to transfer to the municipality the land development rights for areas to be preserved.
- Creating a variety of housing, with emphasis on providing affordable housing for low-income residents.

Urban Growth Boundary Benefits

Proponents of urban growth boundaries point to the following examples of positive effects:¹²

- Reduction in the expansion of land development compared to Euclidian zoning.
- More efficient use of existing space within the boundary.
- More efficient allocation of infrastructure funds into a more compact area.
- Reduction in automobile-related air pollution and traffic accidents.
- Preservation of forests and productive agricultural lands.
- Improved forecasting of the need for state and Federal financial and other assistance, such as with hazardous waste cleanup for redevelopment sites and support for low-income housing development.

Criticisms of Urban Growth Boundaries

Despite its potential promise, more than 40 years since its first statewide implementation smart growth through the use of urban growth boundaries remains a minority methodology in urban planning. The lack of widespread acceptance of smart growth is due to a combination of factors:

Resistance to a High-Density Lifestyle

Not all people are enthusiastic about living in a high-density community, and surveys show that people in their 20s and 30s – the so-called “millennial” generation – are at least as likely as generations that came before them to want to own a single-family dwelling instead of living in a high-density housing area.¹³

Aside from potentially delaying or thwarting the dream of such home ownership, the preferred resident lifestyle inherent in urban growth areas can also conflict with smart growth objectives: not all people want to forsake their automobiles in favor of walking or taking mass transit. Not all people are in favor of having high-density low-income housing built near where they live. Not all developers want to be subject to environmental impact statement delays or to pay for expensive infrastructure repairs or improvements as a precondition for project approval. A city’s efforts to promote increased population density can lead to some people who work in the city to choose living in a suburb or nearby “bedroom community,” but this in turn can contribute to traffic congestion in the city from their commuting back and forth.

¹² https://conservationtools.org/library_items/1685/files/1892

¹³ <http://www.newgeography.com/content/002919-millennials'-home-ownership-dreams-delayed-not-abandoned>

Housing Unaffordability

Some critics of smart growth claim that one effect of restricting the ability of a municipality to expand is to drive up the price of both housing and rental properties. Moreover, those who are affected the most by high housing and rental costs tend to be the poorest residents, which is the opposite of one of the most important objectives of urban growth boundaries, to provide for affordable low-income housing. High housing costs also contribute to the decisions of many urban residents to delay having children or to have fewer children.¹⁴

Supporters of urban growth boundaries dispute the suggestion that smart growth policies are responsible for higher housing costs. For example, although rapidly growing urban growth boundary cities like Portland, Oregon have experienced significant increases in the cost of housing, defenders of the city's smart growth policies note that other cities with traditional zoning have experienced similar cost increases.¹⁵

Conclusion

Approximately a century after its initial expression in cities like New York City and Los Angeles, traditional zoning – as characterized by comprehensive plans and Euclidean low-density single-use zones and their adaptations – remains the dominant form of urban planning in the United States. Although the city of Houston demonstrates that it is possible to achieve most of the objectives of urban planning without an official zoning ordinance, no other American city of significant population or size has emulated its example.

If Houston is on one end of the spectrum of urban planning – representing the least formal approach – smart growth and urban growth boundaries are on the other side, not only being the most restrictive in terms of permitting growth but also the most complete form of comprehensive planning in terms of growth forecasting, environmental protection considerations, and social policies like fair housing and pedestrian-friendly transportation and city design.

The debate over whether smart growth achieves its purposes is ongoing, and whether in the future urban growth boundaries will grow in popularity and use remains unclear. As the United States population continues to increase in the 21st Century, and as the population continues to concentrate in the country's urban areas, it seems likely that smart growth will continue to gain some traction as an alternative path to take for urban planners and the municipalities they serve.

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¹⁴ <https://www.thedailybeast.com/landless-americans-are-the-new-serf-class-10?ref=scroll>

¹⁵ <https://modernfarmer.com/2016/09/portland-urban-growth-boundary/>

Quiz Questions

1. The phenomenon of a municipality expanding its boundaries in a way that encourages low-density occupancy is known as:
 - a. Smart Growth.
 - b. Urbanization.
 - c. Urban sprawl.
 - d. Infrastructure development.

Answer: C

2. Which of the following is not a category of negative effects from urban sprawl?
 - a. High housing costs.
 - b. Environmental damage.
 - c. Inefficient allocation of infrastructure spending.
 - d. Health and safety problems.

Answer: A

3. Criticisms of urban growth boundaries do not include which of the following?
 - a. Higher housing and rental costs.
 - b. Increased air pollution.
 - c. Many people still prefer low-density zones with single-family housing.
 - d. Many people are reluctant to give up their cars in favor of other means of transit.

Answer: B

4. What is de facto zoning?
 - a. A tool used in smart growth planning.
 - b. Laws that have the same effect as zoning laws, but which are not zoning ordinances.
 - c. Another term to describe urban growth boundaries.
 - d. A consequence of urban sprawl.

Answer: B

5. Which of the following is not a claimed benefit of urban growth boundaries?
 - a. Preservation of agricultural land.
 - b. More efficient use of infrastructure funds and resources.
 - c. Reduced pollution.
 - d. Lower population density.

Answer: D

6. Which of the following is not a tool of urban growth boundaries?
 - a. De facto zoning.
 - b. Redevelopment of unused land in the municipality.
 - c. High density, mixed-use zoning.
 - d. Long-term comprehensive plans.

Answer: A

7. Erecting a high-rise office building next to a residential neighborhood is symptomatic of:
- a. Smart growth.
 - b. Redevelopment.
 - c. No zoning laws.
 - d. Mixed-use zoning.

Answer: C

8. Air and water pollution, loss of farmland and wildlife habitats are consequences of:
- a. Urban growth boundaries.
 - b. Urban sprawl.
 - c. De facto zoning.
 - d. High-density zoning.

Answer: B

9. Which of the following is not true about smart growth laws?
- a. They can be local or state in origin.
 - b. They can involve coordination with Federal government agencies.
 - c. They are long-term in focus.
 - d. They are adaptations of Euclidean zoning ordinances.

Answer: D

10. Which of the following is not a tool used in de facto zoning?
- a. Homeowners association rules.
 - b. Urban growth boundaries.
 - c. Deed restrictions.
 - d. Setback buffering ordinances.

Answer: B