

Creating a Regulatory Blueprint for Healthy Community Design

A Local Government Guide to Reforming Zoning and Land Development Codes

Contents

Introduction	3
Why Reform Existing Codes	4
Code Reform Models	7
Scope and Phasing of the Code Reform Effort	9
Getting Started on a Collaborative Code	11
Conclusion	16
Resources and References.	17
Endnotes	18

Zoning and other conventional land development codes control the physical form of communities. They classify land uses (residential, commercial, industrial, agricultural) and regulate buildings and adjoining physical space through the use of setbacks, height limits, floor area ratios (FARs), and regulations covering site coverage, density, and parking. Within the past five years, a growing number of planners, architects, developers, and local government officials have become disenchanted with existing zoning ordinances and land development codes. They contend that such rules and policies have encouraged sprawling, automobile-reliant development patterns. Proponents of smart growth and new urbanism suggest that changes to these land use codes can serve as a catalyst for neighborhood revitalization, environmental protection, and economic vitality. In addition, a growing number of public health experts view the reform of planning and zoning policies and practices as opportunities to improve the built environment and increase physical activity among a largely sedentary population by promoting healthier communities.

Changing zoning and its family of land development regulations is a complex endeavor that requires technical expertise, political commitment, and community consensus around a cohesive vision for the future. For those communities that are contemplating meaningful code changes, one of the initial challenges is determining where to start and how to ensure success. Designed for local government officials, this guide provides a strategic framework for reforming zoning and related development codes to encourage the design of more compact, vibrant, and healthy communities.



A downloadable version of this report is available at bookstore.icma.org, item no. E-43346.

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This guide was prepared by Joseph Schilling, a professor in practice with the Metropolitan Institute at Virginia Tech, with assistance from Nadejda Mishkovsky of ICMA. Before joining the Metropolitan Institute in Alexandria, Virginia, in 2004, Professor Schilling served for seven years as director of community and economic development for ICMA, where he guided the organization's code reform activities. Ms. Mishkovsky manages ICMA's work on smart growth and healthy communities.

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Introduction

THE DIFFERENT DIMENSIONS OF CODE REFORM

Building upon the principles of smart growth and new urbanism, the modernizing of zoning and land development codes seems to have reached a critical mass among a growing number of planners, architects, and new urbanist developers.¹ Many view code reform as a strategic priority for removing regulatory barriers that prevent the design of more livable neighborhoods. While the planning profession has always tinkered with ways to improve zoning and enhance its administration, a new imperative for code reform seems to be gaining traction in communities across the country.

As the links between land use and urban design, health, and livability gain national attention, even the public health community has become interested in zoning code reform. Public health experts and practitioners view the updating of planning and zoning policies as one important way to increase physical activity and access to healthy food among this country's largely overweight population. By improving the built environment, communities may reduce dependency on automobiles and construct places that are more attractive to pedestrians and cyclists thereby encouraging people to become more physically active as part of their daily routines and improve their overall health. Land use also determines the availability and accessibility of healthy food, such as how much agricultural land is available nearby; whether farmers' markets and community gardens are permitted uses; and where fast food establishments locate. Encouraging physical activity and healthy eating is a public health priority, since physical inactivity and poor nutrition are major contributing factors to numerous chronic diseases such as obesity. The sudden increase in the prevalence of these diseases over the past twenty-five years has contributed to a national public health crisis.²

Unfortunately, local zoning codes and related land use procedures—the regulatory DNA of communities—often challenge efforts to create mixed-use neighborhoods with well-connected streets and more compact development, the infrastructure known to support healthier rates of walking and cycling for transportation.³ Healthy nutritional choices are similarly limited in many communities. Experts and researchers, along with practitioners in public health, planning, design, and law are forging new partnerships under the idea of active living⁴ to reform land use and other policies in order to promote healthier communities.

Beyond zoning and planning, code reform encompasses other state and local land use laws and ordinances, along with differing layers of policies and standards. Together, these existing land use regulations substantially influence development patterns, design, and use of public space.

- State and local subdivision regulations govern the platting of large tracts of land that typically results in large-scale, residential subdivisions.
- Local engineering standards also regulate the design, placement, and maintenance of streets and sidewalks.
- Fire and police department policies can further influence the design of public spaces by requiring streets that can accommodate the passage of emergency vehicles.
- Beyond these underlying land use controls, numerous land development regulations establish the hearing procedures for granting and revoking development approvals and permits.

Changes to one code could inadvertently impact the process or regulatory scope of another code; therefore code reform efforts should carefully consider the interrelationships among the entire universe of land use regulations.

Communities across the nation have become disenchanted with the existing patterns of development delivered by current codes. Pioneering cities such as Milwaukee, Wisconsin; Louisville, Kentucky; Nashville, Tennessee; Davidson, North Carolina; and Petaluma, Azusa and Ventura in California; have created innovative approaches that other cities can adapt and tailor to meet unique local dynamics. More communities are willing to change their zoning codes and land use plans as a way to enhance the overall livability and economic vitality of their neighborhoods.

Communities can choose from several different approaches and models of code reform. Hundreds of communities have adopted traditional neighborhood development (TND) ordinances and transit-oriented development (TOD) districts as parts of a larger strategy to revitalize older neighborhoods and to design more livable communities. Other communities have consolidated their land use and environmental regulations into unified development codes. Dozens more cities are modifying their zoning ordinances with form-based coding, an innovative model that focuses more on community design and less on regulating the underlying land uses.⁵ As an incentive for business development, local governments are also updating cumbersome permit procedures and streamlining architectural review processes and design standards. A few states have enacted new statewide rehabilitation building codes to make it easier to repair older structures in existing neighborhoods.

4 Creating a Regulatory Blueprint for Healthy Community Design

Active Living, Smart Growth, and New Urbanism

Many of the goals of active living, smart growth, and new urbanism are interrelated and mutually reinforcing, although each concept has its own separate identity.

Active living⁶ is a way of life that integrates physical activity into daily routines. The goal is to accumulate at least 30 minutes of activity each day. Individuals may do this in a variety of ways, such as walking or bicycling for transportation, exercise, or pleasure, playing in the park, working in the yard, taking the stairs, and using recreational facilities. An active living community is designed with a pedestrian and bicycle-friendly focus and provides opportunities for people of all ages and abilities to engage in routine daily physical activity. Examples of policies that support active living include compact development, interconnected streets, extensive and well-maintained sidewalks and bicycle routes, and a network of parks.

Smart growth⁷ strategies help communities develop in a way that supports economic, environmental, and social goals. The national Smart Growth Network, a coalition of more than 35 national and regional organizations, has endorsed ten principles that build upon this concept of integrated goals. One example of a smart growth approach is to focus development efforts on places with existing infrastructure as a way to stimulate urban revitalization, protect local economies, and minimize the environmental impacts of haphazard development beyond urbanized areas. Communities that support these principles may also develop policies and programs to: promote a mixture of uses, create a walkable community, encourage compact building design, and provide a variety of housing and transportation choices.

Proponents of new urbanism⁸ favor development that is appropriate to its location within the region. In cities and towns, they advocate building neighborhoods similar to those that were designed and established nearly 100 years ago—with houses on smaller lots and narrower streets with shops and services in easy walking distance—over more recent suburban patterns of development.

A LOCAL GOVERNMENT GUIDE TO CODE REFORM

With so many options and so much activity, it can be difficult to know where to begin or whom to consult. Should a city trade its 1950s-era zoning code for a streamlined, form-based model? Before retiring the entire code, is it necessary to pilot test new concepts in certain neighborhoods or districts? Do the local planning and legal staffs

have the capacity to manage a comprehensive code reform process? If not, what consulting groups have the capabilities and the capacity to implement it? What does all of this excitement about code reform mean for a city?

The answers are not always clear. Cities can consult an ever-growing number of experts and examples on code reform. This abundance of resources provides ample support for local government leaders working to enact meaningful change. On the other hand, some local government officials may feel skeptical about adopting new models too quickly. Many code reforms remain relatively untested in the field and in the courts. Plus, previous efforts to overhaul zoning with concepts such as performance zoning some 25 years ago found that these code innovations were difficult to administer on a citywide scale. Finally, many of the concepts and terminology remain foreign or unclear to local government officials.

The purpose of this practice guide is to provide local government officials and staff with a consumer's guide to code reform. It outlines opportunities for reforming zoning codes and land development processes to foster increased levels of physical activity, revitalize neighborhoods, and achieve other livability goals. Based on the lessons learned from national experts and several leading cities that have recently tackled code reform, the guide discusses various code reform options and strategies for pulling together an effective code reform initiative. It also provides a snapshot of current developments and informational resources, and addresses important questions related to reforming existing codes and procedures. (The Resources section at the end of this guide lists some useful Web sites and documents.)

Why Reform Existing Codes?

As local government officials consider code reform as a strategy for enhancing community health and livability, one of the initial hurdles is making the case for change. What is wrong with the existing codes and procedures? How will the proposed changes address these problems? What are the potential benefits of code reform for the community as whole as well as particular neighborhoods? The following section outlines a few insights that may help build support for code reform.

DISADVANTAGES OF A TYPICAL LAND DEVELOPMENT SYSTEM

Local governments have a long-standing love-hate relationship with zoning. Throughout its history, zoning has effectively separated noxious industrial uses and noisy

commercial businesses from quiet residential neighborhoods. Over the years, however, land use regulations have essentially relegated business and office uses to strip malls, regional shopping centers, and office parks—areas generally accessible only by car. Zoning codes and related subdivision regulations no doubt have facilitated these sprawling development patterns.

Zoning procedures are often difficult to administer as new land uses arise that do not neatly fit a zoning's system of use classifications. A growing chorus of practitioners has expressed its disenchantment with zoning and its family of land use controls for many years. Here are a few weaknesses of the existing land development regulatory system:

Fiscal imbalance. Numerous bedroom, or mostly residential, communities have proliferated in many metropolitan regions thanks to zoning's classic separation of uses and its exclusionary potential. Residential development often does not generate enough local government revenue to cover the costs of the services these single-use communities demand. Thus, local governments are left struggling to pay for cost-intensive local services (e.g., police, fire, schools) with an insufficient commercial tax base.

Auto-focused. In many communities, residents drive great distances to and from work or retail centers, without a choice to walk or bicycle. Design elements that favor automobiles can also make walking or bicycling unsafe options. A community that develops primarily around the needs of automobiles—large parking lots, wide roads, strip malls—ignores the human scale and provides little in the way of attractive, walkable boulevards or greenery. Unwalkable neighborhoods can isolate children and seniors who do not drive, particularly where no public transit is available. Finally, high parking requirements under conventional codes typically allocate too much space for parking. Regulations usually require each property owner to provide separate off-street parking, which simply encourages more driving.

Environmental consequences. Community design that requires automobiles for daily trips contributes to increasing traffic congestion, causing air and water pollution and contributing to greenhouse gas emissions. Large amounts of roadways also contribute to urban heat island effects. Existing land development regulations encourage the design and construction of large areas of impervious surfaces, such as parking lots, that contribute to increased storm water runoff that pollutes nearby streams and other water bodies.

Unhealthy communities. Poor connectivity, single-use zones, and limited sidewalk infrastructure restrict routine

opportunities for physical activity and contribute to health problems such as heart disease, cancer, diabetes, obesity, and others.⁹ Pollution resulting from traffic congestion has also been blamed as a contributor to asthma, which has been steadily increasing in children. Highways and other busy roads that bisect neighborhoods are not safe for walking, biking, or skateboarding.

Inconsistent and inflexible regulatory regime. Different aspects of zoning codes are often difficult to administer in a consistent fashion that provides the community and the developer with a comfortable degree of certainty about the final approval of development projects. Outdated rules often discourage the very things that can make communities more livable, such as compact building design, mixed-uses, and pedestrian-friendly places.

For example, conventional zoning codes often make it difficult to accommodate change, unique conditions, and the creativity of architects, developers, and planners, even when the proposed project supports healthy community goals. At the same time, codes often require zoning administrators to approve “by right” individual projects that meet minimum code requirements, even when they may be in conflict with stated livability goals.

When the local code no longer serves a community's needs, exceptions and special permits become the norm and may essentially overcome the entire code.¹⁰ A complex web of internal contradictions and overly technical regulations frustrate the private sector and reward those who seek special permissions, as opposed to those who try to deliver what the local government has stated as policy. The code can also make it difficult for an administrator to reflect on the cumulative impacts caused by dozens of zoning exceptions and special permits.

Complexity of conventional land development regulations. Beyond the land use and land development issues governed by zoning, state and local governments have developed additional regulations to address contemporary development challenges, such as traffic congestion, pollution, natural resource management, or the development of large tracts of land for housing. Regulatory specializations that govern subdivisions, growth management, historic preservation, and infrastructure financing require even more elaborate development approval and permit procedures.

COMMUNITY BENEFITS OF CODE REFORM

Through regulatory reforms that value mixed-use development and traditional neighborhood development, a

6 Creating a Regulatory Blueprint for Healthy Community Design

community can improve its health, natural environment, economic vitality, and overall livability.

Healthy communities. A community can enhance its walkability by allowing for mixed-use development, and enabling residents to walk to stores, parks, and home. Reforming regulations can also enable local governments to adjust street widths to make the streetscape more aesthetically pleasing and allow for pedestrian and bicycle-safe environments. Code reform models, such as traditional neighborhood development (TND) described in the next section, provide numerous destinations in close proximity that support bicycling and walking as viable transportation options. In fact, it is more likely that a resident of a TND will get 30 minutes a day of exercise because she or he has the choice of walking a few blocks rather than driving to the store. A recent study found that people who live within an easy walk of a mix of shops and businesses have a 35 percent lower risk of obesity.¹¹

Reduced costs. When code reform encourages infill development projects, the developer and the local government can leverage existing infrastructure (e.g., roads, sewers, and utilities) to minimize expenditures and total taxpayer costs.

Neighborhood and community revitalization. Mixed-use developments that draw people and residents back to once-distressed urban or older suburban neighborhoods can become a local or even regional destination point. For example, Shaker Heights, Ohio, strategically applied its new commercial district zoning to facilitate the redevelopment of Shaker Town Center. As values and attitudes changed within the community, the commercial district zoning allowed for greater residential density and a mixture of uses necessary to support the town center's shops, restaurants, offices, and homes. Shaker Heights built this new zoning into a rewrite of its zoning code and comprehensive plan.¹² Likewise, Gainesville, Florida, also enhanced its overall livability by developing a TND district with the goal of creating vibrant, mixed-use neighborhoods that catered to the pedestrian experience. Finally, reforming building codes makes it easier to rehabilitate older buildings and convert vacant and abandoned buildings into vital infill development opportunities.

Environmental protection. Land use regulations that promote transit-oriented development (TOD) and encourage a mixture of uses can reduce air pollution from traffic congestion and encourage alternative forms of transportation, such as public transit and walking. Policies that support infill development or green buildings can help minimize environmental degradation of air quality, land, and watersheds (e.g., by reducing the amount of polluted

runoff). Policies supporting green buildings also minimize energy consumption. Brownfields redevelopment or the reclamation of contaminated properties can drive development to places with existing infrastructure and away from greenfield sites.

Enhanced local government efficiency. Clearer regulatory language makes it easier for planners and municipal attorneys to administer modern codes and minimizes conflicts in interpreting confusing and technical language. Reformed, updated codes allow officials and staff to focus on critical government functions, such as planning and community development, rather than participating in time-consuming and repetitive hearings that do not address the underlying problem.

Civic engagement and social equity. A collaborative code reform process can empower citizens and align the community's goals with existing plans so they are consistent with current realities. Code reform can also serve as a catalyst for neighborhood revitalization. For example, local governments can reduce regulatory barriers to low-income housing by requiring construction of affordable units or offering substantial incentives for their construction.

Regardless of the label (e.g., smart growth, active living, or new urbanism), all of these policy initiatives are aligned in their support of code reform to produce positive and holistic quality of life changes in a neighborhood or an entire community. Any successful reform effort will require careful tailoring to fit the political and policy dynamics of the community to support its existing assets.

CODE REFORM CHALLENGES

Despite the current interest in planning and zoning circles, code reform is not without its challenges. A number of local government officials remain hesitant to take on comprehensive code reform for various reasons:

- Code reform takes time and resources. For example, the city of San Diego took six years to complete a comprehensive update of its zoning code.
- Many code reform tools remain relatively untested in the field and in the courts. As more time passes, researchers and commentators will need to perform an objective assessment of the types of projects and tradeoffs that these new codes produce.
- Some local governments may have past experiences with code reform that did not go well and may be skeptical about new attempts.
- Local leaders may be unfamiliar with the latest code reform strategies and tools.

- Not everyone is ready to toss out the existing code and replace it with a new process or a new way of doing business. Many local business and building groups, along with chambers of commerce, are content with what the current code delivers.¹³ Even within city departments, staff may be reluctant to change the existing system they know well.
- Elected leaders and local officials may not feel completely comfortable with the underlying principles of smart growth, new urbanism, or active living that currently champion many code reform discussions. A general lack of acceptance and understanding about the principles and benefits of these approaches might make it politically difficult for local officials to embrace code reform. For example, they may assume that a code advocating higher densities will automatically increase congestion or reduce property values. Moreover, not all communities want or need compact, mixed-use urban developments. Communities with weaker markets that are desperate for growth may approve certain projects to raise revenues, and these projects may not take into account long-term costs or sound planning and design principles.¹⁴

Code Reform Models

Over the years, planning professionals have devised several models for modernizing zoning codes and land development procedures. Some approaches reformulate the traditional principles and practices of zoning, whereas other strategies are somewhat radical departures from Euclidean zoning. This section provides an orientation to existing zoning and planning codes and then highlights five of the more common code reform models: 1) performance-based zoning, 2) unified development codes, 3) traditional neighborhood development,¹⁵ 4) reverse zoning or TND lite, and 5) form-based codes.

EVOLUTION OF CURRENT ZONING AND LAND DEVELOPMENT CODES

Named after the famous U.S. Supreme Court ruling in *Euclid v. Ambler Realty* (1926), Euclidean zoning establishes the rules, standards, and procedures that govern land use activities and the physical development and design of structures (e.g., bulk, density, setbacks, and height).¹⁶ Conventional Euclidean ordinances categorize residential, commercial, and industrial land uses into defined districts or zones. An accompanying zoning map applies the text of these regulations to land parcels

and real property throughout the local jurisdiction. The Euclidean model allows for cumulative uses within its zoning categories. For example, in residential zones, only residential uses are permitted; in commercial zones, both residential and commercial uses are permitted; and industrial zones generally permit all land uses.

Given zoning's rigid structure, state and local governments have created several devices designed to allow for more flexibility, such as cluster and planned unit development ordinances that regulate use by imposing conditions and standards through special use permits.¹⁷ These innovative zoning techniques have made it easier to apply creative alternatives to the conventional Euclidean model.

PERFORMANCE-BASED ZONING

Instead of relying on the underlying land uses to determine compatibility, performance-based zoning regulates land uses according to how the use performs against those measures or standards. Industrial uses and commercial activities are ideally suited for performance-based standards that relate to air, water, light, glare, dirt, noise, odors, and fire hazards among others. Developed during the 1950s, variations of the approach were adopted by several cities for their industrial areas during the 1960s.¹⁸ Other communities grafted these performance measures into their zoning ordinances as a way to regulate office and industrial park areas. While performance-based zoning has a certain intuitive logic, communities have found it difficult to apply its principles beyond industrial uses or special planned industrial permits.

UNIFIED DEVELOPMENT CODE

Many cities have compiled their essential land use ordinances into a unified development code that not only regulates land use (zoning) but also includes subdivision regulations, engineering and grading rules, and natural resource protection standards. Effective unified codes integrate most, if not all, of the local governments' land development permit procedures in order to enhance predictability and administration. Many of the new unified codes include development standards and mixed-use zone districts that emphasize new urbanist design principles. These codes often govern signs, environmental protection, and open space preservation as well as administrative enforcement processes and penalties. San Antonio, Texas, pioneered a hybrid unified development code that incorporates new urbanism provisions and offers different options for special types of mixed-use projects.¹⁹

8 Creating a Regulatory Blueprint for Healthy Community Design

State and Local Approaches to TND

In 1999, the state of Wisconsin enacted a law that requires local governments to adopt comprehensive plan elements and to ensure consistency with local zoning and land development codes by 2010. Before passage of the law, the state had discovered that only 29 percent of its communities had a comprehensive land use plan. The content of these plans varied widely, and many municipalities were granting permits that did not follow their adopted plans. The state provides grants and technical assistance to communities to guide their planning updates. The law also requires that every city and town with a population greater than 12,500 adopt a TND ordinance and has developed a model TND ordinance for their use.²¹

Davidson, North Carolina, applied a citywide TND ordinance for several years as an optional code, but given its early success, the TND ordinance recently became the only zoning code for the city. The TND code provides for a 30 percent reduction in transportation fees charged to the development in return for pedestrian-oriented design features, as well as another possible 30 percent reduction in fees for design that is transit-friendly.²²

TRADITIONAL NEIGHBORHOOD DEVELOPMENT (TND)

Under the guidance of new urbanists, TND ordinances have become a very popular approach to promoting the older forms of American cities and towns—dense, mixed-use, pedestrian-oriented neighborhoods.²⁰ TND ordinances can apply to urban infill situations or greenfields development. From a planning perspective, they help reduce sprawl by consolidating a community's needs within the neighborhood, since stores and restaurants are within walking distance. The same stores that might have been built on a highway or strip mall instead locate closer to their customer base, reducing residents' need to drive long distances and limiting congestion. They typically include:

- A well-connected street system with narrow, quiet streets and multiple routes to multiple destinations.
- Streets that feature street trees, sidewalks, and main street commercial areas with shops fronting on the sidewalk.
- Homes with varied architecture set close to the sidewalk with front porches and expansive windows facing the street and recessed or alley-facing garages.
- Neighborhood services and amenities such as parks, schools, shops, offices, and cafes readily available, often within a ten minute walk or about a quarter of a mile.

The Form-Based Codes Alliance

Several long standing proponents of FBCs, including design experts, architects, planners, and developers, recently established the Form-Based Codes Alliance to advance the idea of FBCs by setting standards for their implementation. The Alliance serves as a forum for discussion, education, and outreach. The Alliance's Web site (<http://formbasedcodes.org/index.html>) also lists resources for learning more about FBCs.

REVERSE ZONING OR TND LITE

Reverse zoning, also known as TND lite, adapts traditional regulatory mechanisms to support creative land use planning objectives.²³ It uses the same permit processes and administrative practices familiar to developer, citizens, staff, and local decision makers. However, it reverses traditional minimum standards and maximum standards—what was once a minimum development standard becomes a maximum standard, and vice versa. For example, most zoning ordinances set *minimum* standards for lot area, lot width, yards, setbacks, off-street parking, street pavement, and rights-of-way widths. Reverse zoning instead sets *maximum* standards for such zoning and subdivision regulations. In the same manner, while most zoning ordinances establish *maximum* standards for building height, FARs, lot coverage, and number of dwelling units per acre, reverse zoning creates new *minimum* standards for these development regulations. Consultant John L. Gann argues that reverse zoning offers a more collaborative and equitable approach to TND ordinances and enables cities to make close-knit community development mandatory. The city of Cleveland has maximum standards for off-street parking in order to encourage public transit use. Barberton, Ohio's new Traditional Neighborhood Overlay District sets maximum lot widths in residential areas and provides for minimum building height standards and FARs in most commercial and office districts.²⁴

FORM-BASED CODES (FBC)

Given its strong design orientation, form-based codes—the most recent code reform model to be developed and applied—has captured the attention of many practitioners. New thinking in the field by design experts such as Peter Katz²⁵ and Andres Duany²⁶ and work by new urbanist firms such as Dover Kohl, Ferrell Madden & Associates, Moule & Polyzoides, and others has stimulated discussion and application of this model for regulating land development.

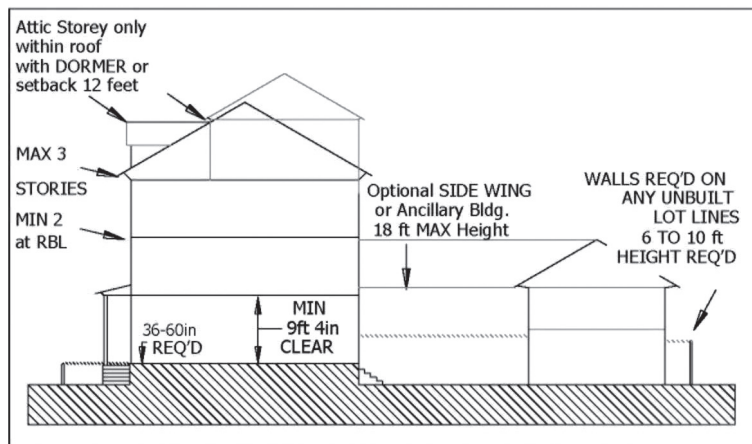
Variations of the Form-Based Model

Arlington County, Virginia, in coordination with the community and the Columbia Pike Redevelopment Organization, created a comprehensive form-based code to help facilitate the revitalization of Columbia Pike's decaying three and one half mile commercial corridor into a walkable, mixed-used, traditional neighborhood development. The county and its consultants, Dover, Kohl & Partners, convened numerous community meetings and a design charrette to gather insights and ownership from the community. Ferrell Madden & Associates then wrote the FBC based on the conclusions of the charrette. While the form-based code is optional and creates a parallel process to the county's conventional land development process, the county does provide incentives to developers who follow the code, including expedited approvals, generous tax rebates, and tax exemptions of up to \$10 million, where the developer may enjoy up to five years of tax relief. All taxes and revenues from this neighborhood revitalization plan will be funneled to subsidize affordable housing on Columbia Pike and to the construction and maintenance of adjacent public parking structures.

The SmartCode²⁷ created by the architecture firm of Duany Plater-Zyberk & Company is a commercially

licensed code that emphasizes design principles similar to those of the form-based code. Architect Andres Duany created the SmartCode as a self-contained regulatory framework that integrates new urbanism and smart growth principles within a set of geographical planning and zoning principles called the Transect. The Transect articulates a continuum of ecological zones that stretch from rural to urban areas.²⁸ Each Transect zone has its own predominant characteristics of density and character of the built environment that reflect the geography of each particular ecological zone. "Transect planning views the plan and the code as inseparable."²⁹ Thus, in theory, the SmartCode would cover the entire regional landscape in a holistic, regulatory continuum from rural to urban community type. In practice, most of the cities have adapted parts or aspects of the SmartCode to distinct neighborhoods or areas, just as they have done with the concept of form-based codes in general. A few places—such as Petaluma, California, Louisville/Jefferson County, Kentucky, and Nashville/Davidson County, Tennessee—have fully integrated the Transect into their comprehensive plan and have retrofitted the SmartCode into their existing zoning regulations.³⁰

D. BUILDING ENVELOPE STANDARDS: LOCAL SITES



Height Specifications

Height Specifications

Building Height

1. Principal building height is measured in STORIES.
2. Each building shall be between 2 and 3 STORIES in height. Additionally, an attic STORY may be built. An attic or half STORY is any top STORY which achieves its minimum clear height between 8 and 12 feet behind the RBL. An attic or half-story may have DORMER windows which face the street.

GROUND STORY Height

1. The first STORY finished elevation of any residential unit shall be between 36 and 60 inches above the fronting sidewalk. Where LIVE-WORK is indicated as permissible on the REGULATING PLAN, the

An excerpt from the Columbia Pike FBC, Arlington, VA, (see above). Credit: Ferrell Madden & Associates, LLC

The form-based approach to codes represents a shift away from conventional practice. FBCs focus less on land uses, and create a stronger connection with the design and physical form of buildings in relationship to public space. A form-based system seeks many of the same outcomes as TND codes—a mixture of uses and housing types, and greater attention to

streetscapes, parks, and sidewalks within a neighborhood. Typically through a collaborative public process, such as a charrette, a community creates design standards and a portfolio of building types that are appropriate to a neighborhood. Within that framework, the use becomes more flexible and can more readily respond to changing market needs.

10 Creating a Regulatory Blueprint for Healthy Community Design

Most pioneering cities have applied form-based codes to limited geographic areas, such as special development districts or older neighborhoods (e.g., Petaluma, California, or Milwaukee, Wisconsin). In such cases, local governments use these as alternative or parallel codes, offering incentives to encourage developers to comply with form-based codes. According to planning consultants in Petaluma, the city's new code has generated numerous increases in TND-type projects since its adoption in 2003. Louisville/Jefferson County, Kentucky, is one of the few places that has applied its form-based model to different districts throughout its metro region, and here too, experts have noted an increase in the number of innovative, mixed-used projects permitted by the new code.

A policy debate over form-based codes continues to evolve within the planning and design professions. Several new urbanist proponents claim that form-based models may someday replace zoning as it currently functions. However, before that can happen, jurisdictions will need workable models that can be applied citywide. They will also need to further resolve and refine important legal and administrative details (e.g., vested rights, nonconformity, etc.) in the field and in the courts. So far, few communities have had much experience with the administration and especially the enforcement of form-based models.

Scope and Phasing of the Code Reform Effort

A number of variables will define the scope and timing of a community's code reform effort. Beyond staffing and budget considerations, community leaders will need to weigh and balance the interests and ideas of staff, the development community, civic groups, and locally appointed and elected officials. Perhaps the community groups and planning commissioners are only willing to change certain aspects of the code or apply the new code to a few districts or neighborhoods. Such realities may lead local government officials to choose a relatively short-term approach, such as tweaking problem areas, inserting illustrations, and reorganizing existing code sections. Perhaps an alternative development project requires special exemptions from existing regulations that ultimately evolves into a series of code amendments. Some communities may want to pilot test these new code models in certain districts before they consider taking them citywide. Other communities are willing to reform their land development codes from the ground up, and design a new system of policies and procedures. In many ways, such a comprehensive approach is ideal because it addresses the commu-

nity's needs over the long-term and ensures the integration of the entire code from the outset.

SHORT TERM—QUICK FIXES AND PROJECT CATALYSTS

If a local government is not ready to make the commitment to completely overhaul its zoning code, then perhaps its leaders can devise an acceptable strategy for tinkering with existing zoning ordinances to better integrate private development with the public realm. Many local governments can easily enhance the workability of their land development codes and also the livability of their communities by making simple changes to existing development regulations and design standards, especially parking requirements and street standards.³¹ For instance, local governments can

- Design streets, sidewalks, plantings, and street furniture to create an attractive, safe, and pedestrian-friendly public realm where cars do not dominate important public spaces. For example, a city or town could
 - Place a cap on the number of parking spaces
 - Require on-street parking and count these spaces toward parking requirements
 - Reduce street width
 - Reduce setbacks.
- Allow for a variety of commercial and residential uses to create vitality and synergy, and to enhance the pedestrian experience. Officials might
 - Adopt a special mixed-use zone
 - Apply a form-based overlay to a particular district.
- Streamline development review processes so that they provide more certainty for developers and community groups.
- Clarify intentions of existing code. Specific actions could
 - Eliminate inconsistent language and excessive cross-referencing
 - Incorporate diagrams and illustrations throughout the code to communicate the desired result.

Projects can also serve as catalysts for code reform. For example, the planning commission or board of zoning adjustment may have a pending mixed-use project that would likely require relief from the existing code. Modifying the code for special projects can often serve as a testing ground for subsequent, more comprehensive code reform. Perhaps an

Comprehensive Paths to Code Reform

Dayton, Ohio, followed a more traditional path to code reform, but with a twist. Before tackling the code, Dayton first defined a new vision for its future by revising its comprehensive plan in 1999. Citi-Plan 2020 called for a comprehensive rewrite of Dayton's 35-year-old zoning code. The 1969 zoning code set forth the classic Euclidean separation of uses that created typical suburban development, specifically subdivisions and strip malls. Starting in 2002, the zoning code update sought to reduce the overall length of the code and to simplify regulations and processes while stimulating attractive, orderly development. The pending draft code focuses on protecting the existing character of Dayton's diverse neighborhoods (e.g., eclectic and mature districts) by preserving traditional, high-density neighborhoods with smaller lots. The new code also allows for more housing options that, for instance, make it easier to build live-work and accessory dwelling units. The city planning department and its plan board managed the more than two-year process, known as *Designing Dayton—Strengthening Our Future through Zoning*.³⁵ During the summer of 2005, Dayton anticipates holding hearings before the plan board and city commission for final approval.

The city of San Diego took a slightly different, more incremental approach to code reform. In 1992, the city of San Diego began its code reform initiative by streamlining its development review processes and public hearing procedures. These efforts led to a traditional zoning code rewrite that spanned approximately six years and culminated with urban village revisions to the strategic planning element of its comprehensive plan in 2003. The new zoning code includes more illustrations and easier-to-understand definitions, and consolidated many of the code's previous special district ordinances, although the code is still quite complex with some overlap of overlays and special districts.

industrial warehouse district is undergoing revitalization and could benefit from more consistent codes to allow for artist lofts that combine business and residential uses on the same property. Live-work ordinances have served as catalysts for initiating code reform in many communities.³²

MID-TERM—DISTRICT OR NEIGHBORHOOD WIDE CODE REFORMS

A number of cities combine elements from various code reform models or form a set of ordinances that often apply only to certain neighborhoods or districts within a city. A common approach for incorporating new urbanism into zoning is to alter use provisions, dimension regulations,

and adopt supplementary regulations consistent with new urbanism concepts.³³ A number of other cities have started down the path of form-based codes by applying them to certain neighborhoods as a revitalization strategy. Many of these cities start by applying the new code as a parallel code that is optional for a developer with a project that would benefit from the form-based emphasis on design. Austin, Texas, Dade County, Florida, and Columbus, Ohio have followed this approach.³⁴

Another hybrid approach is the neighborhood conservation district (NCD) overlay zone, which is used to protect neighborhoods with distinct cultural, historical, and architectural assets. Unlike TND ordinances and historic preservation districts, NCDs retain the overall physical character of the neighborhood rather than prescribe design standards or patterns. NCDs are generally more flexible in addressing infill, rehabilitation, and construction than historic preservation districts. A few cities, such as Milwaukee, Wisconsin, have applied form-based codes through NCDs.

LONG TERM CHANGE—COMPREHENSIVE PATHS TO CODE REFORM

Before the current flood of innovative code reform options, most communities followed a somewhat conventional path of updating their codes and plans. They often started with the regular revisions of their comprehensive plans and moved on to their land development and zoning procedures. Finally, they would tackle the more complex and troublesome tasks of revising their zoning codes at the very end of the reform effort. Many of these cities forged strong connections between the code reform and recent revisions to their general or comprehensive plans. In some cases, the comprehensive plan rewrite drove the code update, while in other cases, the municipality tackled code reform first. These communities essentially kept the same template for their zoning code, but integrated new principles and streamlined the format. Such code reform approaches may provide local government staff a greater degree of comfort with the change inherent in the code reform process. However, when codes become stale and processes too cumbersome, local governments should consider adopting new principles and techniques thereby planting the seeds for more meaningful change.

Getting Started on a Collaborative Code Reform Process

Reforming codes is hard work. It requires hours of evaluating options, drafting and revising ordinances, addressing community concerns, and convening focus groups and

12 Creating a Regulatory Blueprint for Healthy Community Design

town hall meetings. Beyond the technical planning and legal issues, effective code reform demands a collaborative process that can help a community build a common vision about the kinds of place it desires and the redesign of codes and development processes that can take the community there.

The following outline sets forth several strategic questions and suggestions that local government officials should consider before, during, and after reforming their codes. The order is somewhat sequential, but code reform rarely takes a linear track. Many of these actions may happen simultaneously and depend on a host of variables unique to each community. Local officials should feel free to add or modify these guidelines as necessary. This section divides the code reform process into two parts:

- 1) strategies for process design and management and
- 2) code reform techniques and implementation issues.

STRATEGIES FOR DESIGNING AND MANAGING THE PROCESS

1. Survey the local zoning and land development territory.

A good starting point is getting a better grasp on how the existing codes work. Are the end users satisfied with the codes and with the development review processes? Is the zoning code consistent with the comprehensive plan and other strategic planning documents? Do the codes facilitate the end results that citizens and leaders want?

Evaluate the relationship of the comprehensive plan with the codes. Does the plan provide the right community vision, and does the code embody or promote that vision? If the plan is out of date, consider revising or modifying the plan first before tackling the codes. If not, consider how to eventually link code changes to the plan to ensure they remain consistent.

Assess the strengths and weaknesses of existing codes, procedures, and administrative practices. Interview those who work with the codes everyday—not only government staff, but also representatives from the design, development, real estate, and building industries. Find out from them and others what is working and what needs fixing. Look beyond the actual text of the ordinances and codes. Review the supplemental and complimentary guidelines and policies that support the codes. Review variance, waivers, and special permit approvals to identify common and recurring problems with existing codes. Look for patterns that illustrate common shortcomings or complaints about

the efficiency of the permit review process. Has the local government has been sued over its code provisions? Is the current code consistent with recent court decisions and perhaps changes in state laws?

Conduct an independent audit or assessment of zoning codes and development processes. Sometimes a pair of fresh eyes can spot issues that staff or officials engaged in the day-to-day administrative code process may inadvertently overlook. Beyond the typical cadre of law and planning consulting firms, consider partnering with university planning programs, nonprofit institutes or professional associations of planners, architects, and builders. A fair number of such associations and consulting groups have experience conducting code assessments.³⁶

2. Scan the horizon of neighboring communities.

No one has to go it alone. Identify communities within the region or state that have recently reformed their zoning and building codes or streamlined their land development processes. Speak with the city manager, county executive, planning director, and other staff involved in code administration. Go visit them.

Gather lessons from peers. Borrow model codes from other communities. Beyond the sample ordinances, seek their advice on the reform processes. What worked for them? What would they do differently?

Research practical examples from professional associations and networks. Several national and regional associations have presented workshops and published reports on code reform, such as the Local Government Commission, American Planning Association, Congress for the New Urbanism, International City/County Management Association, and Urban Land Institute. (See the appendices for a list of resources and groups.)

3. Explore the feasibility of code reform in the community.

Once the community has conducted a preliminary assessment that indicates a need for code reform, the next step is building internal support within the local government and developing a draft code reform action plan.

Conduct an internal stakeholder assessment with local government staff, particularly the core management team. Identify organizations and individuals who might support reform as well as those who might resist changes to the code, both within the local government and outside groups. Discuss the possible common interests among these groups. Determine whether existing policy themes or initiatives could play a strategic role in code reform.

Perhaps the mayor or council have announced a neighborhood revitalization initiative or large redevelopment project that would benefit from code reform.

Form an internal advisory committee. The committee should represent the full breadth of city departments (planning, building, engineering, environment, law, public safety, parks and recreation, and other relevant departments) to outline the issues and potential process. Meetings with an internal advisory group provide ideal venues for brainstorming and testing different approaches that include short-term fixes and long-range reforms. Do not forget to discuss potential staffing and resource issues for each code reform model as well as the legal and political feasibility and scope of each reform option.

Draft a code reform action plan that:

- Identifies the potential scope of the reforms
- Makes the case for why code reform is necessary
- Links comprehensive vision with concrete goals (e.g., code reform could serve as a catalyst for neighborhood revitalization or preservation)
- Outlines a preliminary approach and collaborative process for building consensus for code reform
- Sets forth a potential timeline for the process, from drafting through adoption and implementation
- Includes three or four possible models or phases of code reform
- Estimates the potential resources and staffing necessary to have an effective and meaningful code reform initiative.

4. Test and execute a code reform action plan.

Based on preliminary meetings and a stakeholder assessment, next explore the feasibility of code reform with pivotal local government officials, community groups, and the development community. Craft several strategies for getting initial buy-in from local government policy makers such as management (city manager, county executive, and municipal attorney) and local elected officials (planning commission and city council or county board). Informally sharing internal discussions with important allies can help, but focus on building trust and relationships to support an official commitment in favor of code reform.

Schedule special code reform workshops. Workshops with the local planning commission and council are great opportunities to explain why code reform is necessary and how it will facilitate the goals and objectives they have established for the community. Be sure to invite advocates

of code reform from outside of the city (developers, community groups, architects, and planning consultants) who will actively participate in these preliminary meetings. They can be a great sounding board regarding the feasibility plan and preliminary process for decision making and outreach.

Form a code reform advisory committee. Beyond staff and local government officials, recruit a diverse coalition of supporters, especially the end users of the code—developers, attorneys, designers, city staff, and citizen planning and land use committees—to serve on a formal advisory committee. Perhaps convene a preliminary planning roundtable or conduct a workshop that illustrates the shortcomings of the status quo, and brainstorm about characteristics they would like to see in the new code.

Design collaborative communication processes for outreach and public engagement. These strategies can range from an intensive charrette to neighborhood coffees and town hall meetings. To ensure a sense of ownership in the end result—a new code—the process must promote trust and facilitate consensus about the goals of code reform and code changes. As a general guide, the outreach and communication processes should include:

- Diverse groups of participants, including design professionals, professional citizens, homeowners, and businesspeople
- Variety of outreach mechanisms and community involvement techniques, such as focus groups, town hall meetings, workshops, and charrettes
- Fact sheets, newsletters, and electronic communication mechanisms such as e-newsletters, listservs, a special code reform Web site, and scenario planning exercises complete with images
- Strategies and protocols for working with the media and the editorial board of the local newspaper.

Consult with a neutral facilitation team. No doubt lots of competing interests will arise throughout this process, and even the planning department may have its own vision of the preferred outcome. Depending on the issues that surface during preliminary meetings, it might be worthwhile to consult and hire professional facilitators to help with the design and management of the entire process. Experienced land use and planning facilitators can often be located through a local university planning or architecture program or else from state or regional chapters of various conflict resolution organizations.³⁷

14 Creating a Regulatory Blueprint for Healthy Community Design

5. Pull together a technical and expert code reform team.

Successful code reform demands a top-notch team of experts from a variety of professions and disciplines since reforming zoning and land development codes involves more than planning and land use. Make sure to include staff from other municipal departments, such as building, engineering, fire, police, and environmental among others to join the code reform team. Assess the capabilities of the current staff while weighing the tradeoffs of having in-house experience versus outside expertise. Perhaps it makes sense to have staff, which are familiar with local dynamics and operations, work with a select team of code reform experts. The final choice may often depend on the health of the local government's budget.

Identify consultants. Look for individuals who have successfully reformed zoning codes and ask for their references from the communities they assisted. Select consultants through a request for proposals (RFP) process. Possibly borrow RFPs that have been used by other jurisdictions that have completed a code reform effort.

Pull together a good legal team. The team needs to be familiar with the latest developments in the field and should be willing to think outside the box. It might take more than one attorney to consider and address all of the legal issues.

Organize a good facilitation and community involvement team. Efforts to reform local codes will succeed or fail according to how successfully the community is engaged and educated about the positive benefits of code reform.

6. Establish a communications and management structure for the code reform process.

Create a realistic budget. The code reform process always takes longer than estimated and will likely cost more than originally anticipated.

Provide formal management and oversight. Select a solid code reform management team and perhaps assign working groups for special technical tasks and other responsibilities.

Establish solid decision-making processes. No doubt the code reform team will confront a wide array of important decisions about the content of the reforms as well as the process itself. Make sure to establish explicit ground rules and standards for how the team will make these decisions so that it carefully considers all aspects of the issues and can reconcile the inherent tradeoffs. For example, the

team may want to agree in advance whether full consensus of all team members is necessary or not.

Schedule regular opportunities to educate and engage city staff. Not all staff will be involved with the code reform effort, but they will hear rumors and snippets about impending change. Ensure these staff members have a sense of ownership in the code reform effort, even if they may not work directly with the code on a daily basis. Some staff may be reluctant to buy into code reform, and these meetings are good opportunities to demonstrate how the reform can benefit multiple departments' interests.

7. Engage and educate neighborhood groups, the development community, and elected officials.

Throughout the process, build in opportunities for keeping elected officials, such as members of the planning commission and council, aware of the latest developments with code reform. Manage their expectations, monitor progress, and meet regularly with stakeholders within and outside of the local government. Code reform is always an evolutionary endeavor that will require course corrections, additional attention, and more time.

Use illustrations, graphics, and community image surveys.³⁸ These visuals should highlight a variety of projects that the new code could deliver.

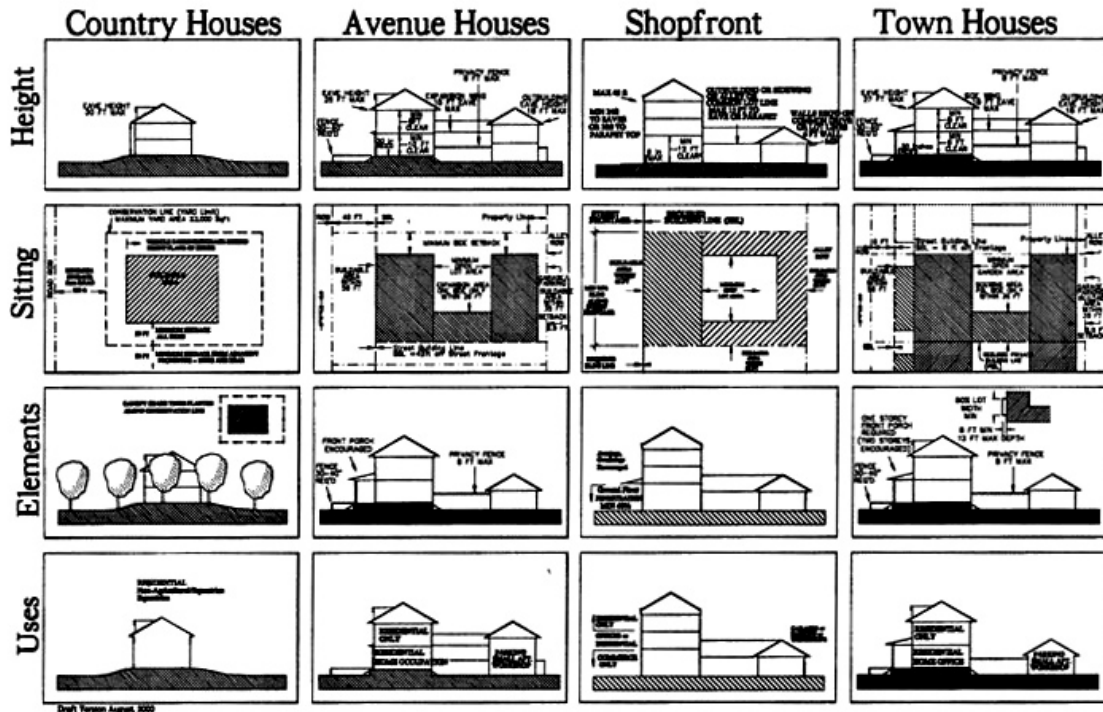
Schedule regular briefings. Throughout the reform process, make a point to meet with elected officials, key civic and business leaders, and community groups.

Encourage desirable development by highlighting local success stories. Conduct tours and take photos before and after implementing these projects.

Create milestones and performance measures. These will document both the positive and negative experiences of the code reforms, and ensure that baseline data, such as reduced processing time and dollars of reinvestment, are available.

CODE REFORM TECHNIQUES AND IMPLEMENTATION ISSUES

Writing or rewriting codes always involves a myriad of technical issues that range from legal terminology to the formatting of appendices and diagrams. For practice tips on actual code language and standards, the Local Government Commission's *Smart Growth Zoning Codes—A Resource Guide*³⁹ includes dozens of suggestions and actual ordinances identified as good examples. Even before the local city council or county board formally adopts the code, anticipate a host of practical, adminis-



A graphic from a FBC for Wooford County, Ky. Credit: Ferrell Madden & Associates, LLC

trative challenges that are likely to arise during the new code’s first year. Here are a few of the likely technical and implementation issues to consider:

1. Format the code to enhance user-friendliness.

Code reform can take on many forms. Even the simple task of changing the format of the code or making the code more readable can substantially improve the code’s overall effectiveness. For example:⁴⁰

- Use precise, straight-forward, and consistent language
- Avoid repetition, cross-references, side documents, and many appendices
- Use illustrations, tables or graphics to communicate zoning criteria and development standards when appropriate
- Use broad building and use categories
- Ensure that numerical standards fit the situation.

2. Consider special approaches when adopting form-based codes.⁴¹

Because form-based codes are design-driven, they need design expertise that many local zoning and building departments do not have on staff. Consider having an architect or urban designer as a team member or the leader of the code reform team. Of course, these codes—like all codes—must be grounded in the communities’

vision for the neighborhood and in the plan that articulates that vision.

Inventory existing building and neighborhood conditions.

Know the building types and places of significance in the neighborhood where the code will apply. In fact, consider conducting a visual picture inventory of neighborhood assets. Such inventories can be critical to the development of building catalogue or typology, which will be the main regulatory device of the form-based code.

Determine the appropriate scale and scope for the regulation. A form-based code can regulate areas at the level of neighborhoods, districts, or travel corridors. The appropriate level of scale depends upon existing conditions and the goals of the community.

Develop appropriate design standards. Form-based systems rely on design and development standards for urban streets, blocks, building placement and height, and land uses. They also require standards for the different building types and different street frontage conditions inventoried in the community’s neighborhoods. Some experts suggest separating architectural standards for such things as exterior colors, materials, and the design of important elements such as roofs, doors, and windows.⁴²

Illustrate the standards in the code. Form-based codes rely heavily on illustration to provide clarity as to the

The Legal Dimensions of Code Reform

More than rethinking the underlying principles of design and land use planning, code reform is fundamentally a legal task of rewriting state and local laws and guidelines. Along with a good municipal attorney, a solid grounding in the basic legal principles of land use and local government law can substantially advance code reform efforts. Each state has its own special legal rules and court decisions that must be carefully considered before starting any comprehensive code rewrite.

The modern legal foundation to regulate land use is based on the police power of state governments. The states maintain extensive regulatory authority (commonly referred to as police powers) for the purposes of protecting the health, safety, morals, and general welfare of citizens. As police power evolved over time, the states delegated certain authority to local governments. The amount and method of delegating powers to the local governments vary from state to state.

Virtually all states have delegated some level of zoning powers to local governments through state constitutions and statutes that grant local governments' broad authority over municipal affairs, and by enabling statutes that empower local governments to enact zoning, subdivision regulations, and other land use regulations. Additional legal authority can be found in local city charters, ordinances, and policies.

regulatory intent of the code's standards. For this reason, it is important to work with consultants who are skilled at producing illustrations and regulatory language that are consistent with each other.

3. Consider the post-adoption challenges of the new code (i.e., implementation, administration, and revision)

Recognize that all activities associated with the new code will come under the proverbial public microscope. Not everyone will be happy with the changes. Opposition and reluctance may arise from local government staff as well as neighborhood groups and the development industry. Be prepared to stay the course and work hard at building trust and strong relationships in support of the new code.

Craft an implementation plan. It will help with the transition from the old code to the new code. If the community will have two parallel codes, determine when the old code expires and the new code takes effect.

Create an implementation manual or guidebook. It should identify the potential changes in day-to-day administration and enforcement that will result after the new code is adopted.

Provide training and orientation for city staff. Ensure they are comfortable with processing applications and issuing permits under the new system. Conduct outreach to the community and development industry so they are aware of new forms and procedures.

Review and carefully characterize the first few projects. The initial projects under the new code will provide ideal opportunities for evaluating the code and identifying and addressing unanticipated consequences. Document the lessons learned from the first few projects and allow for more time and flexibility with these projects. Based on the information and insights gathered during this transition period, build in time to make minor revisions to the code reforms.

Pay close attention to how the code relates to, and whether it is compatible with, the comprehensive plan. It is a good idea after the code has been adopted to carefully review its provisions, so as to ensure its consistency with the general plan.

4. Address significant legal issues in code administration and enforcement.

Working closely with the municipal attorney and having the right legal advice are critical to the success of a code reform effort. During the drafting stage of the process, the legal team should anticipate the potential legal issues that may arise over the administration and enforcement of the new code. Under most circumstances, it may be helpful to rely on existing legal precedents; however, several of these new code reform models such as form-based codes are entering new legal territory that will present courts with cases of first impression. Here are a few legal issues to consider:

Ensure the new code is legally defensible. Will the new code survive legal challenges? For example, does the local government have the independent legal authority to adopt and enact these new codes without express authorization from state law? The majority of local governments probably have such authority, but the scope and type of these powers vary from state to state (see text box below on the legal dimensions of code reform). Recently California became the first state to officially recognize principles of design and form-based coding.⁴³ Is the new code consistent with federal and state statutes and case decisions? Changes in federal and state laws could impact the adoptions and enforcement of new land development codes.⁴⁴

Once the code is adopted, it could encounter a variety of administration and enforcement issues. For example, under a form-based system that transforms design guidelines into the body of the code, will these new code provi-

sions be specific enough to overcome legal objections of vagueness? One of the fundamental tenets of due process is providing sufficient notice of the specific code violations. These new design provisions must be concrete enough to provide the owner with sufficient notice.

Address nonconforming uses. Every change to a zoning code creates some set of land uses that do not conform to the new rules (e.g., legal, nonconforming uses). The scope and type of code reform could have an impact on the way the new code handles such uses, especially if the jurisdiction operates with parallel codes for a period of time.

A nonconforming use is valid when it commences, but becomes legally nonconforming when new regulations are enacted. The elimination of nonconforming uses is one of the most fundamental problems resulting from zoning changes. Immediate termination of nonconforming uses can cause serious hardship and could generate lawsuits claiming a denial of due process and takings of property rights. Most local zoning codes have a section that outlines the rules and process for protecting and revoking these nonconforming uses. Adoption of the new zoning code reforms will no doubt create a new class of nonconforming uses. Carefully consider how to identify these uses and perhaps create incentives or flexible rules that encourage existing owners to follow the new code and voluntarily extinguish their nonconforming rights.

Address the vested rights of projects with preliminary approvals. The idea of “vested rights” is a legal concept that governs development projects that have received preliminary, but not final, approvals. The issue focuses on what happens to projects already in the development process when the local government changes its zoning or land development codes. In other words, when does the owner or developer acquire a property right to proceed with the project under the previous rules that cannot be abridged by the subsequent changes in the code? The legal principles that identify the precise point of when the developer acquires such vested rights vary from state to state. Again, these issues may not pose a major problem in most states, however, they will likely surface during those early days of administering the new code reforms. Consult with legal counsel and devise a game plan that addresses potential vested rights issues.

Provide for administrative hearing mechanisms. The administrative review of special cases and the handling of unanticipated problems can streamline overall processing and avoid subsequent litigation. Identify those cases that should be heard by a planning commission, and direct only those cases with citywide significance to the local legislative body or hearing examiner. Selecting the

appropriate hearing body can substantially streamline the administrative hearing process.

Assemble a legal defense strategy. Assume there will be some level of legal challenge to the new code. Make sure the legal team is ready for the potential court challenges before they are filed. Any successful defense will depend on the legal and policy rationales for changing the code. Make sure these rationales are easily identifiable in special legislative reports, transcripts from legislative hearings, and the actual recitals in the code. Recognize that the municipal attorney who drafted the code may need to rely on the litigation talents of special outside counsel.

Conclusion

This practice guide has set forth a basic road map for assessing the dynamic field of reforming zoning and land developments codes. The questions and checklists it contains can help prepare local leaders and their staff for a challenging journey. Having the right personnel and sufficient resources are critical. Although it will require time, planning, and determination, the benefits of code reform—more vibrant, physically active communities—are well worth the journey.

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Endnotes

- 1 A cursory review of recent national planning and smart growth conferences illustrates how popular code reform has become. In 2001, the American Planning Association's (APA) national conference in New Orleans included very few sessions about zoning administration and zoning code changes. The 2004 and 2005 APA national conferences in Washington, D.C., and San Francisco, California, respectively, featured many sessions on form-based coding and code reform (www.planning.org/2005conference/). The programs at the national conferences for the Congress of New Urbanism (www.cnu.org) and the New Partners for Smart Growth (www.outreach.psu.edu/C&I/SmartGrowth/) have evolved in a similar fashion.
- 2 Ali Mokdad, Ph.D. *et al.* "Actual Causes of Death in the United States, 2000," *Journal of the American Medical Association* 291 (2004): 1238–1245.
- 3 Joseph Schilling and Leslie S. Linton, "The Public Health Roots of Zoning: In Search of Active Living's Legal Genealogy," *American Journal of Preventative Medicine*. February 2005, special edition: 96–104. See also fact sheets compiled by Active Living Research, accessible at www.activelivingresearch.org/index.php/What_We_are_Learning/117.
- 4 For more information about this growing movement, see the Active Living Network at www.activeliving.org. For information specifically about state and local government leaders' involvement in active living, see www.activelivingleadership.org.
- 5 Interestingly, the original New York City ordinance included elements of a form-based code, including three separate maps to address use, bulk, and height.
- 6 For more information, visit www.activelivingleadership.org. The *Action Strategies Guide* provides examples of policies that support active living in communities and is available online at www.activelivingleadership.org/strategies.htm.
- 7 For further details and the ten principles, visit www.smartgrowth.org. Two hundred policies are explained in the two volumes of *Getting to Smart Growth*, both available online at www.epa.gov/smartgrowth/.
- 8 For additional information, consult the Congress for the New Urbanism at www.cnu.org. For information on codes related to new urbanism, see *Codifying New Urbanism: How to Reform Municipal Land Development Regulations*. (Washington, D.C.: Congress for the New Urbanism and the American Planning Association. PAS report no. 526, May 2004), 12–15.
- 9 For more information on the health impacts of traditional land development systems, see *Managing Active Living Communities*, at icma.org/activeliving.
- 10 For example, a study of the New Orleans's zoning code concluded that its code had become dominated by special exceptions; the last meaningful rewrite of the code occurred in 1957. See Bureau of Government Research, "Runaway Discretion: Land Use Decision Making in New Orleans." *Emerging Issues*. (October 2003). Available online at www.bgr.org/MainPages/2003%20pub_list.htm.
- 11 L.D. Frank, M.A. Andresen, and T.L. Schmid, "Obesity relationships with community design, physical activity, and time spent in cars," *American Journal of Preventive Medicine*, 27(2004) 87–96.
- 12 Joyce Braverman, Planning Director for Shaker Heights, Ohio, in a presentation at the April 2003 *Reforming Codes—Revitalizing Communities* workshop, which was sponsored by ICMA and hosted by the Cleveland-Marshall College of Law and the Levin College of Urban Affairs at Cleveland State University.

- 13 Stu Meck, Senior Researcher for the American Planning Association, "Revamping the Urban Zoning Code," presentation at the April 2003 *Reforming Codes—Revitalizing Communities* workshop.
- 14 Ibid.
- 15 The Local Government Commission and others also distinguish transit area (or Transit-Oriented Development) codes as a type of code that requires attention, due to the special requirements of transit-supportive land use. These include facilitating pedestrian access to the station, and often reducing parking requirements. For a more complete discussion, see *Smart Growth Zoning Codes: A Resource Guide* (Washington, D.C.: Local Government Commission. Spring 2003).
- 16 Zoning ordinances and subdivision regulations are the principles devices for implementing the goals and vision set forth in the local government's comprehensive plan. See *The Practice of Local Government Planning*. (Washington, D.C.: International City/County Management Association, 2003) 343.
- 17 Planned Unit Development (PUDs) controls the nature and location of uses and buildings for a specific site through the application of a special PUD plan. PUDs generally allow for a mixture of uses, flexibility in building location, and clustering of buildings to preserve natural resources and open space. Special use permits or conditional use permits regulate land use through a discretionary review process that imposes conditions on the operation of the use. Mark A. Wyckoff, "New Urbanism Hits Mainstream Zoning" *Planning and Zoning News* (June 2004).
- 18 For more information, see Lane Kendig, *Performance Based Zoning*, (Chicago, Ill.: American Planning Association). The system of performance zoning was invented by Dennis O'Harrow in a 1954 study, "Planning Standards in Industrial Zoning," while he was the executive director of the American Society of Planning Officials.
- 19 For a more in-depth case study of the San Antonio Unified Development Code, see *Codifying New Urbanism*, p. 53–56.
- 20 David C. Rouse, Nancy Zobl, and Graciela Cavicchia. "Beyond Euclid: Integrating Zoning and Physical Design," *Zoning News*. October 2001. See also *Smart Growth Zoning Codes*.
- 21 A model TND ordinance was approved by the Wisconsin Legislature in 2001, and is available online at www.wisc.edu/urpl/people/ohm/projects/tndord.pdf.
- 22 *Smart Growth Zoning Codes*. Davidson's citywide planning ordinance was adopted in 2001. See also Meredith Judy and Andrea Lytle, "Davidson Achieves Excellence in Smart Growth," *Getting Smart!* 8, no. 1 (2005).
- 23 John L. Gann, Jr., "Reverse Zoning for Close Knit Communities," *Planning and Zoning News* (June 2004).
- 24 Ibid.
- 25 Co-founder of the Congress for the New Urbanism and the Form Based Codes Alliance, Peter Katz is a professor in practice with the Urban Affairs and Planning School at Virginia Tech in Alexandria, Virginia.
- 26 A principal at Duany Plater-Zyberk, Andres Duany is also a visible thinker in the new urbanism movement. See www.dpz.com/ and www.cnu.org/aboutcnu/board_member_aduany.cfm.
- 27 Published in 2003 and available online at www.municode.com/smartcode/about.asp. DPZ has also made sections of the SmartCode available to the public at www.tndtownpaper.com.
- 28 See www.dpz.com/transect.htm for additional information on the Transect concept.
- 29 David Rouse and Nancy Zobl, "Form-Based Development Codes," *Zoning Practice* 21, no. 5 (2004).
- 30 Ibid.
- 31 Paul Crawford in a presentation, "The Why, What and How of Zoning for Smart Growth" at the New Partners for Smart Growth Conference, Portland, Oregon, January 2004.
- 32 See, for example, Cleveland's live/work ordinance; available online at caselaw.lp.findlaw.com/clevelandcodes/cco_part3_346.html.
- 33 See *Codifying New Urbanism*, p. 33.
- 34 Ibid.
- 35 See summary at www.cityofdayton.org/planning/Documents/Designing_Dayton.pdf. To view Dayton's up to date land use policies, visit www.cityofdayton.org/planning/doc_library.asp.
- 36 The Smart Growth Leadership Institute, through a grant from U.S. Environmental Protection Agency, is conducting assessments of several regional and local development processes and design guidelines with an eye toward helping communities integrate smart growth goals and objectives into existing policies. The results of their assessments can be found on their Web site: www.sgli.org.
- 37 Examples include The Association of Conflict Resolutions (www.acrnet.org), the International Association of Public Participation (www.iap2.org), the American Bar Association's Section on Dispute Resolution (abanet.org/dispute), and the National Charrette Institute (www.nci.org) as well as academic programs such as the Institute for Environmental Negotiations at the University of Virginia and the Consensus Building Institute at MIT (www.cbuilding.org).
- 38 The Local Government Commission (www.lgc.org) provides information on conducting a community image survey.
- 39 *Smart Growth Zoning Codes*.
- 40 Ibid, p. 6.
- 41 Paul Crawford, "Anatomy of New Urbanist Codes." A presentation at the Congress for New Urbanism Annual Conference, Chicago, Illinois, June 24–27, 2004. Available online at www.cnu.org/news/_static_congress_xii.html on February 17, 2005.
- 42 Peter Katz, "Form First," *Planning* (November 2004).
- 43 AB 1268 amends California Government Code (section 65302.4) that governs the delegation of planning responsibilities to general law local governments by legally recognizing form-based principles for zoning ordinances. The zoning text and diagrams of the comprehensive plan's land use element may contain expressions of the community's intentions about urban form and design. These expressions may distinguish neighborhoods and districts, provide for a mixture of land uses and housing types, and set forth specific measures for regulating the relationships among buildings, outdoor public areas, and streets.
- 44 For example, the federal Fair Housing Act Amendment or the Religious and Land Use Independence Privacy Act.

