

Due Process and Zoning:  
Ensuring the Public's Right to Know and Be Heard

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## Abstract

In every state in America, different rules and regulations govern the local zoning and development process, and by law all utilize a public process to guide decision-making. In many communities these procedures have remained largely untouched since they were first developed in the early 19th century. However, the planning field and the expectations citizens have for an inclusive and transparent participatory process has changed substantially. By examining and comparing existing statutory requirements for local zoning amendments and building on existing scholarship in the fields of land use theory and participatory planning policy, this thesis seeks to better understand the strengths and gaps in these laws. By highlighting several areas for possible change and improvement in these procedures, this thesis finds that by incorporating more robust public participation, updating outdated or nonexistent electronic meeting regulations, and making a concerted effort to be more inclusive in public notice practices, local governments can forge a path towards a better public meeting process for themselves and for the community at large.

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## 1. Introduction

In the early days of spring in 2020, communities worldwide watched in fear and grim anticipation as a deadly virus, COVID-19, began to spread rapidly. As governments in China and Italy moved first from gentle warnings to stay inside and out of proximity of others to police-enforced community-wide lockdowns in increasingly extreme measures to stem the spread of the virus, it soon became clear that America would not be able to mobilize in time to avoid devastating consequences.

Federal and state governments have gone to great lengths to protect citizens, with many mandating all non-essential workers work from home and cancelling all large gatherings of people--including public meetings. Balancing these two somewhat contradictory mandates in the face of a widespread public health crisis has proven to be a confusing, frustrating, and murky mess for many planners at the local level. Public meeting law in many areas requires the physical presence of at least one member of the public agency, while some require all. If precautions regarding the virus require physical distance and current legislation bans video conferencing for public bodies, as is the case in many municipalities, how can members of the community meaningfully participate in that process?

In time all state governments gave some measure of guidance for how municipalities could alter their practices or proceed in their normal work electronically, but there are still many unanswered questions. Though many communities have rules and procedures in place for short term emergency situations, few can account for the kind of procedural changes required during a prolonged public health crisis of undetermined duration. Many lack an explicit explanation for whether a board can telephone or video conference, or a mechanism by which emergency protocols could allow for changes or delays to procedural deadlines. This unprecedented

upheaval to the normal order of things has helped to illuminate for many some of the gaps and oversights in existing meeting laws. Local planners are unclear what they should, citizens are unclear when and how they can plug into what their governments are doing, and as a result many of the normal functions of the public process have been effectively suspended for time indeterminate.

In recent years Americans have been paying closer attention to zoning and land use trends. The adoption of the Minneapolis 2040 plan in 2018, which made sweeping changes to allowed residential uses on roughly half the city's land with the intention of adding more density, made headlines across the country in 2018. Cities like Seattle, Los Angeles, and Boston are all contemplating or have already adopted major land use changes to respond to the issues that their residents care most about-sustainability, affordability, safety. As cities make these changes, though, it is difficult to learn from them because there is a critical lack of baseline data when it comes to land use. There is no central entity at the federal level, or even state level, that keeps a record or history of local land use regulations. Data that does exist is often difficult to access, out of date, or woefully incomplete. Only recently has anyone taken on the task of attempting to maintain long term national datasets on land-use practices and their evolution over time. <sup>1</sup>

This paper examines the history, evolution, and boundaries of procedural rules governing the local zoning and development hearing process, with a focus on rules relating to transparency and participation by members of the public. Nearly every municipality in the country regulates development and growth through zoning mechanisms or something similar, and by law all utilize

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<sup>1</sup> See UC Berkeley's land-use survey data "Land Use in California: Turner Center for Housing Innovation," [Californialanduse.org](http://californialanduse.org), 2017, <http://californialanduse.org/index.html>.and the Urban Institute's National Longitudinal Land Use Survey National Longitudinal Land Use Survey "National Longitudinal Land Use Survey (NLLUS)," Urban Data Catalog, September 30, 2019, <https://datacatalog.urban.org/dataset/national-longitudinal-land-use-survey-nllus>.

a public process to guide decision-making. In many places, the laws that govern these open meeting procedures have remained largely untouched since they were first developed in the early 1900s. However, the planning field and the expectations citizens have for an inclusive, participatory process has changed substantially.

These hearing processes have received sharp criticism from critics: notice is not adequate, the decision is a foregone conclusion, opportunities for public participation are insufficient. Due to the hyper-local nature of land use regulations, it comes as no surprise that the existing literature on these statutory requirements tends to run deep, but not broad: you can find a dozen analyses of Florida's open meeting law in a moment online, but comparative analyses between different states are few and far between, because they are like apples and oranges.

But in a time when every municipality is reevaluating the intent and efficacy of their public meeting procedures, there is value in returning to the bread and butter of the planning profession and examining the points of convergence and divergence in statutory requirements at the 10,000-foot level. Though a deep dive into the implications of COVID-19 on municipal practices is beyond the scope of this analysis, several recent developments illustrating the vital importance of effective public procedures will be highlighted. By evaluating some of the key public meeting procedures that govern zoning amendments in each state, this paper will attempt to establish some basis for comparison that practitioners can use to compare their practices with those of others. By bringing to the fore some of the unique interpretations and practices that local governments utilize in creating their own spin on statutory requirements, several opportunities will be identified for innovation and improvement in the public process in the hopes that a better process can help create outcomes for communities.

## 2.1 Land Use Pre-Zoning

Though zoning as we use it now is a fairly modern invention, people have been controlling the built environment and making plans for future development since well before these rules were ever codified. Noting the increased frequency of devastating fires in their new colonial holdings, Parliament issued the first building regulations in the New World in 1692, requiring any building in Boston over a certain size to be built of stone or brick rather than wood.<sup>2</sup>

Dating back to the Colonial era, various authorities have sought to regulate the use of private property in the name of protecting the health, safety, and welfare of the public sphere. Their power to do so came from the common law notion of a nuisance. This practice has been described historically as being rooted in the notion that "a man shall not use his property so as to harm another."<sup>3</sup> If your neighbor built or altered their property in such a way that it caused your property real harm, nuisance law would allow the courts to intervene on your behalf to stop them or to grant you just compensation.<sup>4</sup>

The first known nuisance law passed in the Colonies was also in 1692 in South Carolina, where local legislators passed an ordinance banning the running and free roaming of pigs on the streets of Charleston. The laws were invoked to curb potentially harmful behavior such as

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<sup>2</sup> "Because of Great Desolation and Ruins having sundry times happened by Fire breaking out in the town of Boston, principally occasioned by Reason of the nearness of Buildings, being mostly of Timber...BE IT ORDAINED that henceforth, no Dwelling-House, Shop, WareHouse, Barn, Stable, or any other Housing of more than eight feet in length, and seven feet in Height, shall be erected and set up in Boston, but of Stone or Brick covered with Slate or Tile." As cited in James Metzenbaum, "The History of Zoning--A Thumbnail Sketch," *Case Western Reserve Law Review* 9, no. 1 (January 1, 1957): 36, <https://scholarlycommons.law.case.edu/caselrev/vol9/iss1/6>.

<sup>3</sup> "Zoning and the Law of Nuisance," *Fordham Law Review* 29, no. 4 (January 1, 1961): 749, <https://ir.lawnet.fordham.edu/flr/vol29/iss4/10>.

<sup>4</sup> Elizabeth C. Tandy, "The Regulation of Nuisances in the American Colonies," *American Journal of Public Health* 13, no. 10 (October 1923): 810–13, <https://doi.org/10.2105/ajph.13.10.810>.



prohibiting outdoor smoking, requiring safe storage of gunpowder, and setting standards for chimney construction to minimize the ever-present risk of fires in urban areas.<sup>5</sup> These policies were largely reactive rather than proactive in nature, and though cities could and did invoke police power to enforce some nuisance laws, they often failed to fix these issues at the root.<sup>6</sup> Justice George Sutherland, writing for the majority of the Supreme Court in the cornerstone zoning case *Euclid v. Ambler*, alluded to the precedent set by nuisance laws, reasoning that what constitutes a nuisance is circumstantial, and that “A nuisance may be merely a right thing in the wrong place -- like a pig in the parlor instead of the barnyard.”<sup>7</sup>

Nuisance laws posed a serious infringement upon an individual's right to use their property exactly as they wanted to do-- even today, property owners are often reluctant to give up any of the “sticks“ that comprise their property rights. It is then perhaps a surprise that on the whole nuisance laws were widely accepted with a minimal amount of fuss. This is likely because in common cases like slaughterhouses near homes, it was common sense to most people to create restrictions within reason. It served as an annoying infringement on private property perhaps, but a necessary evil, and these public safety measures were seen by many as a benefit to the whole community worth the sacrifice.<sup>8</sup>

As the Industrial Revolution transformed patterns of working and living in urban cores, nuisance laws became more difficult to administer. The population grew exponentially, and with people packed into urban cores more densely, instances of “incompatible” uses encroaching into traditionally residential spaces increased. New nuisances the likes of which citizens had not

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<sup>5</sup> Thomas Bender and Howard P. Chudacoff, “The Evolution of American Urban Society,” *The Journal of American History* 62, no. 4 (March 1981): 1–30, <https://doi.org/10.2307/1903851>.

<sup>6</sup> John F. Hart, “Colonial Land Use Law and Its Significance for Modern Takings Doctrine,” *Harvard Law Review* 109, no. 6 (April 1996): 1252–1300, <https://doi.org/10.2307/1342215>.

<sup>7</sup> *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926)

<sup>8</sup> Bender and Chudacoff 14

encountered before- factories spewing noxious fumes, unsafe tenement homes filled fit to burst - presented challenges the likes of which common law was not always equipped to handle.

Litigation against slaughterhouses, manufacturing houses, and other undesirable enterprises spiked drastically in the wake of these developments.<sup>9</sup> With no formal environmental regulations in place, as industrial factories and the pollution that goes with established a firm foothold across the nation, nuisance laws alone proved ineffective at curbing the negative impacts of growth.

## 2.2 Progressive Era Reform

Nuisance laws still exist today as a tool to control private use of privately held land, but they have largely been usurped by the widespread adoption of zoning ordinances. Controlling zoning and land use are in many ways the bread and butter of the modern planning profession. Though there is no easy consensus in the profession as to the best way to govern, manage, and design the built environment, zoning and other land use and aesthetic regulations are at the core of how planners try to plan for the results they want to achieve.<sup>10</sup>

Many historians trace modern zoning practices back to turn of the century German roots. By the late 1800s the dual powers of industrialization and urbanization had wrought havoc on German urban centers. Many of them still retained their medieval layouts, which left them

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<sup>9</sup>Christine Meisner Rosen, “‘Knowing’ Industrial Pollution: Nuisance Law and the Power of Tradition in a Time of Rapid Economic Change, 1840-1864,” *Environmental History* 8, no. 4 (October 2003): 569, <https://doi.org/10.2307/3985884>.

<sup>10</sup> Patsy Healy and et al, “Land Use Planning and the Mediation of Urban Change,” *The British Planning System: An Introduction*

vulnerable to quick-spreading epidemics or fires. housing shortage, health problems, and the city's unplanned layout was perceived as limiting economic development.<sup>11</sup>

Reinhard Baumeister, a professor of engineering, proposed a remedy to some of the thorniest issues affecting German cities in the form of districting. He argued that as a result of industrialization, economic activities exhibited greater clustering than ever before in history.<sup>12</sup> He saw this as a natural progression, and one that should be codified in law. Baumeister wrote:

In the city of the future, there will be three principal divisions; a business section as a core, an industrial district, including possibly wholesaling, and a residential district. It is therefore important that all large cities of the future, from the outset, should keep these principles in view. It must be recognized that the development of a city is confined to these three divisions and that they are interdependent in their development.<sup>13</sup>

The advent of the Progressive Era in the early 1900s brought with it a wave of urban reformers eager to apply a scientific, methodological order and structure to what was then the wild west of local land use rules. These self-styled reformers sought to use the scientific method to solve the social problems that plagued modern cities.<sup>14</sup> It was suggested by many at the time that imposing zoning would be a progressive move for cities, one with a “populist flare,” and could allow citizens to have a new weapon to ward against outside greed and speculation and even serve as a bonding experience to bring their community closer together.<sup>15</sup>

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<sup>11</sup> Christian Hermansen Cordua, *Manifestoes and Transformations in the Early Modernist City* (Farnham, Surrey, England; Burlington, Vt.: Ashgate Pub. Company, 2010).

<sup>12</sup> Sonia Hirt, *Zoned in the USA: The Origins and Implications of American Land-Use Regulation* (Ithaca: Cornell University Press, 2015), 135.

<sup>13</sup> Reinhard Baumeister and Trans. Frank Koester, “Town Extensions: Their Links with Technical and Economic Concerns and with Building Regulations,” [urbanplanning.library.cornell.edu](http://urbanplanning.library.cornell.edu), 1876, <http://urbanplanning.library.cornell.edu/DOCS/baumeist.htm>.

<sup>14</sup> Eric Claeys, “Euclid Lives? The Uneasy Legacy of Progressivism in Zoning Euclid Lives? The Uneasy Legacy of Progressivism in Zoning,” *Fordham Law Review*, *Volume 73 Issue 2*, 2004.

<sup>15</sup> Emily Talen and Andres Duany, *City Rules: How Regulations Affect Urban Form* (Washington: Island Press, 2012), 26.

New York City was the first major city in the country to adopt a comprehensive zoning ordinance in 1916. This ordinance was adopted in part to impose order on the tall buildings that were at the time proliferating across the city and ensure adequate light and air to the streetscape below.<sup>16</sup>

New York's ordinance exhibits many of the features common to modern ordinances including lot size requirements, setbacks, and a notion of the future planners envisioned for the city. The adoption of zoning in New York is somewhat of an anomaly. Other parts of the country used zoning as a key tool to protect single-family residential areas, while New York implemented zoning more so to protect certain markets. In his 1969 book *Zoned American*, Seymour Toll paints a much darker view of zoning origins in America. He claims that rather than being the product of progressive reformers, the first zoning ordinances were in fact enacted through a coordinated effort of powerful, elite, rich businessmen called the Fifth Avenue Association. Their members owned a number of high end fashion shops that had displaced mansions along ritzy Fifth Avenue in Manhattan.<sup>17</sup> By the early 1900s, they were themselves at risk of being displaced by their own suppliers, the garment manufacturers, which were run by immigrants and perceived as having a very negative impact on the exclusive, privileged world of Fifth Avenue luxury retail.

After New York, other cities quickly followed suit. Any question of the legality of controlling land in this way at the local level was assuaged by *Euclid v. Ambler* in 1926. This major Supreme Court decision held that so long as the ordinances were reasonable and not arbitrary, and that they had a legitimate tie to safeguarding the health, safety, or welfare of the

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<sup>16</sup> William A. Fischel, "An Economic History of Zoning and a Cure for Its Exclusionary Effects," *SSRN Electronic Journal*, 2003, <https://doi.org/10.2139/ssrn.461140>.

<sup>17</sup> Seymour Toll, *Zoned American* (New York, Grossman Publishers, 1969).

community, they were a constitutional use of the power of local government.<sup>18</sup> The court upheld the validity of the town's zoning ordinance and determined that maintaining the character of a neighborhood and regulating where certain land uses could occur was within the powers granted to the town by the state.

Herbert Hoover, in the years before his presidency, helped to craft and revise the Standard Zoning and Enabling Act (SZEAs), first published in 1924. This act, a publication rather than an act of Congress, served as a template for many states as they went on to enact zoning ordinances of their own.<sup>19</sup> Through the SZEAs, the federal government was able to exert an enormous influence using informal power to significantly alter how land use decisions would be made at the local level for years to come. The zoning rules outlined in the SZEAs were "built carefully on the nuisance concept as applied in land-use conflict cases.", and as they were implemented at the local level, created a land use hierarchy with residential districts at the top. It set some groundwork for many of the norms required in zoning plans today, including a requirement that zoning must be in accordance with a comprehensive plan, and that exceptions to zoning in the form of variances might be granted. Having such far-reaching power to regulate land was a new realm for municipalities, and the zoning enabling acts helped clarify some, but not all, of the questions they raised in the court system.

According to the American Planning Association, these acts form "the basic foundation for planning and zoning."<sup>21</sup> Progressive as they may have been at the time, the SZEAs and the acts that followed it failed to anticipate some of the substantial changes that were soon to come

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<sup>18</sup> Village of Euclid, Ohio v. Ambler Realty Co. (U.S. 1926).

<sup>19</sup> Donald L Elliott, *A Better Way to Zone: Ten Principles to Create More Liveable Cities* (Washington, Dc: Island Press, 2008), 16.

<sup>20</sup> "American Planning Association," accessed April 15, 2020, [www.planning.org/growingsmart/enablingacts.htm](http://www.planning.org/growingsmart/enablingacts.htm).

<sup>21</sup> Daniel R Mandelker, *Land Use Law* (Charlottesville, Va.: Lexis Law Pub, 1997), 100–130.

in the planning landscape and would play a role in zoning. It was written prior to the advent of the interstate highway system that would revolutionize development, and in a time when the federal government system was stronger and more active in the planning sphere.<sup>22</sup> Many of the normal and expected elements of comprehensive plans that zoning boards oversee in modern planning practice, such as sustainability measures, urban design standards, and affordable housing requirements, were not contemplated in these early documents.

### **2.3 Zoning as Social Reform**

Zoning is essentially a classification system, and there is a potential for inequality in any system of legislative classification.<sup>23</sup> As zoning and the modern conception of land use spread rapidly, several other prominent critiques against it arose. Jane Jacobs viewed zoning as a largely destructive force in communities, suppressing the natural comingling of different activities in cities, which contributed to dying downtowns and lack of social vitality in cities.<sup>24</sup> From this early critique, zoning has met plenty more from all sides. Zoning has been accused of being at the root of many problems associated with land use, including racial and socioeconomic segregation, enabling and perpetuating sprawl,<sup>25</sup> and a decline in quality of life on a broader scale.<sup>26</sup> Nevertheless the popularity of zoning as a tool has endured, and today about ninety-

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<sup>22</sup> Ibid

<sup>23</sup> J. Gregory Richards, "Zoning for Direct Social Control," *Duke Law Journal* 1982, no. 5 (November 1982): 761–86, <https://doi.org/10.2307/1372309>.

<sup>24</sup> Jane Jacobs and Jason Epstein, *The Death and Life of Great American Cities* (New York: Modern Library, 2011).

<sup>25</sup> Jay Wickersham, "Jane Jacob' s Critique of Zoning: From Euclid to Portland and Beyond," 28 *B.C. Env'tl. Aff. L. Rev* 28, no. 4 (2001).

<sup>26</sup> Eliza Hall, "Divide and Sprawl, Decline and Fall: A Comparative Critique of Euclidean Zoning," *University of Pittsburgh Law Review* 68, no. 4 (April 26, 2007): 915, <https://doi.org/10.5195/lawreview.2007.77>.

seven percent of incorporated cities in America use zoning as a primary tool to regulate land use.<sup>27</sup>

Trenchant widespread segregation is perhaps the most obvious example of the power of zoning to enact social control, along with the exclusionary effect that prioritizing large-lot single family homes in codes creates. Until 1917, there was a trend within Northern states to use zoning to protect and enhance property values, which succeeded in further consolidating and concentrating areas of wealth and poverty. In the South, zoning codes exhibited a more explicit interest in enforcing racial segregation. Cities in Maryland, Virginia, Alabama, Georgia, Kentucky, Louisiana, Missouri, North Carolina, and Oklahoma each adopted racial zoning between 1911 and 1917.<sup>28</sup> Communities of color were organizing around fighting these segregating ordinances from their onset. In 1909 the National Association for the Advancement of Colored People (NAACP) was first formalized and would go on to become a leading entity in orchestrating lawsuits, protests, and other means of publicizing racist policies, including racial zoning.

In *Buchanan v. Warley*, a 1917 case initiated by the NAACP, the Supreme Court ruled racial zoning to be unconstitutional. Still, many Southern states, and increasingly Northern states in the wake of the Great Migration northward, continued to enact zoning that was racially segregating, if not as explicitly.<sup>29</sup> Planners that followed created other exclusionary zoning

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<sup>27</sup> Andrew Dietderich, "An Egalitarian's Market: The Economics of Inclusionary Zoning Reclaimed," *Fordham Urban Law Journal* 24, no. 1 (1996): 29.

<sup>28</sup> Racial zoning is "the official designation of residential areas by race." 20th century progressive planners such as Robert Whitten, Harland Bartholomew, and Frederick Law Olmsted Jr. argued that in creating municipal zoning civic officials needed to determine the physical, economic, and social characteristics of neighborhoods. Included in these characteristics to be regulated was the race of occupants. Plotkin, Wendy. "Racial Zoning." *Encyclopedia of American Urban History*. SAGE Publications, 2007, pp. 10.

<sup>29</sup> Christopher Silver, "The Racial Origins of Zoning: Southern Cities from 1910–40," *Planning Perspectives* 6, no. 2 (May 1991): 189–205, <https://doi.org/10.1080/02665439108725726>.

tactics including redlining and other federal land-use policies to exclude Black families from homeownership.<sup>28</sup> Some of the ordinances passed were challenged and struck down by the courts, but many segregating zoning strategies have contemporary iterations. One such example is in Charleston, South Carolina, where in the 1920s zoning was first used to further historic preservation, with an explicit interest in excluding racial minorities from moving to or developing business in these designated areas of the city.<sup>30</sup>

Though in recent years the tide has started to turn, and courts are more ready to acknowledge the value of functioning families, historically courts have strongly linked the social values of family life with the concept of zoning itself.<sup>31</sup> Local, state and federal laws afford “traditional” nuclear families a favored position in many different contexts, and far more protections.<sup>32</sup> In a landmark 1974 Supreme Court case, *Village of Belle Terre v. Boraas*, the majority found that zoning ordinances that restrict cohabitation by unrelated individuals, are not in violation of the Due Process Clause of the Fourteenth Amendment.<sup>33</sup> In an effort to ease tensions between long-time residents and college students, in 2008 the Boston Zoning Commission amended the Boston Zoning Code to restrict more than four undergraduate students from living together in a leased dwelling,<sup>34</sup> though Boston is far from alone in enacting

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<sup>30</sup> Silver 9

<sup>31</sup> Kate Redburn, “Zoned Out: How Zoning Law Undermines Family Law’s Functional Turn,” SSRN Electronic Journal, 2017, <https://doi.org/10.2139/ssrn.3109969>.

<sup>32</sup> Richard F. Storrow, “The Policy of Family Privacy: Uncovering the Bias in Favor of Nuclear Families in American Constitutional Law and Policy Reform,” *Missouri Law Review* 66, no. 3 (2001), <https://doi.org/10.2139/ssrn.289677>.

<sup>33</sup> *Village of Belle Terre v. Boraas* 416 U.S. 1

<sup>34</sup> Edward D Crane, “Suffolk University Law Review » Five Is a Crowd: A Constitutional Analysis of the Boston Zoning Amendment Prohibiting More Than Four College Students From Living Together,” [Suffolklawreview.org](http://suffolklawreview.org), 2018, <http://suffolklawreview.org/crane-zoning/>.



restrictions like this in college towns.<sup>35</sup> Just this year in Cambridge a citizen petition was submitted to abolish the definition of “family” in the zoning ordinance.<sup>36</sup>

In *Segregation by Design*, Jessica Trounstein argues that local governments have systematically created segregation “by design” along race and class lines. By jealously guarding access to valuable public goods, such as high-quality education, infrastructure, and open space, and in the interest of preserving their own property values, a preference for white single-family homes has been institutionalized at all levels of government.<sup>37</sup> There is enormous variety in the amount and access to parks, transportation, potable water, grocery stores, hospitals, paved roads, and a huge determining factor in where these go lies in how land is zoned. There is ample evidence that where the poor are concentrated, services are worse, which amplifies the effects of economic and racial segregation. In her research and that of Richard Rothstein in his research on the impact of zoning, mortgage guarantees, and public housing on segregation,<sup>38</sup> we see ample evidence that segregation is not the result of individual choices alone. Economic and racial inequality are powerful forces, but without the collective powers of government, the kind of acute segregation we can still see block by block and neighborhood by neighborhood in our cities would not be possible.

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<sup>35</sup> Richards 766

<sup>36</sup> See Family Definition zoning petition, City of Cambridge, “Zoning Amendments - CDD - City of Cambridge, Massachusetts,” [Cambridgema.gov](https://www.cambridgema.gov/CDD/zoninganddevelopment/Zoning/Amendments), 2020, <https://www.cambridgema.gov/CDD/zoninganddevelopment/Zoning/Amendments>.

<sup>37</sup> Jessica Trounstein, *Segregation by Design: Local Politics and Inequality in American Cities*, 3. (Cambridge University Press, 2019).

<sup>38</sup> Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (New York ; London: Liveright Publishing Corporation, A Division Of W. W. Norton & Company, 2018).

In these segregated neighborhoods, there are quantifiable inequalities in incarceration rates, infant mortality, poverty rates, homeownership, and rates of foreclosure.<sup>39</sup> Though ostensibly enacted to protect the health, safety, and welfare of residents, ultimately the impact of zoning on many communities of color is that it has actually made their health far worse. By nature of classifying land uses, zoning can designate the general location of noxious uses, and has an inherent connection to environmental justice.<sup>40</sup> Low income communities and people of color have borne the brunt of health and environmental impacts for many of these undesirable uses, such as highways, toxic waste dumps, and industrial uses.<sup>41</sup> It is important to note that it is impossible to point to just one or even two root causes of complex, dynamic social issues like segregation and a lack of affordable housing- these systems have co-evolved over many years and play out differently in each community.<sup>42</sup>

Practitioners often point to zoning as one of the main culprits in assessing why sprawl is so widespread in the US. Some of the arguments for this take boil down to the fact that Euclidean zoning prevents commercial development in residential areas and requires residents to travel greater distances in order to perform many of the routine functions of life, such as shopping, working, etc. Without this strict separation of functions, communities would build

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<sup>39</sup> Robert J Sampson, "Neighbourhood Effects and beyond: Explaining the Paradoxes of Inequality in the Changing American Metropolis," *Urban Studies* 56, no. 1 (October 2, 2018): 3–32, <https://doi.org/10.1177/0042098018795363>.

<sup>40</sup> Heather E. Campbell, Yushim Kim, and Adam Eckerd, "Local Zoning and Environmental Justice," *Urban Affairs Review* 50, no. 4 (October 30, 2013): 521–52, <https://doi.org/10.1177/1078087413505736>.

<sup>41</sup> Ana Isabel Baptista, "Local Policies for Environmental Justice: A National Scan," NRDC, March 20, 2019, <https://www.nrdc.org/sites/default/files/local-policies-environmental-justice-national-scan-tishman-201902.pdf>.

<sup>42</sup> Allison Shertzer, Tate Twinam, and Randall P. Walsh, "Race, Ethnicity, and Discriminatory Zoning," *American Economic Journal: Applied Economics* 8, no. 3 (July 2016): 217–46, <https://doi.org/10.1257/app.20140430>.

more densely, as we did in the past. If communities were built up at a higher density, urban areas would be much more compact, with less sprawl.<sup>4344</sup>

There is consensus among many members of major planning organizations including the APA,<sup>45</sup> Congress for New Urbanism,<sup>46</sup> and HUD<sup>47</sup> that widespread zoning reform would be beneficial for most municipalities. In major metropolitan areas experiencing rapid population growth, there is additional pressure to loosen zoning codes in order to allow for more density. Traditional Euclidean zoning has such a strong bias in favor of the single-family home that in some municipalities, it is difficult bordering on functionally impossible to build multifamily housing,<sup>48</sup> which is perceived as further compounding an already dire lack of housing in many communities. Even in areas where multifamily housing is allowed, scholar Jenny Schuetz found that strict dimensional requirements like minimum lot sizes can restrict housing to densities that are roughly the same as single-family housing development.<sup>49</sup>

## 2.4 Public Participation

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<sup>43</sup>Emily Talen, “Zoning For and Against Sprawl: The Case for Form-Based Codes,” *Journal of Urban Design* 18, no. 2 (May 2013): 175–200, <https://doi.org/10.1080/13574809.2013.772883>.

<sup>44</sup>Edgar E. Ramírez de la Cruz, “Local Political Institutions and Smart Growth,” *Urban Affairs Review* 45, no. 2 (April 10, 2009): 218–46, <https://doi.org/10.1177/1078087409334309>.

<sup>45</sup>“Reform Local Codes,” American Planning Association, 2014, <https://www.planning.org/home/action/codes/>.

<sup>46</sup>Kristen Dunphey, “The Project for Code Reform,” CNU, March 20, 2017, <https://www.cnu.org/our-projects/project-code-reform>.

<sup>47</sup>Gerrit Knaap et al., “Zoning as a Barrier to Multifamily Housing Development,” American Planning Association (Planning Advisory Service Report Number 548, 2007).

<sup>48</sup>Michelle J. White and William A. Fischel, “The Economics of Zoning Laws: A Property Rights Approach to American Land Use Controls,” *Land Economics* 62, no. 4 (November 1986): 426, <https://doi.org/10.2307/3146477>.

<sup>49</sup>Jenny Schuetz, “No Renters in My Suburban Backyard: Land Use Regulation and Rental Housing,” *Journal of Policy Analysis and Management* 28, no. 2 (December 2009): 304, <https://doi.org/10.1002/pam.20428>.

The federal government has long advocated for plans and policies that delegate much of the day to day decision making of land use to the local level.<sup>50</sup> This makes sense on a number of levels: geographic proximity means that local practitioners will be familiar with development trends, community needs, and the local cast of characters participating in land use activities. But along with this decentralization and delegation of power came pressure from the federal government for municipalities to also involve and engage local citizens in that process as well.

Research on the levels and depth of public participation in land use regulation in the past is spotty. Records show that attendance at town meetings in New England in the 18th century were highly dependent on physical obstacles including bad weather or road conditions. There is also evidence that there were sometimes politically motivated machinations at work where municipalities would fail to inform whole neighborhoods of particular meetings in order to ensure they would not attend.<sup>51</sup>

The planning field experienced a reckoning in the post-Robert Moses, post-Urban Renewal era and has shifted since towards a more collaborative approach. This shift has in many communities necessitated an increase in participation in the land use process. The need for a more comprehensive way to lift up the voices of marginalized communities became clear to many in the wake of the Urban Renewal era in the mid 1900s, which resulted in widespread displacement of working class poor families and people of color in dozens of American cities and often caused more problems than they solved.<sup>52</sup> Fostering greater public participation

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<sup>50</sup> Douglas Jorden and Michele Hentrich, "Public Participation Is on the Rise: A Review of the Changes in the Notice and Hearing Requirements for the Adoption and Amendment of General Plans and Rezonings Nationwide and in Recent Arizona Land Use Legislation," *Natural Resources Journal* 43, no. 3 (2003): 865–86.

<sup>51</sup> Suzanne Piotrowski, "An Analytic Framework for Open Meetings and Transparency" (*Public Administration & Management*. 15. 138-176, 2010).

<sup>52</sup> Donald Shoup, "Graduated Density Zoning," *Journal of Planning Education and Research* 28, no. 2 (December 2008): 161–79, <https://doi.org/10.1177/0739456x08321734>.

appeals to a deeply rooted American notion of democracy and representation stretching back to the New England town meeting, and on the face of it seems to speak to a basic standard of fairness.<sup>53</sup> Why shouldn't citizens have the right to speak up on what they think about changes in their own neighborhood?

## **2.5 Benefits and Challenges of Public Participation**

There is a large body of research on strategies that are effective for engaging citizens in planning processes and fostering strong civic forums. Proponents of higher levels of democracy in planning point to the unique, lived experience of residents as inherently valuable in the decision-making process,<sup>54</sup> and to evidence that neighborhood conditions can improve when residents have more of a say in the planning process. Communication and dialogue between citizens, developers, and decision-makers can create more fair outcomes, a way to empower marginalized communities, and a means to counter and check the power of developers and elite interests.

However, there is also evidence that many participatory processes are not all they are cracked up to be. As higher levels of participation have proliferated, some scholars have argued that it no longer bears any real resemblance to the grassroots interests it was meant to serve. In fact, elite actors can use participatory tactics to quell counter social movements and protests before they even begin. As Michael McQuarrie puts it in his assessment of participatory

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<sup>53</sup> Audrey McFarlane, "When Inclusion Leads to Exclusion: The Uncharted Terrain of Community Participation in Economic Development," (2009):103  
[https://doi.org/https://www.researchgate.net/publication/228164236\\_When\\_Inclusion\\_Leads\\_to\\_Exclusion\\_The\\_Uncharted\\_Terrain\\_of\\_Community\\_Participation\\_in\\_Economic\\_Development](https://doi.org/https://www.researchgate.net/publication/228164236_When_Inclusion_Leads_to_Exclusion_The_Uncharted_Terrain_of_Community_Participation_in_Economic_Development).

<sup>54</sup> Sherry R. Arnstein, "A Ladder Of Citizen Participation," *Journal of the American Institute of Planners* 35, no. 4 (July 1969): 216–24, <https://doi.org/10.1080/01944366908977225>.

technologies, “rather than serve as a challenge to elite and expert authority, participation is now deployed as a tool of that authority.”<sup>55</sup> Jeremy Levine offers another view: participatory tactics are largely illusory in that they might increase participation, but that does not lead to increased impact. These tactics might appear to empower residents, but ultimately, they gain no real power in the decision-making process.<sup>56</sup>

Public hearings are commonly held late in the decision-making process, which can serve to minimize the impact of public input in the process.<sup>57</sup> Rates of political participation are low and political power and influence are becoming more and more concentrated in the hands of those that already hold wealth and power in society.<sup>58</sup> Though policy and engagement initiatives have been able to increase attendance at particular meetings (for controversial cases, for example), doing so can be time-consuming, expensive, and does not guarantee results. Discouragingly, there is also evidence that increases in turnout are not evenly distributed and can even widen disparities in participation between underrepresented groups and those in positions of greater power in society.<sup>59</sup>

Some of this disparity might be attributed to what William Fischel describes as the “Homevoter hypothesis” in this way: homeowners, unlike stock owners, cannot diversify their holdings among several communities. This makes homeowners effective watchdogs of

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<sup>55</sup> Michael McQuarrie, “No Contest: Participatory Technologies and the Transformation of Urban Authority,” *Public Culture* 25, no. 1 (2013): 143–75, <https://doi.org/10.1215/08992363-1890495>.

<sup>56</sup> Jeremy R. Levine, “The Paradox of Community Power: Cultural Processes and Elite Authority in Participatory Governance,” *Social Forces* 95, no. 3 (January 9, 2017), <https://doi.org/10.1093/sf/sow098>.

<sup>57</sup> Katherine A. McComas, “Theory and Practice of Public Meetings,” *Communication Theory* 11, no. 1 (February 2001): 36–55, <https://doi.org/10.1111/j.1468-2885.2001.tb00232.x>.

<sup>58</sup> Richard R. John, “Review of Unequal Democracy: The Political Economy of the New Gilded Age,” *The Forum* 6, no. 3 (January 9, 2008), <https://doi.org/10.2202/1540-8884.1262>.

<sup>59</sup> Ryan D. Enos, Anthony Fowler, and Lynn Vavreck, “Increasing Inequality: The Effect of GOTV Mobilization on the Composition of the Electorate,” *The Journal of Politics* 76, no. 1 (January 2014): 273–88, <https://doi.org/10.1017/s0022381613001308>.

community assets like parks and schools, and a desire to protect that value makes them more likely to participate in politics and public hearings.<sup>60</sup> Homeowners are disproportionately represented at hearings compared to one-time attendees, or to even long-term renters, and many are activists with extreme, unrepresentative viewpoints about development.<sup>61</sup> Involvement in political processes by the public characterized by concentrated costs and diffuse benefits,<sup>62</sup> and many renters or would-be residents who do not own property in the town might see little benefit investing time and energy into a process that they have no long-term stake in.

## **2.6 Impact of Zoning on City Form & Economics**

There is a stark difference in the kinds of communities that could be built prior to zoning and what the law allows now. The sort of compact, mixed-use development in areas like Harvard Square or lower Manhattan could never be built as they are today. To create any major development at all, they would have to contend with dozens of roadblocks- permits, travel demand studies, environmental reviews, the public process- that would make them impossible to build now without arduous, time-consuming, and expensive rezoning exemptions. The regulation of development on urban land through zoning is now so common it serves as one of the foundational tools in city planning. Many municipalities see zoning as necessary in order to plan for the future of the physical development of the city, including housing, green space, and

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<sup>60</sup>William A Fischel, *The Homevoter Hypothesis : How Home Values Influence Local Government Taxation, School Finance, and Land-Use Policies* (Cambridge, Massachusetts ; London, England Harvard University Press, 2005).

<sup>61</sup> Katherine Levine Einstein, David Matthew Glick, and Maxwell Palmer, *Neighborhood Defenders : Participatory Politics and America's Housing Crisis* (Cambridge, United Kingdom ; New York, Ny: Cambridge University Press, 2020).

<sup>62</sup> Ibid

economic development. It is difficult to even imagine America without zoning. Houston, notoriously the only large city to operate without a zoning ordinance, still has de facto zoning through covenants and other private restrictions that create results similar to zoning.

Developable land, once seen as almost endlessly abundant in the United States, has become much scarcer due to high demand and as more people move into cities, that land becomes more valuable.<sup>63</sup> As cities like Boston, New York, and San Francisco become magnets for ever more real estate development and investment, zoning plays a crucial role in determining the value of scarce land. Any property put on the market will undergo an appraisal process that will set the market value of the parcel. Determining the zoning of a property and the uses the zoning allows for is an important part of that appraisal. In this system, the potential profit an owner can make from developing the land is what determines its value. For example, in a 10,000 square foot lot that is zoned for multifamily unit uses, zoning restrictions that limit density, height, and other physical dimensions can mean that the number of units that can be built on that lot might vary from 2 to 12 units. This has an impact not just on how much profit a landowner can make from their parcel of land, but also affects the amount of housing that can be built overall in that zoning district.<sup>64</sup>

Zoning reform should be considered as a part of any region's plan to enable affordable housing and other desired neighborhood amenities, and there is evidence that even changes at the local level that loosen some of those restrictions can have a positive effect and enable the construction of more affordable housing.<sup>65</sup> However, zoning changes are not a silver bullet, and

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<sup>63</sup>Thomas Angotti and Sylvia Morse, *Zoned out! : Race, Displacement, and City Planning in New York City* (New York: Urban Research (Ur), 2017).

<sup>64</sup>Anne B. Shlay, "Regulating Scarcity: The Effects of Zoning on Urban Land Market Changes," *Journal of Urban Affairs* 6, no. 3 (October 1984): 19–35, <https://doi.org/10.1111/j.1467-9906.1984.tb00449.x>.

<sup>65</sup>Vanessa Calder, "Zoning, Land-Use Planning, and Housing Affordability," *Ssrn.com*, 2018, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3112830](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3112830).



no amount of up zoning, downzoning, or amendments can resolve systemic entrenched problems like housing affordability alone. There is to a degree a disconnect between what zoning is meant to do and is capable of doing within the current framework, and the outcomes many zoning critics would like to see. Activists might be most concerned primarily with the price and accessibility of housing, but what zoning is ostensibly meant to regulate is related more to the physical dimensions of buildings. Zoning is not an effective substitute for a failure of holistic planning, and it is a very weak tool with which to regulate the cost of housing.<sup>66</sup>

## 2.7 Legal Issues

Growth and development are regulated through layered levels of control at the local, state, and federal level through statutory law. Though there have been several federal laws passed in recent decades that have a significant impact on land use (the National Historic Preservation Act of 1966 and the National Environmental Policy Act of 1969).

This leaves the large bulk of land use decisions in the US to the local level. Town managers, planning boards, zoning boards, and public servants make many of the decisions that determine land use. Municipal governments have taken on a larger role in the economic and social structure of communities in recent years as restructuring of federal involvement in local government and increasing fiscal austerity have left fewer avenues of interaction between federal government and citizenry.<sup>67</sup> With this new configuration of local government as a source of greater control, expectations for the kind of responsibility these local governments hold have

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<sup>66</sup> For a an in-depth analysis of the inherent tensions between private development and the work of urban planners in the current climate, see Samuel Stein, *Capital City: Gentrification and the Real Estate State* (London: Verso, 2019).

<sup>67</sup>J. Edwin Benton, “The Effects of Changes in Federal Aid on State and Local Government Spending,” *Publius* 22, no. 1 (1992): 71–82, <https://doi.org/10.2307/3330234>.

changed. Commissions and boards, either elected or appointed, became more popular as a way to set policy and goals, leaving planners and city staff to interpret policy and to manifest that vision.<sup>68</sup>

One of the reasons why zoning receives so much attention at the local level is that this system effectively politicizes all land use by making it a community decision, not one based purely on private property rights. In fact, courts have consistently upheld the right of cities to change zoning regardless of the permission or blessing on property owners.<sup>69</sup> Property owners or citizens always have the right to protest according to the rules of due process, but this does not grant them the ability to challenge the substance of the regulation itself. Because land use regulations are adopted in the interest of protecting the health, safety, and welfare of the public, they are generally presumed valid by courts.

The power to regulate most aspects of land use and authority to adopt zoning laws is one of the most significant powers municipalities have.<sup>70</sup> Each state has delegated wide authority to local municipalities to manage land how they will, and they typically enjoy the presumption of validity from courts. This system often puts municipalities in the uncomfortable position of balancing the rights of private property owners with plans meant to benefit the greater good of the community as a whole.

### Legislative vs Quasi-Judicial Decisions

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<sup>68</sup>Otis Pease, "Urban Reformers in the Progressive Era: A Reassessment," Source: The Pacific Northwest Quarterly 62, no. 2 (1971): 49–58.

<sup>69</sup> Samuel R Staley, "The Progressive Roots of Zoning | Samuel R. Staley," Fee.org (Foundation for Economic Education, March 28, 2012), <https://fee.org/articles/the-progressive-roots-of-zoning/>.

<sup>70</sup>"Beginner's Guide to Land Use Law," Pace law School, accessed April 15, 2020, <https://law.pace.edu/sites/default/files/LULC/LandUsePrimer.pdf>.

While local legislatures play an important part in adopting land use regulations, planning and zoning boards play a key role in reviewing development proposals and interpreting land use regulations for projects brought to them. Each state legislature has passed statutes enabling a process of review and approval by such boards. They vary greatly state to state and are often supplemented with additional local rules.

Cases that come before local zoning boards and commissions typically fall into a category: they are either legislative decisions or quasi-judicial decisions. Legislative decisions create policies for future application, and quasi-judicial decisions apply those policies.

<sup>71</sup>Different rules apply based on the type of petition the proposal calls for. Quasi-judicial decisions can include variances, special exceptions, subdivisions, zoning code violations, and site plan review, and are used typically for site-specific projects that affect just one or a small number of properties. These cases tend to have a narrower focus, with proceedings based largely on fact-finding in the way a court case would, and these boards must follow strict procedural requirements.

Legislative zoning decisions include adoption of plans, adoption of ordinances, and amendments to those ordinances. Legislative zoning decisions have the potential to affect the whole community, and the policy choices made in the adoption of a comprehensive plan can have a huge impact. Accordingly, statutes authorizing local government zoning require broad public notice and deliberation of each proposal.<sup>72</sup> This paper will focus largely on the legislative land use process, but many of the standards hold true for quasi-judicial decisions as well.

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<sup>71</sup>“Legislative v Quasi-Judicial Land Use Decisions,” Community and Economic Development, 2020, <https://www.extension.iastate.edu/communities/legislative-v-quasi-judicial-land-use-decisions>.

<sup>72</sup> McComas 45

### 3.1 Preface

Once a zoning petition is submitted to the local zoning agency, the clock starts, and the procedural process begins. Each state has statutory requirements that outline the procedural requirements that will allow a land use proposal to move through the bureaucratic process from submission all the way through to possible implementation, or to denial. The municipality will need to provide public notice of the proposal, begin planning to hold any required public hearings, prepare to create a record of actions taken by the department to be shared with the public, and be ready to file and circulate the final decision made for each case. Though they share many commonalities, each state has different requirements. And within each state, cities and counties might also have their own unique standards.

Having such a wide variation in procedural requirements makes it hard to generalize best practices for these proceedings. Words and phrases might be defined differently in each local law- an abutter in Minneapolis might not have the same rights as an abutter in St. Paul— or those phrases might not be defined at all. What might look to be a uniform standard at the state level quickly proves to be much more diverse at the local level. This can be attributed in part to the fact that state level rules establish a floor, not a ceiling for due process requirements. If the state of New Mexico requires one public hearing for a zoning amendment, Las Cruces must hold at least one public hearing, but there is nothing that says the city can't require more. Similarly, if Delaware required neighbors within a 150 foot radius of a proposed change to be notified by mail of an upcoming hearing, Wilmington could legally require neighbors in a 600 foot radius to get that notice, because they are allowed to go above and beyond the baseline set by the state.

This section discusses some findings derived from an analysis of the statutory language addressing public meeting notice and procedure for zoning amendments in each state. While this

paper looks primarily at local-level town and city requirements, in some instances however there are interesting points of divergence between what is required of cities and what is required of counties that the discussion will touch on. Out of necessity to limit the scope of the analysis, many elements of these statutes that are critical to the public hearing process are omitted or touched on only briefly. It is also worth noting that these statutes are living documents, and at the time of writing an unprecedented amount of activity and flurry of new bills and temporary changes to public proceedings in light of the COVID-19 pandemic were passed. As a result, some of this information might already be outdated, but all attempts were made to update that information where applicable.

### **3.2 Public Hearings**

Due process requires that the public be notified of an upcoming hearing and that they be granted an opportunity to be heard by an impartial decision maker.<sup>73</sup> Due process requirements stem from the 5th Amendment which states that no one may be “deprived of life, liberty or property without due process of law.”<sup>74</sup>

For zoning and land use cases, due process issues are typically divided into two subsets: procedural due process and substantive due process. To show a violation of substantive due process, it must be proven that the decision has no reasonable relation to the public health, safety and welfare of the community, or that the ordinance is unreasonable because of the arbitrary, capricious, or unfounded exclusion of other types of legitimate land use from the area under

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<sup>73</sup>“The Requirements of Due Process,” LII / Legal Information Institute, 2016, <https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/the-requirements-of-due-process>.

<sup>74</sup>“Due Process,” LII / Legal Information Institute, 2020, [https://www.law.cornell.edu/wex/due\\_process](https://www.law.cornell.edu/wex/due_process).

consideration.<sup>75</sup> If neither of those are proven, substantive due process can be considered fulfilled.

Procedural due process, on the other hand, has a lot of moving parts. It requires a minimum standard of fairness during the process of making public decisions which can include public notice rules, a fair hearing, reasonable and impartial standards in the decision-making process, and making public records of the proceedings available to the public.<sup>76</sup>

Because of due process rules, local legislative bodies are required to hold publicly accessible hearings before adopting or amending zoning. These hearings ensure that members of the community have a forum to express their support, concern, or questions regarding land use proposals. These processes were by and large adopted around the time of the SZEAs and are fairly consistent around the country. A public hearing can occur as part of a regular public meeting or, in some circumstances, it can be scheduled as its own entity. A public hearing is obligatory when due process is required, but a local government can also choose to hold a public hearing when it desires in order to solicit public input on a project or policy.

The vast majority of states require at least one public hearing before the local legislative body for zoning cases. Twenty-five states require both counties and cities to hold one public hearing, and eleven require only cities to hold one. Four states require at least two hearings in all cases, while four require two hearings only in special circumstances. Several states outline very specific circumstances in which a second hearing is required,<sup>77</sup> while others like Florida require

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<sup>75</sup>“DUE PROCESS OF LAW,” LII / Legal Information Institute, 2020, <https://www.law.cornell.edu/constitution-constan/amendment-14/section-1/due-process-of-law>.

<sup>76</sup>“Due Process Considerations in Zoning – Community Planning and Zoning,” Extension.org, July 25, 2019, <https://community-planning.extension.org/due-process-considerations-in-zoning/>.

<sup>77</sup> New Hampshire requires cities and counties to hold a second hearing only if substantial changes were made at the first hearing. Pennsylvania requires this only in cities.

a second hearing only if the city initiates the proposal and it involves ten or more acres. In one state, Arizona, a follow-up hearing is only required if the property owner requests one.

The norm at the state level calls for just one hearing, but in practice many municipalities hold far more than the minimum. It can take months, even years for major projects to go through the public process, only to fail on the final vote, as was the case in Lenox, Massachusetts where after a series of over two dozen hearings and community meetings to solicit feedback, a measure proposed to regulate short-term rentals died on vote at the Planning Board.<sup>78</sup>

Houston, which has been called "the hair shirt of the city planners,"<sup>79</sup> stands out as the one major city in America that does not utilize land use zoning. In every other city, procedural due process would generally require notice of a zoning change to be sent to close neighbors, and a public hearing would be convened where community feedback could be given. But Houston stands alone in its refusal to adopt zoning as a tool to guide growth, giving the private market an extraordinary amount of control in the development process. Though land use and other regulations do still govern the use of property in Houston, development can proceed without the typical hoops developers elsewhere would have to jump through, because that development is not done under the auspices of zoning and is therefore not subject to the same due process requirements. Without the promise of that process, development in Houston often happens in such a way that neighbors might have no idea that construction is happening in their neighborhood until they see the cranes roll in.

Currently, no state requires developers to host public meetings to discuss zoning proposals. However, a number of local governments do require them in certain circumstances,

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<sup>78</sup>“Facing Legal Complexities of Proposed Zoning Law, Lenox Backs off Short-Term Rental Regs Plan,” The Berkshire Eagle, April 11, 2018, <https://www.berkshireeagle.com/stories/facing-legal-complexities-of-proposed-zoning-law-lenox-backs-off-short-term-rental-regs-plan,536884>.

<sup>79</sup> Babcock 225

and there has been a trend toward requiring such meetings to address community concerns from the get-go. Some localities have clearly outlined goals and a standard process for them, as in San Francisco which requires almost all new development to participate in a Pre-Application Community Outreach Process and host at least one community meeting before going before the planning board.<sup>80</sup> Others like Annapolis in Maryland require developers to host a community meeting within 5 miles of the proposed development within the six-month period before they submit a preliminary plan to the board.<sup>81</sup> However, local developers have pushed back against this requirement, arguing that the dictates of the rule are so vague as to mean essentially nothing, and that “There are no standards or boundaries for a potential applicant to understand what it must do to progress from the community meeting phase to the application submittal phase and, conversely, there are no standards for a community meeting participant to understand what he or she might expect a potential developer to do...”<sup>82</sup>

If one of the main complaints citizens tend to have when it comes to public meetings is the fact that by the time the public hearing happens the plan is already almost fully formed, these developer meetings might become very important forums in which concerns can be hashed out. As more municipalities move towards requiring meetings between developers and community members in the early days of planning for the project, there may be more opportunities to incorporate public input in a meaningful way.

### **3.3 Public Participation Requirements**

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<sup>80</sup> “Department Facilitated Pre-Application Meeting | SF Planning,” Sfplanning.org, 2020, <https://sfplanning.org/resource/department-facilitated-pre-application-meeting>.

<sup>81</sup> Sandra Heisch, “Community Meeting | Anne Arundel County, MD,” Aacounty.org, June 7, 2018, [www.aacounty.org/departments/planning-and-zoning/development/community-meeting/](http://www.aacounty.org/departments/planning-and-zoning/development/community-meeting/).

<sup>82</sup> Danielle Ohl, “Developers Challenge New Annapolis Public Meeting Law,” capitalgazette.com (Capital Gazette, January 22, 2018)



Though they do guarantee access, not all state open meeting laws grant the public the right to participate in these hearings. In fact, only ten state laws explicitly give the public the right to comment at public hearings. There is considerable latitude afforded to local governments in establishing rules for the conduct of public meetings, including how members of the public are allowed to participate in the proceedings. Some municipalities develop comprehensive rules and procedures, others might opt to follow formalized parliamentary-style rules. The government is given broad discretion to manage their public hearings and that meeting be considered valid so long as they do not violate the constitution and are not in conflict with state laws. They are also allowed to go above and beyond state laws, so long as they at least meet the minimum standard set by state statute.

Meeting formats can vary a lot depending on the case before the board, or on the preferences of the board itself. In many instances, the board and experts will sit at a desk before the assembled crowd and conduct presentations. Petitioners might bring models, a presentation, or even physical objects like different types of stone facades for the board to consider in reviewing their petition. The board might take comments from the public, ask for input from city staff, and talk amongst themselves before making a decision, which can include approving the proposal as-is, denying it, or requiring the petitioner to do more work on the proposal and then come back for another review. Unlike many other boards, the St. Louis planning board does not make a decision on the day of the hearing. Instead, they use these public hearings as a way to take in information and then reconvene at a later time for Executive Meetings, where they are

able to incorporate any further public comment that has been submitted in that time period and any further study of the proposal.<sup>83</sup>

If public comment is to be taken, there might be a microphone set up to take comments. Sometimes public comment is taken right away, before any presentations are made or before the board discusses anything, while in other cases for each item on the agenda, the zoning petitioner might give a presentation, the public will provide comment, and only then will the board weigh in. One of the difficulties of the typical public hearing format is the lack of dialogue or back and forth between the public and the board. A resident may get an opportunity to express an opinion and voice their concerns, but typically there is no direct response from board members. In this way hearings are very distinct from town hall meetings, where there is often a greater expectation of a response from the board or government body.

Some sunshine laws give the municipality discretion to allow or disallow public comment as they wish, as is the case in South Carolina. Of the states that explicitly give the public the right to comment at hearings, some allow for the creation of time limits or to require citizens to sign up in advance of the meeting to get the chance to speak.<sup>84</sup> The rules, length of time for public comment, and the topics they are allowed to discuss during this time, can vary greatly among different public bodies even within the same town. In Denver, where speakers at Planning Board meetings are limited to 3 minutes of testimony, speakers are allowed to cede their time to another speaker for a total of 6 minutes of speaking time.<sup>85</sup> Many cities, such as Flagstaff,

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<sup>83</sup> “Citizen’s Guide to the Zoning Process.” 2020. Stlouisco.Com. 2020. <https://www.stlouisco.com/Property-and-Roads/Planning-Zoning-and-Subdivision-Information/Zoning-and-Subdivision-Information/Citizens-Guide-to-the-Zoning-Process#steps-timeframe>

<sup>84</sup> Sandra Heisch, “Community Meeting”, Anne Arundel County, MD,” [aacounty.org](https://www.aacounty.org/departments/planning-and-zoning/development/community-meeting/), June 7, 2018, <https://www.aacounty.org/departments/planning-and-zoning/development/community-meeting/>.izona, California, Hawaii, Louisiana, Nebraska, and Pennsylvania

<sup>85</sup>“Planning Board Bylaws,” [Denvergov.org](https://www.denvergov.org/content/denvergov/en/community-planning-and-development/planning-and-design/planning-board/Planning_Board_Bylaws.html), 2019, [https://www.denvergov.org/content/denvergov/en/community-planning-and-development/planning-and-design/planning-board/Planning\\_Board\\_Bylaws.html](https://www.denvergov.org/content/denvergov/en/community-planning-and-development/planning-and-design/planning-board/Planning_Board_Bylaws.html).

Arizona<sup>86</sup> and Lake Shasta in California expressly forbid this practice,<sup>87</sup> while the majority of ordinances are silent on the practice. It is also a common practice to require citizens to sign up to speak well in advance of the meeting- and even then, if time runs out, they may be denied the chance to speak. In Springfield, Missouri, their local charter allows citizens to speak on any topic at a council meeting, but only if they submit their request by 5 p.m. the Friday before a meeting. If they fail to do so, they can be denied the right to speak.<sup>88</sup>

In a court case in North Carolina, over 500 citizens attended a public hearing on the topic of adoption of the zoning ordinance for Chapel Hill. The chair of the committee decided to divide the time for public comment evenly among those who approved of the ordinance and those who opposed, giving one hour to each. In that time 31 citizens were heard (16 in favor, 15 opposed).<sup>89</sup> The chair took a show of hands, which showed by a four-to-one ratio, most attendees were opposed to the proposal. Around 200 members of the public indicated that they wanted to speak on the matter but were denied due to the time limit. The court found this procedure to be acceptable, arguing that the practice did provide those in attendance an adequate opportunity to express their opinion.<sup>90</sup> In other municipalities it is common practice to give a larger chunk of time for neighborhood groups to speak than just individuals, with the understanding that they speak for a bigger number of community members.

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<sup>86</sup>“Agenda,” Flagstaffaz.gov, 2019, [http://cityweb.flagstaffaz.gov/agendaquick/agenda\\_publish.cfm](http://cityweb.flagstaffaz.gov/agendaquick/agenda_publish.cfm)

<sup>87</sup> “Planning and Zoning | Shasta Lake, CA - Official Website,” Cityofshastalake.org, 2019, <https://www.cityofshastalake.org/478/Planning-Division>.

<sup>88</sup> Amos Bridges, “Freedom to Speak? Rules Vary in Area Towns,” Springfield News-Leader, June 12, 2015, <https://www.news-leader.com/story/news/local/ozarks/2015/06/12/freedom-speak-public-meetings-guarantee/71133986/>.

<sup>89</sup> Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968).

<sup>90</sup> David Owens, “Zoning Hearings: Knowing Which Rules to Apply,” UNC School of Government, January 1997, <https://www.sog.unc.edu/resources/legal-summaries/zoning-hearings-knowing-which-rules-apply>.

In 2018, courts upheld the practice in Long Beach, California of limiting public comment to just three minutes per person, per agenda item , but setting no limits on how long staff or speakers and applicants could speak.<sup>91</sup> Limitations like the one Long Beach has in place are very common, and the Citizen Advocacy Center recommends a three minute time limit per person, or a 30 minute public comment period overall for each agenda item.<sup>92</sup> Considering the large number of speakers who attend controversial hearings and want to speak, it might be a practical measure for a municipality to impose time restrictions and attempt to strike a balance between the public’s right to address the board while also allowing for efficiency in the running of the meeting and respecting the time of those involved. However, in practice putting such strict limits on participation can serve to undermine the public process and deny attendees the opportunity to share their full thoughts and concerns.

### **3.4 Broad Notice of the Public Hearing**

In order for a public hearing to take place, according to due process, in all state statutes the hearing must be publicly advertised to inform interested citizens of the time, date, and location of the hearing, as well as a brief explanation of the agenda item. Current open meeting laws allow for several different avenues through which the hearing can be advertised. In theory, this requirement could hardly be simpler. If there is a meeting, that meeting must be advertised in a way that makes it clear what the meeting is about and where and when it will be. But in delving

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<sup>91</sup> “Court Affirms Reasonable Limits On Public Comment - Dannis Woliver Kelley | Attorneys at Law.” 2018. Dannis Woliver Kelley | Attorneys at Law. October 15, 2018. <https://www.dwkesq.com/court-affirms-reasonable-limits-public-comment/>.

<sup>92</sup> “Public Comment,” Citizen Advocacy Center, 2015, [https://www.citizenadvocacycenter.org/uploads/8/8/4/0/8840743/public\\_comment\\_brochure\\_final\\_jan\\_2015.pdf](https://www.citizenadvocacycenter.org/uploads/8/8/4/0/8840743/public_comment_brochure_final_jan_2015.pdf).

into the different ways in which this requirement is carried out, it is clear that there is a broad diversity in how public notice is conducted.

Public Notice Requirements	Written Notice	Posted Notice	Newspaper Notice
Variance	X	X	
Subdivision	X		X
Special Use permit	X	X	X
Zoning Map Amendment	X	X	X
Planned Development	X	X	X
Text Amendment			X
Preliminary Plat		X	X

*Public Notice Requirements in Louisiana*

A number of state statutes require signs to be physically posted on the property under consideration for a rezoning. Some states like Idaho and South Carolina require both cities and counties to post notice on the property, while others only require this at the city level. In some cases, signs are only required under particular conditions, such as in Georgia where these signs are only required if the property owner initiates the rezoning, or in Pennsylvania where this is only required if the zoning map would be altered by the zoning change. Some states require notices to be posted in public places other than the area to be rezoned itself. In Utah, three notices must be posted in public places in the city though those locations are not specified, and in Maine and Massachusetts, notice must be posted in the town hall or municipal office.

**3.5 Newspaper Notice**

Though the long history of public notice requirements predates newspapers,<sup>93</sup> local governments have been publishing public notices in newspapers since colonial times. The mandates to publish public notices in local papers in America date back to 1792, when Congress ordered the postmaster general to put bids for the construction of new post office buildings in the paper. The Acts of the First Session of the First Congress in 1789 went on to require the Secretary of State to publish all “bills, orders, resolutions and congressional votes” in at least three newspapers of wide circulation.<sup>94</sup> Though the specifications vary, there is a general consensus among many statutes on the characteristics that are desirable or required in a newspaper for these purposes. An ideal newspaper is one that is published regularly, and in proximity to the municipality, it has a general paid circulation, and rather than being a paper devoted just to legal proceedings, it publishes items of general interest to the public.<sup>95</sup>

A majority of states require both cities and counties to publish at least one notice of an upcoming zoning hearing in the local newspaper. Eleven states require two newspaper notices, and two states require three publications. Some statutes specify particular cases that trigger this requirement, like in Ohio where local governments must publish two notices, but only if ten or less parcels are involved in the zoning change. On the flipside, Florida requires two notices only if it is the government that initiates the zoning change, and the plan involves ten or more affected parcels.

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<sup>93</sup> “About Public Notice,” Public Notice Resource Center, June 12, 2013, <https://www.pnrc.net/about-2/about-public-notice/>.

<sup>94</sup> Jeff Moore, “Take Notice: Public Notices Important Part of History,” *The Daily Reporter - WI Construction News & Bids*, January 7, 2011, <https://dailyreporter.com/2011/01/07/take-notice-public-notices-important-part-of-history/>.

<sup>95</sup> Shannon E Martin and Kathleen A Hansen, *Newspapers of Record in a Digital Age: From Hot Type to Hot Link* (Westport, Conn.; London: Praeger, 1998):1

In many communities, these advertisements are run as a legal ad in the classified section of the newspaper. This practice has been criticized by some, who see relegating the notice to a section that lay people might not seek out, in a typeface and format that practically begs readers to ignore it, dooms the zoning hearing notices to being overlooked. Some local governments purchase larger ads to call more attention to them. In Arizona these ads must cover at least one-eighth of a full page.<sup>96</sup> In Florida, required advertisements must be at least 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, with headlines set in a size 18-point font at a minimum.<sup>97</sup>

Some local governments have begun to question what the value is in requiring advertising in a newspaper of record really means in an age so dominated by digital media. Once a critical source of local knowledge and national events, newspapers nationwide have experienced a sharp decline in readership over the years. Over two hundred local papers have shuttered permanently in recent years,<sup>98</sup> and years of declining revenue due to loss of subscribers and advertising threaten the longevity of those papers that do remain. Advertising in newspapers can be hugely expensive for local governments. The executive director of the League of Arizona Cities and Towns has claimed that 90 municipalities in Arizona spent about \$900,000 in one year on public notice ads alone,<sup>99</sup> and the mayor of Raleigh in North Carolina reported that by forgoing newspaper ads and posting notice directly on the city's website the city saved about \$13,000 per year.<sup>100</sup>

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<sup>96</sup> AZ Rev Stat § 11-813

<sup>97</sup> FL ST § 125.66

<sup>98</sup> Lauren Rieders, "Old Principles, New Technology, and the Future of Notice in Newspapers," *Hofstra Law Review* 38, no. 3 (2010): 1009.

<sup>99</sup> Dalesio, Emery P. 2009. "Move to Online Public Notices Looms over Papers." ABC News. ABC News. May 22, 2009. <https://abcnews.go.com/Technology/story?id=7659030&page=1>.

<sup>100</sup> Dalesio 2009

Each year the Public Notice Resource Center (PNRC) tracks bills nationwide that would eliminate public notice requirements from newspapers either wholesale or in particular circumstances. In 2018 alone, they tracked 160 separate bills, the majority of which failed to pass.<sup>101</sup> States and local governments pushing for these bills often argue that they can save taxpayer money by posting public notices on websites rather than in papers and be able to prioritize promoting meetings digitally to a community that more and more looks to the internet for news rather than the newspaper. The PNRC holds that newspapers should remain a vital component of the public notice process because governments have a spotty history of publishing information on the internet and keeping it consistently updated, and citizens rely on newspapers to provide vital information about civic issues and the going-on of their community in a way that the internet cannot consistently provide.

The Internet can be a powerful tool to inform interested citizens of a zoning hearing, but there are downsides to focusing exclusively on web updates. There are now so many websites, social media accounts, and different outlets to check, it might not be clear where to go for consistent and accurate news. Local governments, cash-strapped and overburdened as many of them are, might not have the capacity to ensure all notices are properly posted and updated as needed. During the shutdown of many government offices in 2013, many agency websites and communication outlets went dark for days due to the lapse in funding,<sup>102</sup> leaving citizens unable to access critical information. The PNRC also points out in their educational resources that to be a truly effective notice, making a post in an independent source can ensure better transparency

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<sup>101</sup> Richard Karpel, “The Year in Public Notice Legislation,” Public Notice Resource Center, December 5, 2018, <https://www.pnrc.net/2018/12/05/the-year-in-public-notice-legislation-2/>.

<sup>102</sup> “About Public Notice,” Public Notice Resource Center, June 12, 2013, <https://www.pnrc.net/about-2/about-public-notice/>.



because it wouldn't just be that body posting about its activities on its own government website that it has complete control over and the ability to change at will.<sup>103</sup>

COVID-19 is expected to hit local news outlets hard, as advertisers have proven averse to running ads next to COVID-19 headlines and a steep drop in consumer demand has made advertisers more reluctant to spend on expensive campaigns.<sup>104</sup> In mid-March 2020, House Bill 195 was passed by the Kentucky legislature, which would have allowed counties with populations over 80,000 to publish their legal notices on just their own websites instead of in local papers.<sup>105</sup> Governor Beshear, citing the 20% of Kentucky residents who lack internet access, vetoed the bill in April 2020.<sup>106</sup> The North Carolina Branch of the NAACP has also expressed serious concerns about pivoting over exclusively to online ads, as many people of color and members of rural communities have limited access to the Internet and still rely largely on newspapers.

### **3.6 Notice to Specific Property Owners**

Statute might also require nearby property owners to receive special notice of zoning changes to nearby properties. At least twelve states require local governments to send notice to surrounding property owners by mail. Of those that do, the proximity of neighbors to the parcel

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<sup>103</sup> Ibid

<sup>104</sup> Hendrickson, Clara. 2020. "Critical in a Public Health Crisis, COVID-19 Has Hit Local Newsrooms Hard." Brookings. Brookings. April 8, 2020. <https://www.brookings.edu/blog/fixgov/2020/04/08/critical-in-a-public-health-crisis-covid-19-has-hit-local-newsrooms-hard/>.

<sup>105</sup> Kentucky Legislative Research Commission. 2020. "20RS HB 195." Ky.Gov. 2020. <https://apps.legislature.ky.gov/record/20rs/hb195.html>.

<sup>106</sup> Sonka, Joe. 2020. "Gov. Andy Beshear Signs 36 Bills into Law but Vetoes 2. Here's What You Need to Know." The Courier-Journal. Louisville Courier Journal. March 28, 2020. <https://www.courier-journal.com/story/news/politics/2020/03/28/kentucky-gov-andy-beshear-vetoes-taxing-district-legal-notice-bills/2933240001/>.

in question deemed important can range widely or be limited just to abutting parcels. Some studies have held that zoning changes have a very small radius of impact,<sup>107</sup> therefore only property owners in immediate proximity to the parcel should receive a mailed notice. Sending notice by mail has the benefit of allowing the municipality to go into greater detail about the specifications of the project, and if sent by certified mail as several statutes require, can serve as proof should a court case ever happen that the property owners were correctly notified. Nearby neighbors are deemed deserving of this special consideration in the public process because as parties whose property values could be impacted, immediate neighbors can have standing to challenge the amendment in court.

Notice must be sent to property owners within 100 feet in New Mexico, 200 feet in Kansas, 350 feet in Minnesota, 750 feet in Nevada, ranging all the way up to 1000 feet in Missouri. Very little study thus far has delved into what an appropriate radius of impact would constitute when it comes to zoning changes. One analysis done in the 1960's in Skokie, Illinois, found that the chance of a neighboring landowner participating at a zoning hearing declined by 50 percent for every additional eighty feet that separated their property from the one to be rezoned.<sup>108</sup> However, the logic behind the radius of impact in each municipality appears to be somewhat arbitrary.

For some municipalities, it might be a slippery slope to widen that radius. Widening the radius to 1,000 feet might have a minimal impact in a rural community, but to do so in a denser city might require an unreasonable number of mailings. But unless that number is based on a logical measure, it is worth consideration at least on the local level whether that radius is

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<sup>107</sup> William T Bogart, *Don't Call It Sprawl: Metropolitan Structure in the 21st Century* (Cambridge England ; New York: Cambridge University Press, 2006), 139.

<sup>108</sup> Tideman 84

encompassing all parties who might be interested to know and directly impacted by the development or zoning change. It has been noted by some practitioners that the mailed notice requirement has been the subject of more scrutiny and change in local legislation than perhaps any other required zoning procedure.<sup>109</sup> These individual mailing can be very costly, and a number of local governments in recent years have sought legislative relief for this requirement. The most common modification has been to substitute publication once a week for four weeks of a large display advertisement in a local newspaper in lieu of mailed notices

It is notable that seemingly across the board, to satisfy these public notice requirements, notice must only be sent once. The public process for many large projects can extend over many months, even years in some cases. In Cambridge there are ongoing projects that have been in the works going back at least 3 years with over a dozen public hearings in that time. But residents will only ever receive that notice for the very first meeting, and none for subsequent meetings. Some states do require notices to be sent via certified mail, giving local governments the assurance that the notice at least was received successfully, but most states do not have this requirement. Notices can easily be lost in the shuffle of things, in which case residents might miss reading it. Or they might read it, attend that initial meeting, but then lose track of where things stand in the development process over time.

One group left unaddressed by any state statute on this topic is renters. At this time, no state statute guarantees renters the right to receive mailed notice of a zoning change, and a survey of local level protocols failed to find any at the municipal level either. Even if a renter were to live within 10 feet of a new project, the notice would not go to the residents of the abutting building but would go instead to the owner of the building only. Renter participation in

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<sup>109</sup> David Owens, "Zoning Hearings: Knowing Which Rules to Apply," UNC School of Government, January 1997, [www.sog.unc.edu/resources/legal-summaries/zoning-hearings-knowing-which-rules-apply](http://www.sog.unc.edu/resources/legal-summaries/zoning-hearings-knowing-which-rules-apply).

public hearings is typically far lower than among homeowners,<sup>110</sup> and it is possible that this is in part because they are often left out of this process and may not even be aware of the proposal.

If practitioners and policymakers seek to improve the efficacy and inclusion of their public notice process, they might consider going beyond the state statutes and making a more concerted effort to make sure that they are not just ticking boxes to fulfill the bottom-line requirements. The purpose of public notice is to ensure that neighbors and those most likely to be impacted by the zoning change have full knowledge of that change and how they can make their voice heard, whether it is for or against the proposal. As things stand now, it seems very likely that some of these foundational rules require little more than sending a single notice that may or may not be read. It begs the question, who is really being served in this process—members of the public, who might never receive that notice or might not understand the full scope and implications of public procedures, or developers, who can easily cover their legal bases by sending just one notice?

### **3.7 Sunshine Laws & Virtual Hosting**

In addition to the rules laid out in the zoning enabling statutes for each state, land use hearings are also subject to Sunshine laws. These rules work to ensure the public has full access to the information shared at governmental meetings. These rules serve to assure that the public can be informed and confident in the political process and have a way to hold their governments

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<sup>110</sup> Katherine Levine Einstein, Maxwell Palmer, and David M Glick, “Who Participates in Local Government? Evidence from Meeting Minutes,” *Bu.Edu*, October 14, 2018, <https://doi.org/1537-5927>.

accountable if they fail to meet the standards outlined in the Sunshine law.<sup>111</sup> Of particular interest in this analysis is the topic of virtual meetings. In recent years there has been a reevaluation of the role teleconferencing and virtual participation can play in regard to open meeting rules. As emerging technologies including teleconferencing, email, and video, which are all at this point well-established communication methods not anticipated by 19th century meeting laws, have become more ubiquitous, a number of states have amended their open meeting laws to allow for some measure of virtual participation.

What does it mean to be virtually “present” at a public hearing? In some municipalities a board member can phone in to vote on an ordinance, or teleconference in, and in some both are strictly prohibited. In the states that do allow virtual presence in the form of teleconferencing or virtual meetings like in Florida, Iowa, and Massachusetts, usually at least a quorum of physically present people is needed if there is to be one or more virtual participants. Typical sunshine requirements still apply even if a meeting is held via telephone or video conferencing.<sup>112</sup> Some states allow teleconferencing just for individuals who are sick or have impaired mobility. Other states only permit meetings via electronic networks if physically convening at one location is difficult or impossible, or if there is a declared state of emergency. Nebraska allows video or telephone conferences for statewide boards only, with no more than half of that body’s meetings to be held virtually within one calendar year, and with at least one member physically present where the public has gathered for that meeting.<sup>113</sup>

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<sup>111</sup> Sandra F. Chance & Christina Locke, *The Government-in-the-Sunshine Law Then and Now: A Model for Implementing New Technologies Consistent with Florida's Position as a Leader in Open Government*, 35 Fla. St. U. L. Rev. (2008).

<sup>112</sup> Jessica M. Natale, *Exploring Virtual Legal Presence: The Present and the Promise*, 1 J. High Tech L. 157 (2002):160

<sup>113</sup> NE Code § 84-1411

In light of COVID-19, legislation surrounding the legal validity of virtual meetings is changing by the day. With planners and local boards between a rock and a hard place, charged with keeping social distance while also conducting publicly accessible meetings, the message from the state level is not always consistent. Some state attorneys and governors waived certain requirements in their open meeting laws, as is the case in Maine, New Hampshire, and in Nebraska where an emergency order now allows public bodies to meet by audio and video conferencing as long as public access to the meeting is provided.<sup>114</sup>

Some states have fast-tracked legislation to address the issue, like in Missouri where a bill was passed that approved the use of live streaming for public meetings while a declared state of emergency is in effect.<sup>115</sup> In Pennsylvania, House Bill 1564, passed through the House on March 25th, 2020, which if adopted would allow public hearings to be conducted via telecommunication devices in the case of a statewide emergency.<sup>116</sup>

The long-term impacts of these hastily made decisions are not yet clear. Many local governments appear to be treating virtual meetings under COVID-19 as a lesser alternative to the real things- not a true replacement for the normal, in-person meetings, but rather an inconvenient necessity in a time of emergency. Though it is unlikely that digital meetings will replace physical ones permanently, this temporary revolution of meeting format could hold possibilities for greater inclusion moving forward. Some boards expect they might actually get higher levels of

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<sup>114</sup> “Nebraska Attorney General.” 2020. Attorney General Doug Peterson - To Serve the Citizens of Nebraska and Nebraska’s Elected Officials with Fidelity to Our U.S. Constitution, State Constitution, and Nebraska Law. 2020. <https://ago.nebraska.gov/news/attorney-general-guidance-executive-order-no-20%E2%80%949403-coronavirus-%E2%80%9494-public-meetings-requirement>.

<sup>115</sup> Hancock, Jason. 2020. “Citing Coronavirus Outbreak, Missouri House Moves Quickly to Change Open Meetings Law.” Kansas City. The Kansas City Star. March 17, 2020. <https://www.kansascity.com/news/politics-government/article241229301.html>.

<sup>116</sup> “Bill Information (History) - House Bill 1564; Regular Session 2019-2020.” 2019. The Official Website for the Pennsylvania General Assembly. 2019. [https://www.legis.state.pa.us/cfdocs/billInfo/bill\\_history.cfm?syear=2019&sind=0&body=H&type=B&bn=1564](https://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?syear=2019&sind=0&body=H&type=B&bn=1564).

participation using online forums for public hearings. Disability advocates like Karrie Higgins have brought attention to the fact that accommodations long sought and requested by people in the disability community-chief among them, the ability to participate in meetings virtually-are often denied flat out or refused for being too cumbersome or expensive, but have been rolled out very quickly and willingly by organizations when the health and well-being of the able-bodied were threatened.<sup>117</sup> Providing online engagement options also holds the potential to involve others often excluded from the public process, including people who are sick, those staying at home watching children, or those otherwise unable to be physically present for hearings.

## **6. Discussion**

Based on an analysis of state statutes that outline the rules, requirements, and expectations that local governments might follow to enact zoning changes, some several takeaways for practice emerge:

### *Takeaway 1*

The urban conditions and political climate that set the stage for the foundation of the American zoning framework helped form the basis of state laws that regulate land use today. The goals and scope of what local planning processes govern have evolved and grown over time however, and so too have the expectations for transparency and inclusion. Citizens expect to

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<sup>117</sup> Meng, Amy. 2020. "The Coronavirus Response Shows How Crucial Accessibility Is." BuzzFeed News. BuzzFeed News. March 13, 2020. <https://www.buzzfeednews.com/article/amymeng/coronavirus-working-from-home-disability-accessibility>.

have open lines of communication with their government and a substantive role in the development process that is not always clearly defined or accommodated in state statutes.

### *Takeaway 2*

Statutory regulations play an important role in the local zoning process, but local governments have broad authority to run meetings as they choose to and to adopt measures that go beyond what the state requires. This approach has a number of benefits, giving municipalities the ability to better respond to the specific changing needs of their own communities. However, it means that a one size fits all framework for public meeting theory is not feasible, and practices learned from one community might not translate well to another. Nevertheless, the rich diversity of local practices means that a practitioner looking to learn from other communities need not look just to their neighbors but can look nationally at different approaches communities are using to improve the public meeting process.

### *Takeaway 3*

There is a strong interest among many residents in engaging in the work of local planning—whether it be at a legally mandated hearing to discuss a zoning change, or an informational meeting with developers or city staff to discuss development proposals. By strictly limiting the amount of time in which citizens are allowed to speak, or by failing to guarantee the right to speak at all in some cases, state-level laws do not consistently safeguard the rights of citizens to participate meaningfully at public hearings on zoning matters. In municipalities where there is not an explicit mandate to allow for that participation, or where it is common practice to regulate it so strictly that having the chance to speak is cumbersome or inconsistent, it is critical



that they examine what purpose those restrictions serve and if there are opportunities for better inclusion of public input.

#### *Takeaway 4*

Public hearings are in many ways an imperfect vessel for this engagement, since the level of participation that is allowed varies greatly depending on the location, and many projects will be in a state of near completion by the time they are reviewed in a public hearing. Scholarship tells us that participatory planning processes have value despite often proving complex, cumbersome, and expensive to implement. But the popularity of local requirements for pre-application meetings at the beginning of the development process with developers and more forums outside of the legal mandate shows that the legal requirements may not adequately meet the needs and desires of many communities. It may be beneficial to citizens and to city staff as well to focus engagement efforts on these informal processes on the front end of the zoning process rather than the hearings in order to better capture community sentiments.

#### *Takeaway 5*

Public notice and publication procedures are ubiquitous at both the state and local level, and work to ensure that everyone has access to the information they need to be informed about changes in their neighborhood. While the intention is noble, there is evidence that the status quo in many communities is not sufficient to reach certain populations. Renters are given no special consideration in most public notice processes, potentially creating a gap in the conversation at the local level where their input could be valuable. Vulnerable community members, including a disproportionate number of poor residents and people of color, risk losing a crucial lifeline to

community news as more and more municipalities move away from traditional newspaper ads towards online-only platforms. Keeping open as many pathways of communication that people use to engage their government in its work should be a top priority for planners in the public process.

### *Takeaway 6*

The ability to host meetings virtually or by telephone is granted in some state laws, but not all, and even when it is granted, there are a number of ambiguities. State statutes must be updated to keep up with the changing tides of technology and communication styles, otherwise inadvertent violations of open meeting laws will be inevitable. Careful study should be conducted prior to implementing public hearings via these technologies, with ample time to train city staff in how to use software and ensure an accessible process. Citizens should be made aware well in advance of the protocol for virtual gatherings, with special consideration given to those who might not have ready access to the internet, and they should be assured their right to participate actively in those processes even in a remote setting.

### **Conclusion**

Public hearing are required of many local government bodies to decide on zoning amendments. These public processes are often criticized for a lack of transparency or providing little opportunity for members of the public to meaningfully participate and serving as little more than a way for municipalities to rubber-stamp development that was already a foregone conclusion. But local governments have a vested interest in running these public meetings well because they serve as critical forums through which the government can understand the thoughts, feelings, and fears of residents to learn more about the issues they care most about, and because they give legitimacy to the political process in an age when trust in the government is weak.

Statutory requirements exist in every state to provide protections for transparency and participation, but the content of those statutes varies widely, as does local-level interpretations of those requirements. Such variation makes it difficult to extract easy lessons for what to do vs. what not to do, but by looking at where protocols are similar and where they diverge more severely, we can begin to better understand to what extent these statutory regulations are fulfilling their intended purposes, and if not, what changes must be made to respond to that gap.

Though requirements at the state level have changed from time to time and have evolved since first adoption, those updates have not kept pace with the rate of change in society and technology. People interact with development differently, utilize different technologies, and expect a more open dialogue with elected officials and zoning bodies than they did in years past. While the intention of these rules is to promote open government and foster public engagement in the zoning process in a way that is flexible enough to respond to local needs and conditions, in practice this is not always the case. Some of these laws are so vague as to be almost impossible to enforce consistently, and most fail to anticipate some of the modern issues that plague communities. This leaves municipalities largely on their own to navigate the day to day functioning of planning and zoning boards, where some might choose to follow the letter of the law, and others call for significant public outreach, posting, and multiple hearings to incorporate the public in the development process.

These laws can and should be updated to reflect changes in communication and technology. Audio and video recordings capabilities are now ubiquitous and an important component of doing business in the modern age. There are significant challenges and caveats to any local zoning body that opts to use telephone or video conferencing to conduct public meetings, and care must be taken to ensure that legal standards are being met and that technological gaps will

not prevent anyone from participating. But as local governments scramble nationwide in the midst of widespread public health crisis, rushing to interpret outdated and ambiguous codes to determine whether or not they are allowed to do business virtually and for an unknown length of time, it is evident that it is far past time to kick the tires on some of these statutory requirements. If the laws cannot be expected to account for any possible calamity, they can at least set in place a framework for the behavior of public bodies in times of crisis. This would be critical for government bodies in danger of violating open meeting protocols and other statutory regulations, and for communicating clearly to citizens what to expect in the event of a long-term emergency.

Zoning amendments are nothing new, and with so many local processes built on the infrastructure of state level regulations, many communities may be reluctant to reinvent the wheel by overhauling their long-established systems. But in the midst of a widespread housing crunch, where more and more citizens are expressing concerns about environmental sustainability, and when there is an increasing interest in addressing the harmful impacts of sprawl and car-centric transportation systems, it is no surprise that the public seems to be recognizing more broadly the need for effective and understandable local land use regulation. Local governments are creatures of the state, and without effective state-level regulations that address key concerns and are understandable and accessible to everyone, the creativity, efficacy, and autonomy of local governments to rezone well will be hamstrung. Beyond simply making sure that local governments are not acting in violation of state statute, planners and policymakers should continue to question whether those laws are adequately serving communities and responding to the inevitable change.

Appendix A. Excerpt from Analysis of Statutes

State	Name/ Code Title	Planning Enabling Legislation	Time Period for Newspaper Notices	Number of Newspape r Notices	Posting of Notices	Radius	Teleconferencing/Video Conferencing
Alabama	Code of Alabama	Title 11 Counties and Municipal Corporations, Chapter 52 Planning Zoning and Subdivisions, Sections 1 - 84	15 days (§ 11-52- 77)	Two (§11- 19-18)	"if there is no such newspaper, then by posting the proposed ordinance in four conspicuous places within the municipality" (11- 52-77)		
Alaska	Alaska Statutes	Title 29, Chapter 40 Platting, Planning and Land Use Regulation, Sections 010 - 200	once each week for two consecuti ve weeks, at least 10 days before the date set for hearing (§18.55.53 0h)	One (§18.55.53 0h)	"if there is no newspaper of general circulation, by posting the notice in three public places in the municipality at least 10 days before the date set for hearing "(§18.55.530)	"Notice of intent to grant a variance or a conditional use permit must be sent to all property owners of record within one- quarter mile of the parcel for which the variance or conditional use permit is requested, or to the owners of the record of the nearest 50 parcels, whichever number is greater." (11 AAC 91.110. )	Allowed. Meetings held by teleconference must be open to the public and must meet Open Meetings Act requirements, including giving notice of the teleconference site locations and having available commission materials at teleconference sites. All votes at teleconferenced meetings are by roll call. (AS 44.62.310(a))

Arizona	Code of Alabama	Title 9, Chapter 4, Article 6 Municipal Planning, Sections 461.01 - 461.13 et seq	at least fifteen days before the hearing. (A.R.S. § 9-462.04.)	One (A.R.S. § 9-462.04.)	If there is no newspaper, notice must be placed on property and at least ten public places in the municipality."	300 feet (9-462.04.)	
Arkansas	Arkansas Code	Title 14 Local Government	fifteen days prior to the hearing (§ 14-56)	One (§14-56)			
California	California Government Code	Title 7, Planning and Land Use, Division 1 Planning and Zoning, Sections 65000 - 66103	15 days (§36933(c)(1))	One (§36933(c)(1))	Three notices must be posted in public places in the city 10 days prior to the hearing if there is no newspaper (§65353)	300 feet (GOV § 65091) but "If the number of owners to whom notice would be mailed or delivered pursuant to this paragraph or paragraph (1) is greater than 1,000, a local agency, in lieu of mailed or delivered notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local agency in which the proceeding is conducted at least 10 days prior to the hearing" (GOV § 65091.4)	Teleconference allowed, but with a number of stipulations (GOV § 11123(b)(1). A)

Colorado	Colorado Revised Statutes	Title 29 Government - Local, Article 20 Local Government Regulation of Land Use, Part 1 Local Government Land Use Control Enabling Act, Sections 29-20-101 to 29-20-108	At least 14 days before hearing (C.R.S. § 31-23-208)	One (C.R.S. § 31-23-208)			Teleconference and potentially video allowed (not specified), subject to Open Meeting requirements (Colo. Rev. Stat. § 24-6-402(1))
Connecticut	General Statutes of Connecticut	Volume 2, Title 8 Zoning, Planning, Housing, Economic and Community Development and Human Resources, Chapters 124-127a, Sections 8-1 to 8-37h	intervals of not less than two days, the first not more than fifteen days or less than ten days and the last not less than two days before the date set for the hearing" (Sec. 8-7d)	2 (Sec. 8-7d)		Not explicitly allowed	

## Bibliography

“About Public Notice.” Public Notice Resource Center, June 12, 2013.

<https://www.pnrc.net/about-2/about-public-notice/>.

“Agenda.” Flagstaffaz.gov, 2019.

[http://cityweb.flagstaffaz.gov/agendaquick/agenda\\_publish.cfm?id=&mt=ALL&get\\_month=9&get\\_year=2019&dsp=agm&seq=4214&rev=1&ag=921&ln=21821&nseq=&nrev=&pseq=&prev=#ReturnTo21821](http://cityweb.flagstaffaz.gov/agendaquick/agenda_publish.cfm?id=&mt=ALL&get_month=9&get_year=2019&dsp=agm&seq=4214&rev=1&ag=921&ln=21821&nseq=&nrev=&pseq=&prev=#ReturnTo21821).

“American Planning Association.” Accessed April 15, 2020.

<https://www.planning.org/growingsmart/enablingacts.htm>.

Ana Isabel Baptista. “Local Policies for Environmental Justice: A National Scan.” NRDC,

March 20, 2019. <https://www.nrdc.org/sites/default/files/local-policies-environmental-justice-national-scan-tishman-201902.pdf>.

Angotti, Thomas, and Sylvia Morse. *Zoned out! : Race, Displacement, and City Planning in New York City*. New York: Urban Research (Ur, 2017.

Arnstein, Sherry R. “A Ladder Of Citizen Participation.” *Journal of the American Institute of Planners* 35, no. 4 (July 1969): 216–24. <https://doi.org/10.1080/01944366908977225>.

Baumeister, Reinhard, and Trans. Frank Koester. “Town Extensions: Their Links with Technical and Economic Concerns and with Building Regulations.”

[urbanplanning.library.cornell.edu](http://urbanplanning.library.cornell.edu), 1876.

<http://urbanplanning.library.cornell.edu/DOCS/baumeist.htm>.

“Beginner’s Guide to Land Use Law.” Pace law School. Accessed April 15, 2020.

<https://law.pace.edu/sites/default/files/LULC/LandUsePrimer.pdf>.

Bender, Thomas, and Howard P. Chudacoff. “The Evolution of American Urban Society.” *The Journal of American History* 62, no. 4 (March 1981): 1–10.

<https://doi.org/10.2307/1903851>.

Benton, J. Edwin. “The Effects of Changes in Federal Aid on State and Local Government Spending.” *Publius* 22, no. 1 (1992): 71–82. <https://doi.org/10.2307/3330234>.

“Bill Information (History) - House Bill 1564; Regular Session 2019-2020.” The official website for the Pennsylvania General Assembly., 2019.

[https://www.legis.state.pa.us/cfdocs/billInfo/bill\\_history.cfm?year=2019&sind=0&body=H&type=B&bn=1564](https://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?year=2019&sind=0&body=H&type=B&bn=1564).



- Bogart, William T. *Don't Call It Sprawl: Metropolitan Structure in the 21st Century*. Cambridge England ; New York: Cambridge University Press, 2006.
- Bridges, Amos. "Freedom to Speak? Rules Vary in Area Towns." *Springfield News-Leader*, June 12, 2015. <https://www.news-leader.com/story/news/local/ozarks/2015/06/12/freedom-speak-public-meetings-guarantee/71133986/>.
- Calder, Vanessa. "Zoning, Land-Use Planning, and Housing Affordability." *Ssrn.com*, 2018. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3112830](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3112830).
- Campbell, Heather E., Yushim Kim, and Adam Eckerd. "Local Zoning and Environmental Justice." *Urban Affairs Review* 50, no. 4 (October 30, 2013): 521–52. <https://doi.org/10.1177/1078087413505736>.
- Christian Hermansen Cordua. *Manifestoes and Transformations in the Early Modernist City*. Farnham, Surrey, England ; Burlington, Vt.: Ashgate Pub. Company, 2010.
- "Citizen's Guide to the Zoning Process." *Stlouisco.com*, 2020. <https://www.stlouisco.com/Property-and-Roads/Planning-Zoning-and-Subdivision-Information/Zoning-and-Subdivision-Information/Citizens-Guide-to-the-Zoning-Process#steps-timeframe>.
- City of Cambridge. "Zoning Amendments - CDD - City of Cambridge, Massachusetts." *Cambridgema.gov*, 2020. <https://www.cambridgema.gov/CDD/zoninganddevelopment/Zoning/Amendments>.
- Claeys, Eric. "Euclid Lives? The Uneasy Legacy of Progressivism in Zoning Euclid Lives? The Uneasy Legacy of Progressivism in Zoning." *Fordham Law Review*, Volume 73 Issue 2, 2004.
- "Court Affirms Reasonable Limits On Public Comment - Dannis Woliver Kelley | Attorneys at Law." *Dannis Woliver Kelley | Attorneys at Law*, October 15, 2018. <https://www.dwkesq.com/court-affirms-reasonable-limits-public-comment/>.
- Crane, Edward D. "Suffolk University Law Review » Five Is a Crowd: A Constitutional Analysis of the Boston Zoning Amendment Prohibiting More Than Four College Students From Living Together." *Suffolklawreview.org*, 2018. <http://suffolklawreview.org/crane-zoning/>.

Dalesio, Emery P. "Move to Online Public Notices Looms over Papers." ABC News. ABC News, May 22, 2009. <https://abcnews.go.com/Technology/story?id=7659030&page=1>.

"Department Facilitated Pre-Application Meeting | SF Planning." Sfplanning.org, 2020. <https://sfplanning.org/resource/department-facilitated-pre-application-meeting>.

Dietderich, Andrew. "An Egalitarian's Market: The Economics of Inclusionary Zoning Reclaimed." *Fordham Urban Law Journal* 24, no. 1 (1996): 29.

"Due Process." LII / Legal Information Institute, 2020. [https://www.law.cornell.edu/wex/due\\_process](https://www.law.cornell.edu/wex/due_process).

"Due Process Considerations in Zoning – Community Planning and Zoning." Extension.org, July 25, 2019. <https://community-planning.extension.org/due-process-considerations-in-zoning/>.

"DUE PROCESS OF LAW." LII / Legal Information Institute, 2020. <https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/due-process-of-law>.

Dunphey, Kristen. "The Project for Code Reform." CNU, March 20, 2017. <https://www.cnu.org/our-projects/project-code-reform>.

Einstein, Katherine Levine, Maxwell Palmer, and David M Glick. "Who Participates in Local Government? Evidence from Meeting Minutes." *Bu.Edu*, October 14, 2018. <https://doi.org/1537-5927>.

Elliott, Donald L. *A Better Way to Zone : Ten Principles to Create More Liveable Cities*. Washington, Dc: Island Press, 2008.

Enos, Ryan D., Anthony Fowler, and Lynn Vavreck. "Increasing Inequality: The Effect of GOTV Mobilization on the Composition of the Electorate." *The Journal of Politics* 76, no. 1 (January 2014): 273–88. <https://doi.org/10.1017/s0022381613001308>.

"Facing Legal Complexities of Proposed Zoning Law, Lenox Backs off Short-Term Rental Regs Plan." The Berkshire Eagle, April 11, 2018. <https://www.berkshireeagle.com/stories/facing-legal-complexities-of-proposed-zoning-law-lenox-backs-off-short-term-rental-regs-plan,536884>.

Fischel, William A. "An Economic History of Zoning and a Cure for Its Exclusionary Effects." *SSRN Electronic Journal*, 2003. <https://doi.org/10.2139/ssrn.461140>.

- Fischel, William A. *The Homevoter Hypothesis : How Home Values Influence Local Government Taxation, School Finance, and Land-Use Policies*. Cambridge, Massachusetts ; London, England Harvard University Press, 2005.
- Freeland v. Orange County (273 N.C. 452, 160 S.E.2d 282 1968).
- Freilich, Robert, and Derek Guemmer. “Removing Artificial Barriers to Public Participation in Land-Use Policy: Effective Zoning and Planning by Initiative and Referenda.” *Source: The Urban Lawyer* 21, no. 3 (1989): 511–56.
- Hall, Eliza. “Divide and Sprawl, Decline and Fall: A Comparative Critique of Euclidean Zoning.” *University of Pittsburgh Law Review* 68, no. 4 (April 26, 2007): 915. <https://doi.org/10.5195/lawreview.2007.77>.
- Hancock, Jason. “Citing Coronavirus Outbreak, Missouri House Moves Quickly to Change Open Meetings Law.” *kansascity*. The Kansas City Star, March 17, 2020. <https://www.kansascity.com/news/politics-government/article241229301.html>.
- Hart, John F. “Colonial Land Use Law and Its Significance for Modern Takings Doctrine.” *Harvard Law Review* 109, no. 6 (April 1996): 1252–1300. <https://doi.org/10.2307/1342215>.
- Healy, Patsy, and et al. “Land Use Planning and the Mediation of Urban Change.” *Economic Geography* 73, no. 2 (1988). <https://doi.org/10.2307/144450>.
- Heisch, Sandra. “Community Meeting | Anne Arundel County, MD.” *Aacounty.org*, June 7, 2018. <https://www.aacounty.org/departments/planning-and-zoning/development/community-meeting/>.
- Hendrickson, Clara. “Critical in a Public Health Crisis, COVID-19 Has Hit Local Newsrooms Hard.” *Brookings*. Brookings, April 8, 2020. <https://www.brookings.edu/blog/fixgov/2020/04/08/critical-in-a-public-health-crisis-covid-19-has-hit-local-newsrooms-hard/>.
- Hirt, Sonia. *Zoned in the USA : The Origins and Implications of American Land-Use Regulation*. Ithaca: Cornell University Press, 2015.
- Jacobs, Jane, and Jason Epstein. *The Death and Life of Great American Cities*. New York: Modern Library, 2011.
- John, Richard R. “Review of Unequal Democracy: The Political Economy of the New Gilded Age.” *The Forum* 6, no. 3 (January 9, 2008). <https://doi.org/10.2202/1540-8884.1262>.

- Jorden, Douglas, and Michele Hentrich. "Public Participation Is on the Rise: A Review of the Changes in the Notice and Hearing Requirements for the Adoption and Amendment of General Plans and Rezoning Nationwide and in Recent Arizona Land Use Legislation." *Natural Resources Journal* 43, no. 3 (2003): 865–86.
- Karpel, Richard. "The Year in Public Notice Legislation." Public Notice Resource Center, December 5, 2018. <https://www.pnrc.net/2018/12/05/the-year-in-public-notice-legislation-2/>.
- Katherine Levine Einstein, David Matthew Glick, and Maxwell Palmer. *Neighborhood Defenders : Participatory Politics and America's Housing Crisis*. Cambridge, United Kingdom ; New York, Ny: Cambridge University Press, 2020.
- Kentucky Legislative Research Commission. "20RS HB 195." Ky.gov, 2020. <https://apps.legislature.ky.gov/record/20rs/hb195.html>.
- Knaap, Gerrit, Stuart Meck, Terry Moore, and Robert Parker. "Zoning as a Barrier to Multifamily Housing Development." *American Planning Association*. Planning Advisory Service Report Number 548, 2007.
- Kublicki, Nicolas. "Land Use by, for, and of the People: Problems with the Application of Initiatives and Referenda to the Zoning Process." *Pepperdine Law Review* 19, no. 1 (November 12, 2012). <http://digitalcommons.pepperdine.edu/plr/vol19/iss1/4>.
- "Land Use in California — Turner Center for Housing Innovation." Californialanduse.org, 2017. <http://californialanduse.org/index.html>.
- "Legislative v Quasi-Judicial Land Use Decisions." Community and Economic Development, 2020. <https://www.extension.iastate.edu/communities/legislative-v-quasi-judicial-land-use-decisions>.
- Levine, Jeremy R. "The Paradox of Community Power: Cultural Processes and Elite Authority in Participatory Governance." *Social Forces* 95, no. 3 (January 9, 2017). <https://doi.org/10.1093/sf/sow098>.
- Mandelker, Daniel R. *Land Use Law*. Charlottesville, Va.: Lexis Law Pub, 1997.
- Martin, Shannon E, and Kathleen A Hansen. *Newspapers of Record in a Digital Age : From Hot Type to Hot Link*. Westport, Conn. ; London: Praeger, 1998.
- McComas, Katherine A. "Theory and Practice of Public Meetings." *Communication Theory* 11, no. 1 (February 2001): 36–55. <https://doi.org/10.1111/j.1468-2885.2001.tb00232.x>.

- Mcfarlane, Audrey. "When Inclusion Leads to Exclusion: The Uncharted Terrain of Community Participation in Economic Development," 2009.  
[https://doi.org/https://www.researchgate.net/publication/228164236\\_When\\_Inclusion\\_Leads\\_to\\_Exclusion\\_The\\_Uncharted\\_Terrain\\_of\\_Community\\_Participation\\_in\\_Economic\\_Development](https://doi.org/https://www.researchgate.net/publication/228164236_When_Inclusion_Leads_to_Exclusion_The_Uncharted_Terrain_of_Community_Participation_in_Economic_Development).
- McQuarrie, Michael. "No Contest: Participatory Technologies and the Transformation of Urban Authority." *Public Culture* 25, no. 1 (2013): 143–75. <https://doi.org/10.1215/08992363-1890495>.
- Meng, Amy. "The Coronavirus Response Shows How Crucial Accessibility Is." BuzzFeed News. BuzzFeed News, March 13, 2020.  
<https://www.buzzfeednews.com/article/amymeng/coronavirus-working-from-home-disability-accessibility>.
- Metzenbaum, James. "The History of Zoning--A Thumbnail Sketch." *Case Western Reserve Law Review* 9, no. 1 (January 1, 1957): 36.  
<https://scholarlycommons.law.case.edu/caselrev/vol9/iss1/6>.
- Moore, Jeff. "Take Notice: Public Notices Important Part of History." *The Daily Reporter - WI Construction News & Bids*, January 7, 2011. <https://dailyreporter.com/2011/01/07/take-notice-public-notices-important-part-of-history/>.
- "National Longitudinal Land Use Survey (NLLUS)." *Urban Data Catalog*, September 30, 2019.  
<https://datacatalog.urban.org/dataset/national-longitudinal-land-use-survey-nllus>.
- "Nebraska Attorney General." Attorney General Doug Peterson - To serve the citizens of Nebraska and Nebraska's elected officials with fidelity to our U.S. Constitution, State Constitution, and Nebraska law., 2020. <https://ago.nebraska.gov/news/attorney-general-guidance-executive-order-no-20%E2%80%94403-coronavirus-%E2%80%9494-public-meetings-requirement>.
- Ohl, Danielle. "Developers Challenge New Annapolis Public Meeting Law." *capitalgazette.com*. Capital Gazette, January 22, 2018.  
<https://www.capitalgazette.com/maryland/annapolis/ac-cn-hyatt-judgement-20180122-story.html>.

- Owens, David. "Zoning Hearings: Knowing Which Rules to Apply." UNC School of Government, January 1997. <https://www.sog.unc.edu/resources/legal-summaries/zoning-hearings-knowing-which-rules-apply>.
- Pease, Otis. "Urban Reformers in the Progressive Era: A Reassessment." *Source: The Pacific Northwest Quarterly* 62, no. 2 (1971): 49–58.
- Piotrowski, Suzanne. "An Analytic Framework for Open Meetings and Transparency." *Public Administration & Management*. 15. 138-176, 2010.
- "Planning and Zoning | Shasta Lake, CA - Official Website." [Cityofshastalake.org](http://Cityofshastalake.org), 2019. <https://www.cityofshastalake.org/478/Planning-Division>.
- "Planning Board Bylaws." [Denvergov.org](http://Denvergov.org), 2019. [https://www.denvergov.org/content/denvergov/en/community-planning-and-development/planning-and-design/planning-board/Planning\\_Board\\_Bylaws.html](https://www.denvergov.org/content/denvergov/en/community-planning-and-development/planning-and-design/planning-board/Planning_Board_Bylaws.html).
- "Public Comment." Citizen Advocacy Center, 2015. [https://www.citizenadvocacycenter.org/uploads/8/8/4/0/8840743/public\\_comment\\_brochure\\_final\\_jan\\_2015.pdf](https://www.citizenadvocacycenter.org/uploads/8/8/4/0/8840743/public_comment_brochure_final_jan_2015.pdf).
- Ramírez de la Cruz, Edgar E. "Local Political Institutions and Smart Growth." *Urban Affairs Review* 45, no. 2 (April 10, 2009): 218–46. <https://doi.org/10.1177/1078087409334309>.
- Redburn, Kate. "Zoned Out: How Zoning Law Undermines Family Law's Functional Turn." *SSRN Electronic Journal*, 2017. <https://doi.org/10.2139/ssrn.3109969>.
- "Reform Local Codes." American Planning Association, 2014. <https://www.planning.org/home/action/codes/>.
- Richards, J. Gregory. "Zoning for Direct Social Control." *Duke Law Journal* 1982, no. 5 (November 1982): 761–86. <https://doi.org/10.2307/1372309>.
- Rieders, Lauren. "Old Principles, New Technology, and the Future of Notice in Newspapers." *Hofstra Law Review* 38, no. 3 (2010): 1009.
- Rosen, Christine Meisner. "'Knowing' Industrial Pollution: Nuisance Law and the Power of Tradition in a Time of Rapid Economic Change, 1840-1864." *Environmental History* 8, no. 4 (October 2003): 569. <https://doi.org/10.2307/3985884>.
- Rothstein, Richard. *The Color of Law : A Forgotten History of How Our Government Segregated America*. New York ; London: Liveright Publishing Corporation, A Division Of W. W. Norton & Company, 2018.

- Sampson, Robert J. “Neighbourhood Effects and beyond: Explaining the Paradoxes of Inequality in the Changing American Metropolis.” *Urban Studies* 56, no. 1 (October 2, 2018): 3–32. <https://doi.org/10.1177/0042098018795363>.
- Schuetz, Jenny. “No Renters in My Suburban Backyard: Land Use Regulation and Rental Housing.” *Journal of Policy Analysis and Management* 28, no. 2 (December 2009): 296–320. <https://doi.org/10.1002/pam.20428>.
- Shertzer, Allison, Tate Twinam, and Randall P. Walsh. “Race, Ethnicity, and Discriminatory Zoning.” *American Economic Journal: Applied Economics* 8, no. 3 (July 2016): 217–46. <https://doi.org/10.1257/app.20140430>.
- Shlay, Anne B. “Regulating Scarcity: The Effects of Zoning on Urban Land Market Changes.” *Journal of Urban Affairs* 6, no. 3 (October 1984): 19–35. <https://doi.org/10.1111/j.1467-9906.1984.tb00449.x>.
- Shoup, Donald. “Graduated Density Zoning.” *Journal of Planning Education and Research* 28, no. 2 (December 2008): 161–79. <https://doi.org/10.1177/0739456x08321734>.
- Silver, Christopher. “The Racial Origins of Zoning: Southern Cities from 1910–40.” *Planning Perspectives* 6, no. 2 (May 1991): 189–205. <https://doi.org/10.1080/02665439108725726>.
- Sonka, Joe. “Gov. Andy Beshear Signs 36 Bills into Law but Vetoes 2. Here’s What You Need to Know.” *The Courier-Journal*. Louisville Courier Journal, March 28, 2020. <https://www.courier-journal.com/story/news/politics/2020/03/28/kentucky-gov-andy-beshear-vetoes-taxing-district-legal-notice-bills/2933240001/>.
- Staley, Samuel R. “The Progressive Roots of Zoning | Samuel R. Staley.” *Fee.org*. Foundation for Economic Education, March 28, 2012. <https://fee.org/articles/the-progressive-roots-of-zoning/>.
- Stein, Samuel. *Capital City : Gentrification and the Real Estate State*. London: Verso, 2019.
- Storror, Richard F. “The Policy of Family Privacy: Uncovering the Bias in Favor of Nuclear Families in American Constitutional Law and Policy Reform.” *Missouri Law Review* 66, no. 3 (2001). <https://doi.org/10.2139/ssrn.289677>.
- Talen, Emily. “Zoning For and Against Sprawl: The Case for Form-Based Codes.” *Journal of Urban Design* 18, no. 2 (May 2013): 175–200. <https://doi.org/10.1080/13574809.2013.772883>.

- Talen, Emily, and Andres Duany. *City Rules : How Regulations Affect Urban Form*. Washington: Island Press, 2012.
- Tandy, Elizabeth C. “The Regulation of Nuisances in the American Colonies.” *American Journal of Public Health* 13, no. 10 (October 1923): 810–13.  
<https://doi.org/10.2105/ajph.13.10.810>.
- Tarlock, Dan. “Toward a Revised Theory of Zoning.” *Management and Control of Growth*, 1973.
- “The Requirements of Due Process.” LII / Legal Information Institute, 2016.  
<https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/the-requirements-of-due-process>.
- Tideman, T.N. “Three Approaches to Improving Urban Land Use.” *Doctoral Dissertation, University of Chicago*, 1969.
- Toll, Seymour. *Zoned American*. New York, Grossman Publishers, 1969.
- Trounstine, Jessica. *Segregation by Design :Local Politics and Inequality in American Cities*. Cambridge Cambridge University Press, 2019.
- Village of Belle Terre v. Boraas 416 U.S. 1 (n.d.).
- Village of Euclid, Ohio v. Ambler Realty Co. (U.S. 1926).
- White, Michelle J., and William A. Fischel. “The Economics of Zoning Laws: A Property Rights Approach to American Land Use Controls.” *Land Economics* 62, no. 4 (November 1986): 426. <https://doi.org/10.2307/3146477>.
- Wickersham, Jay. “Jane Jacob’ s Critique of Zoning: From Euclid to Portland and Beyond.” 28 *B.C. Envtl. Aff. L. Rev* 28, no. 4 (2001).
- Witten, Jon. “The Cost of Developing Affordable Housing: At What Price?,” *Land Use Law & Zoning Digest* 54, no. 1 (January 2002).  
<https://doi.org/10.1080/00947598.2002.10394753>.
- Wood, Alex. “Legal Notices Moved to Website.” *Journal Inquirer*, April 3, 2020.  
[https://www.journalinquirer.com/towns/glastonbury/legal-notices-moved-to-website/article\\_986dc5b2-75c0-11ea-aa6d-87b16d1e4b56.html](https://www.journalinquirer.com/towns/glastonbury/legal-notices-moved-to-website/article_986dc5b2-75c0-11ea-aa6d-87b16d1e4b56.html).
- “Zoning and the Law of Nuisance.” *Fordham Law Review* 29, no. 4 (January 1, 1961): 749.  
<https://ir.lawnet.fordham.edu/flr/vol29/iss4/10>.



“Zoning Process Flow Chart PRE-DEVELOPMENT MEETING (OPTIONAL) SUBMIT APPLICATION & PAY APPLICATION FEE STAFF PREPARES REPORT & SENDS OUT PROPERTY NOTIFICATION LETTERS PROCESS ENDS ZONING IS APPROPRIATE FOR USE P&Z COMMISSION RECOMMENDATION REQUEST TO APPEAL TO CITY COUNCIL NO NO YES YES APPROVE APPROVE APPROVE PLANNING & ZONING COMMISSION PUBLIC HEARING CITY COUNCIL HEARING 1 ST READING OF ORDINANCE FILE IS CLOSED REZONING IS APPROVED ORDINANCE IS ADOPTED FILE IS CLOSED CITY COUNCIL HEARING 2 ND READING OF ORDINANCE City of Abilene Planning & Zoning Department Planning@abilenetx.Com • (325) 676-6237.” Accessed April 16, 2020. <https://www.abilenetx.gov/DocumentCenter/View/3673/Zoning-Process-Flow-Chart-PDF>.

“Zoning Process Flow Chart PRE-DEVELOPMENT MEETING (OPTIONAL) SUBMIT APPLICATION & PAY APPLICATION FEE STAFF PREPARES REPORT & SENDS OUT PROPERTY NOTIFICATION LETTERS PROCESS ENDS ZONING IS APPROPRIATE FOR USE P&Z COMMISSION RECOMMENDATION REQUEST TO APPEAL TO CITY COUNCIL NO NO YES YES APPROVE APPROVE APPROVE PLANNING & ZONING COMMISSION PUBLIC HEARING CITY COUNCIL HEARING 1 ST READING OF ORDINANCE FILE IS CLOSED REZONING IS APPROVED ORDINANCE IS ADOPTED FILE IS CLOSED CITY COUNCIL HEARING 2 ND READING OF ORDINANCE City of Abilene Planning & Zoning Department Planning@abilenetx.Com • (325) 676-6237.” Accessed April 16, 2020. <https://www.abilenetx.gov/DocumentCenter/View/3673/Zoning-Process-Flow-Chart-PDF>.