

Guest Editor's Introduction

It's Not Only Hoover's Fault: Reflections and Opportunities on the Centennial of the State Zoning Enabling Act

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Introduction

The lack of sufficient housing units in communities across the United States has resulted in high housing costs (Gyourko and Molloy, 2015) and accompanying high rates of housing instability (Raphael, 2010), reduced labor mobility (Ganong and Shoag, 2012), and increased commuting times (with harmful climate impacts) (Gately and Reardon, 2021). Those consequences negatively affect households, neighborhoods, local governments, and regions. Land use regulation is regularly identified as significantly contributing to the lack of housing, with a particular focus on zoning ordinances, which are adopted at the local level. Local choices thus contribute to a national affordability crisis, suggesting the need for federal action. Recent administrations going back to 2016 have proposed the need for regulatory reform to increase housing supply (White House, 2016, 2019, 2022). Those actions often are met with consternation, anger, or fear: the federal government should not be involved in local land use decisions. However, the federal government supported local zoning 100 years ago, raising the question of what role that involvement played in creating today's housing outcomes.

In 1921, the U.S. Department of Commerce, under its then-Secretary Herbert Hoover, supported the formation of an Advisory Committee on Zoning. The Advisory Committee's charge included aiding communities interested in the "promotion of the public welfare and the protection of property values" (U.S. Dept of Commerce, Advisory Committee on Zoning, 1926: 7 [orig. ed.

1922]). The Committee published two documents in 1922: *A Zoning Primer* (Primer) and *A Standard State Zoning Enabling Act, Under Which Municipalities May Adopt Zoning Regulations* (Enabling Act; U.S. Dept of Commerce, Advisory Committee on Zoning, 1922). Just how influential the Enabling Act was in the widespread adoption of local zoning ordinances is unclear. The Advisory Committee reported that on May 22, 1922, 66 municipalities had zoning ordinances, and another 114 were developing zoning plans (Primer, 1926: 6). In the foreword to the 1926 reprinting, Hoover notes that, within a year of issuance of the Enabling Act, 11 states had passed zoning enabling acts (U.S. Dept of Commerce, Advisory Committee on Zoning, 1926). Fischel states, “Before 1910, there was not a single zoning ordinance in the United States. By 1930, it had spread to all sections of the country” (2015: 170). Zoning ordinances had been adopted in 8 cities by the end of 1916, another 68 cities by 1926, and an additional 1,246 municipalities by 1936, constituting 70 percent of the U.S. population (Fischel, 2015: 171).

While Hoover’s Advisory Commission was meeting, elected city officials, local staff, and esteemed planning experts were debating whether they could implement zoning in their cities and which use categories to adopt. Secretary Hoover viewed the Advisory Committee as responding to an urgent need. Zoning interferes with individuals’ use of their land. Only through the police power—for the protection of public health, safety, and general welfare—may the government interfere with private activity. The Standard State Zoning Enabling Act was a tool by which states could delegate zoning to their municipalities constitutionally. For example, one of the explanatory notes states, “Modify this standard act as little as possible. It was prepared with a full knowledge of the decisions of the courts in every case ... A safe course to follow is to make only those changes necessary to have the act conform to local legislative customs and modes of expression” (Enabling Act, 1926: 1). The 1926 U.S. Supreme Court decision in *Euclid v. Ambler*, which upheld zoning districts under the police power, was the final piece needed to give localities assurance that their local zoning ordinances would be upheld.

The Enabling Act and accompanying Primer arguably did more than provide states with a tool: “Calls for [the Enabling Act] have been received from persons in all sections of the country who have desired to use it on account of its general bearing on the legal and social aspects of zoning” (Enabling Act, 1926: 3). Thus, the Advisory Committee’s work likely served as a resource in local debates and influenced the choices made.

The Primer provides insights into what zoning was intended to accomplish. Protecting property values was important from the beginning, as zoning was lauded for stabilizing property values, supporting more mortgage lending, and leading to more houses being built (Primer, 1922: 2). The Enabling Act specifically notes that zoning is “not intended to enhance the value of buildings but to conserve that value” (1926: 7, fn 25). The input of local residents was a central component: “The professional zoning expert [must] call upon the citizens for much of the accurate information upon which any good zoning regulations must be based” (Primer, 1922: 5). Although those elements continue to guide many local land use policies, other goals outlined in the Primer have not been met. The Primer proposes that zoning will enable more houses to be built (Primer, 1922: 2). It also anticipates that zoning will avoid the wasteful extension of infrastructure to more distant locations

and reduce the amount of transportation. Furthermore, zoning is not intended to “stifle growth” but to ensure that it is done in an orderly way (Primer, 1922: 6).

In the ensuing hundred years, zoning has failed to meet several of the goals envisioned by Hoover's Advisory Committee. Permitted under the auspices of protecting public health, safety, and the general welfare, zoning and other land use regulations have contributed to patterns and practices that create harm to households and communities. The centennial of the formation of the Advisory Committee and its publication of the Enabling Act causes one to reflect on the factors that contributed to the development of the Enabling Act, the implications of the system of local zoning, and alternatives and reforms that can be implemented in the current environment. This *Cityscape* symposium is designed to provide an opportunity for researchers and policymakers to address those issues.

Symposium Articles

The symposium begins with two articles that provide historical background and discuss its implications for current zoning reform. In “Single-Family Zoning and the Police Power: Early Debates in Boston and Seattle,” John Infranca examines, through archival research, how the justifications for single-family zoning developed by prominent national leaders in the zoning movement were enlisted by zoning proponents in Boston and Seattle. While Hoover's Advisory Committee was being created and drafting its Primer and the Enabling Act, local governments were hiring experts to advise them how to construct a system for addressing concerns about land use that would hold up in court. The local proponents defended zoning, a new form of regulation, as a valid exercise of the police power, furthering health, safety, and the general welfare. Some of the local goals identified in the discourse continue to drive land use regulation today, particularly protection of property values and providing stability to support investment. Details on debates in Seattle over whether duplexes should be included in residential districts are relevant as the issue is being debated—although likely with different arguments and outcomes—in jurisdictions throughout the country today. Infranca recommends that states consider public health, safety, and welfare—the basis for initial acceptance of local zoning power—as they move forward with regulatory reform, particularly in light of environmental challenges, housing costs, and inequality in access to schools and other resources.

Royce Hanson, in “Of Pigs in Parlors: The Politics of Local Zoning ‘Reform,’” combines a knowledge of the history and mechanics of zoning with his years of experience as the head of a local planning commission to identify the political environment that makes zoning change difficult. Although land use often is seen as a conflict between Molotch's “growth machine” and Fischel's “homevoters” (see, for example, Been, Madar, and McDonnell, 2014), Hanson's commentary frames zoning as a convergence of interests between the commercial republic and citizens' miniature republics, going back in history (long before the Enabling Act) to Hamilton and Madison's different visions for the new country. Those shared interests, which include sufficient growth to sustain home values, low taxes, and a high level of services and amenities, do not lead to the production of below-market-rate housing. According to Hanson, local governments, faced with the need to act in response to the affordable housing crisis, look to zoning reforms as a preferable option to implementing

redistributive or distributive policies. They therefore consider changes, such as allowing duplexes and reducing parking requirements. Such relatively minor changes face local resistance, suggesting that other policy approaches may be required. Fortunately, other authors in the symposium consider the potential for state action to increase housing supply.

The Enabling Act envisioned municipalities across the country having the authority to develop zoning ordinances that reflect local conditions. The resulting thousands of local zoning codes have made analyzing the effect of zoning specifications across jurisdictions difficult. This situation poses a challenge for conveying similarities and differences among zoning codes, determining the prevalence of specific zoning provisions, or examining the relationship between zoning districts and outcomes. Wenfei Xu, Scott Markley, Sara C. Bronin, and Diana Drogaris, in “A National Zoning Atlas to Inform Housing Research, Policy, and Public Participation,” describe the development of the National Zoning Atlas, a collaboration that creates a picture of zoning, literally, that can be used for research and policy development. By constructing a method for standardizing and coding local zoning ordinances and combining them with geospatial data, the National Zoning Atlas team has enabled coordination among independent organizations across the country to develop detailed information on zoning districts. The Atlas allows comparison across municipalities—within a metropolitan area, within a state, and across metropolitan areas and states. This tool presents new research opportunities, such as an analysis in Connecticut on how zoning codes correlated with inequality and evaluation of proposed zoning reforms. As importantly, it translates what can be a complicated legal document into usable information for public discussion and policymaking. A greater understanding of current zoning and how it determines what is built and who can afford to live there may encourage residents to consider changes to their zoning code, as occurred in Montana following development of the Montana Zoning Atlas and which resulted in state legislative action.

In “How Can State Governments Influence Local Zoning to Support Healthier Housing Markets?” Jenny Schuetz considers states’ opportunities to influence local land use regulations to improve housing market outcomes through increased housing production. She identifies the policy tools available to states—regulations, taxes, subsidies, and information sharing—and how they can support increased housing supply. Underlying Schuetz’s analysis is recognition of the need to design state policies to respond to current market conditions and needs. Schuetz uses California, Massachusetts, Oregon, Utah, and Virginia to describe a range of state approaches. The states’ level of engagement and choice of policy tools reflect their capacity and traditional role in land use regulation. For example, California and Massachusetts have a long history of involvement in land use regulation compared with Utah and Virginia. Although states may differ in what tools they select and how they apply those tools, states should consider taking action where housing markets are not functioning properly. The federal government also has a role to play, but that does not include designing model codes. Instead, Schuetz recommends that it provide quality, timely data to inform policy reforms and evaluate their effectiveness; identify best practices and pitfalls; and offer technical assistance to states and localities that want to implement policy reforms but lack the staff and financial resources.

Christopher Wielga looks at state preemption of local zoning regulations, specifically related to accessory dwelling units, in “Accessory Dwelling Units and the Preemption of Land Use Regulation” to explore one way in which states can influence local land use regulation. He finds variation among the nine states that have used preemption to promote the development of accessory dwelling units, addressing issues such as parking, owner occupancy, lot size, and floor area. Several states revisited their policies over time, usually to increase the scope of the preemption, in response to local implementation of the preemption. Wielga’s analysis is an example of the trial and error that may be needed at the state level to achieve the intended outcome. It also reflects a major theme from Schuetz’s work: each state must respond to local context; no single approach is likely to be effective throughout the country.

An alternative to states preempting local action in a specific regulatory area is states adopting legislation that encourages or mandates regulatory action, such as permitting duplexes by-right in single-family residential zones. Edward Pinto and Tobias Peter offer a model code for state and local jurisdictions to adopt to accomplish this gradual increase in density in “How Government Policy Has Made Housing Expensive and Scarce, and How Unleashing Market Forces Can Address It.” These authors, too, consider the history of zoning, finding that it was designed from the beginning as a tool of segregation, using economic segregation to support racial segregation. A hundred years later, zoning continues to support economic segregation. To produce less expensive homes, given land prices, they recommend adopting rules to allow more than one housing unit on lots currently zoned for single-family homes. This concept aligns with many of the reforms being considered at the state and local levels. Informed by a series of case studies, Pinto and Peter offer a model light-touch density bill with options that would make it effective for both greenfield and infill development that can be adopted at the state or local level. The bill provides for accessory dwelling units and two- to four-unit buildings and values access to amenities. Important components include the use of objective standards and ministerial approval.

The light-touch density proposal is consistent with Hanson’s reflection that these types of reforms may be the most politically viable means to address housing needs without significantly changing the character of the community or risking residents’ home values. Pinto and Peter support light-touch density to produce more housing, decrease the cost per unit, reduce neighbor resistance (because the change is gradual), and enable the market to respond to demand.

The symposium concludes with an international perspective that indicates the United States is not alone in having designed a system of land use planning that fails to meet current needs for sufficient, affordable housing. In “An International Perspective on the U.S. Zoning System,” Paul Cheshire compares the U.S. zoning system with the U.K. planning system, informed by other countries’ planning approaches. Grounding his analysis in the purposes of planning, Cheshire proposes that the U.S. and U.K. systems fail to meet the basic goals. He then considers planning systems along a continuum of discretion/rule-based and local/national formulation and control. Although the two systems have very different structures, both the U.S. and U.K. systems lean toward discretion and local control, which create the opportunity for significant delay and higher costs, making homes more expensive to produce—and to buy. The local focus also gives current residents’ interests greater weight than future residents. The detailed discussion on development in

the United Kingdom, with its similarities and differences from the U.S. system, provides a helpful context from which to evaluate U.S. zoning. Although suddenly changing its planning system to be national-focused and rules-based is infeasible for either country, states could benefit from more regional approaches, such as the metro regions of France, or fiscal changes to encourage different land use outcomes.

As policymakers consider the many options presented in the symposium papers, considering the purposes of planning and zoning today is worthwhile. The goals identified in the Primer in 1922 did not include equity, sustainability, access to opportunity, and provision of sufficient affordable and quality housing for households of all income levels. Perhaps the time has come to revisit whether the states are enabling conduct in their municipalities that the nation as a whole will continue to support.

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Mark Shroder envisioned this symposium to mark the centennial of the federal government's early role in local zoning and, perhaps, spark ideas on federal opportunities to use zoning differently to improve housing availability and affordability. I thank the authors for their submissions and the referees who brought their expertise to improve the components of this symposium. I also thank my HUD colleagues, who offered guidance and support.

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