

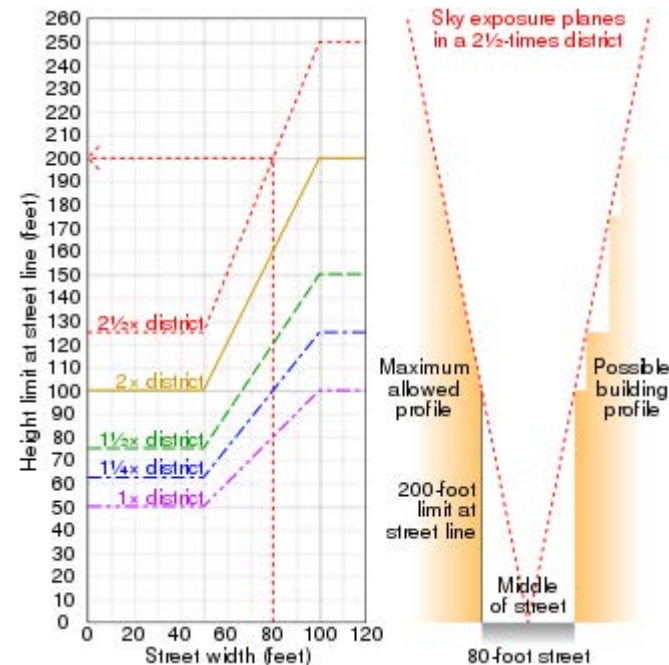
Zoning for Economic Development

11.438 Economic Development Planning

Jeff Levine, AICP

What is Zoning?

- Originally designed as a public health response to living conditions in urban areas
- 1908 Los Angeles City Council separates uses
- New York City's "1916 Zoning Resolution" focused on setbacks and stepbacks
- Core values:
 - Health
 - Safety
 - "Welfare"

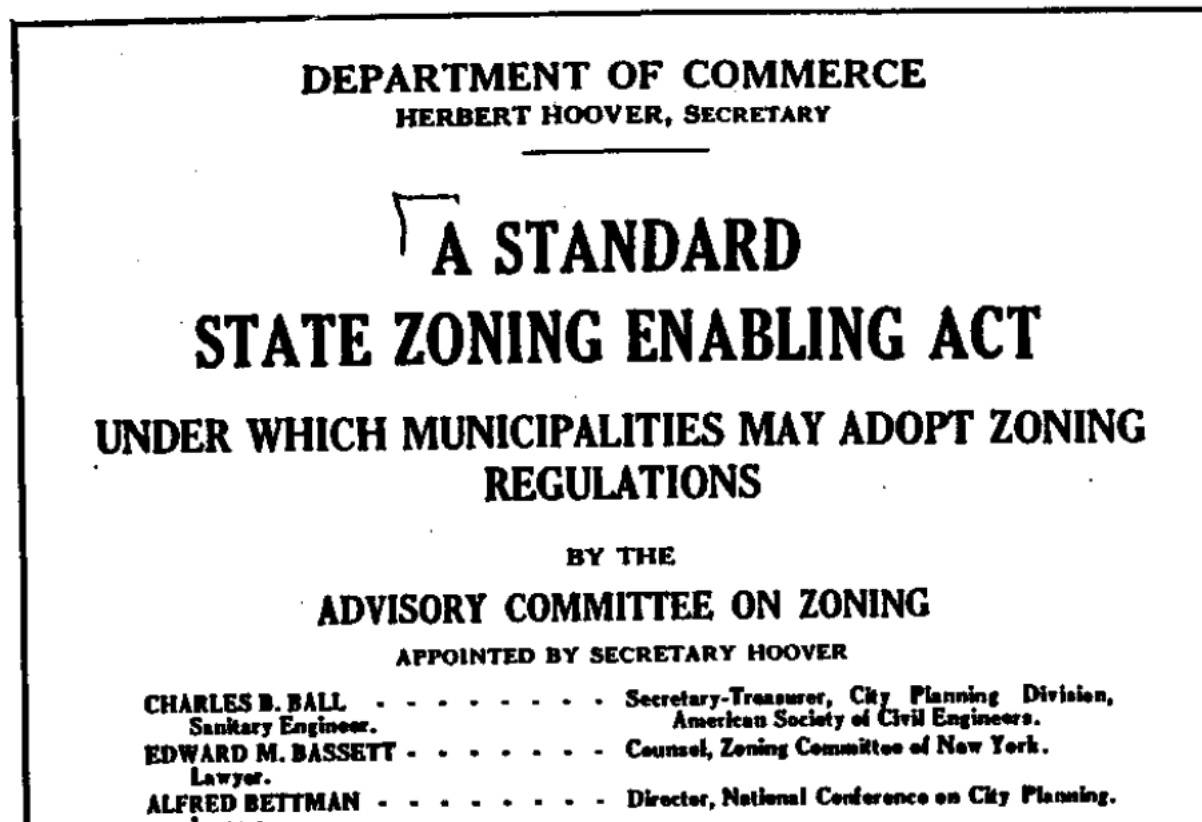


Regulatory Redlining

- Zoning in the 1910's was used for explicit racial segregation Baltimore, Richmond, Atlanta, Louisville...
- Courts were not initially amused
- U.S. Supreme Court ruled that Louisville's code violated the 14th Amendment and the "Right to Contract" (*Buchanan v. Warley* (245 U.S. 60 (1917)))
- Cities kept doing it anyway, sometimes more subtlety

Standard State Zoning Enabling Act

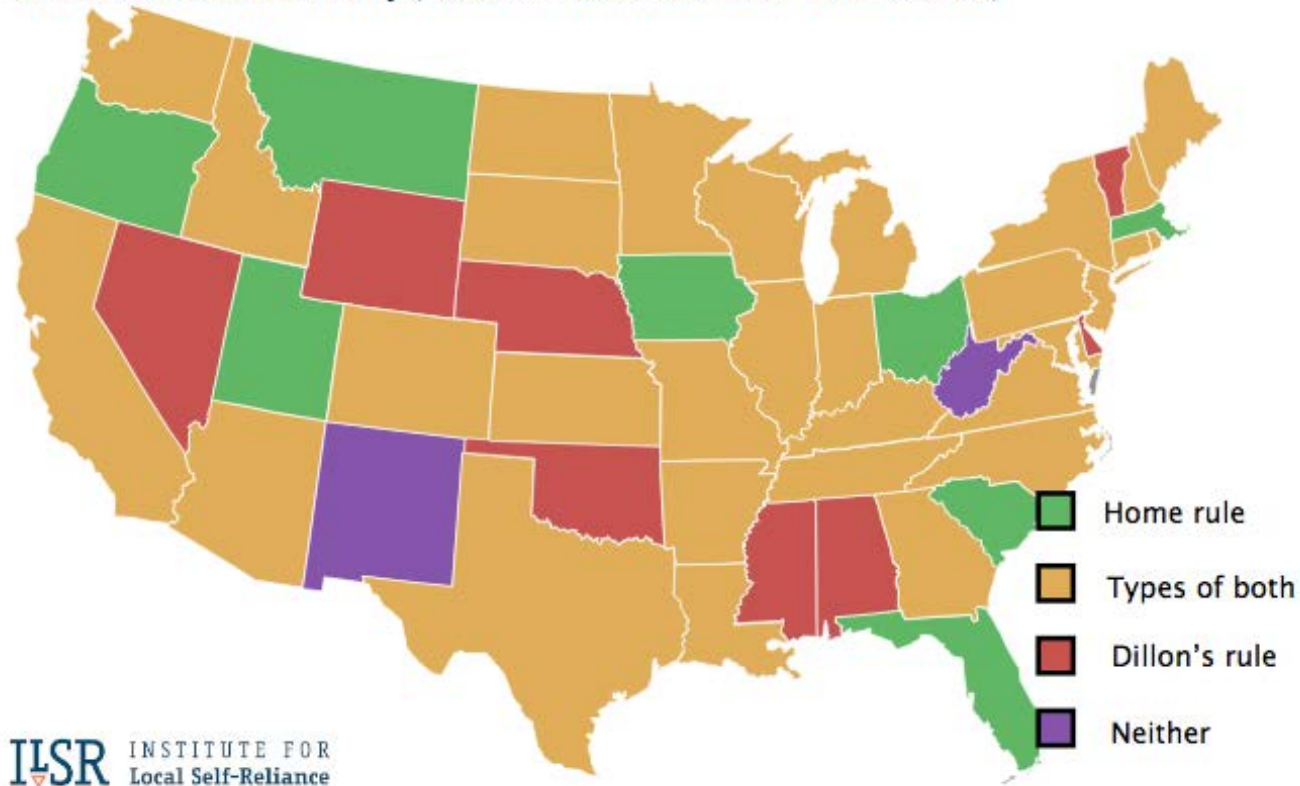
- U.S. Department of Commerce 1922 guidance
- By 1926, 19 states had passed enabling acts



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Home Rule in the United States

The Limits of Local Authority (Based on “Home Rule” and “Dillon’s Rule”)



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Why is Zoning Allowed?

- Village of Euclid v. Ambler Realty Company (272 U.S. 365 (1926)): Supreme Court case upholding the right to zoning as a use of police power to protect the public welfare, within reason.
- MGL c. 40A: Not a “zoning enabling act” but frames the limits of Home Rule. Clear rules on municipal discretion (Variance and Special Permits); grandfathering; and nonconforming uses.
- MGL c. 40B, 40R: Outline additional opportunities and responsibilities with respect to affordable housing (40B) and growth zones (40R). Sets obligation of municipalities to meet affordable housing needs and also of the state to financially support Smart Growth.

“Euclidean Zoning”

- Euclidean zoning is a zoning by specific and uniform geographical division.
- It is a system of zoning whereby a town or community is divided into areas in which specific uses of land are permitted.
- It is not designed to include illustrations, design guidelines, or excessive flexibility for municipalities.
- By far the most common form of zoning in the US.

Performance[-Based] Zoning

- Imagine a perimeter line outside of a site. What happens on the site is not the issue, it's what crosses the line
- Traffic, odors, community-wide impacts
- Not widely used in exclusion of Euclidean zoning, though many zoning codes have performance standards.
- Often implemented through Site Plan Review processes

“Rather than establishing specific area and bulk standards within zoning districts to govern development, performance zoning regulates the design and location of a use based on the characteristics of a particular site to support development. Under performance zoning, municipalities replace conventional zoning districts with performance criteria to guide development.”

Chester County [PA] Planning Commission

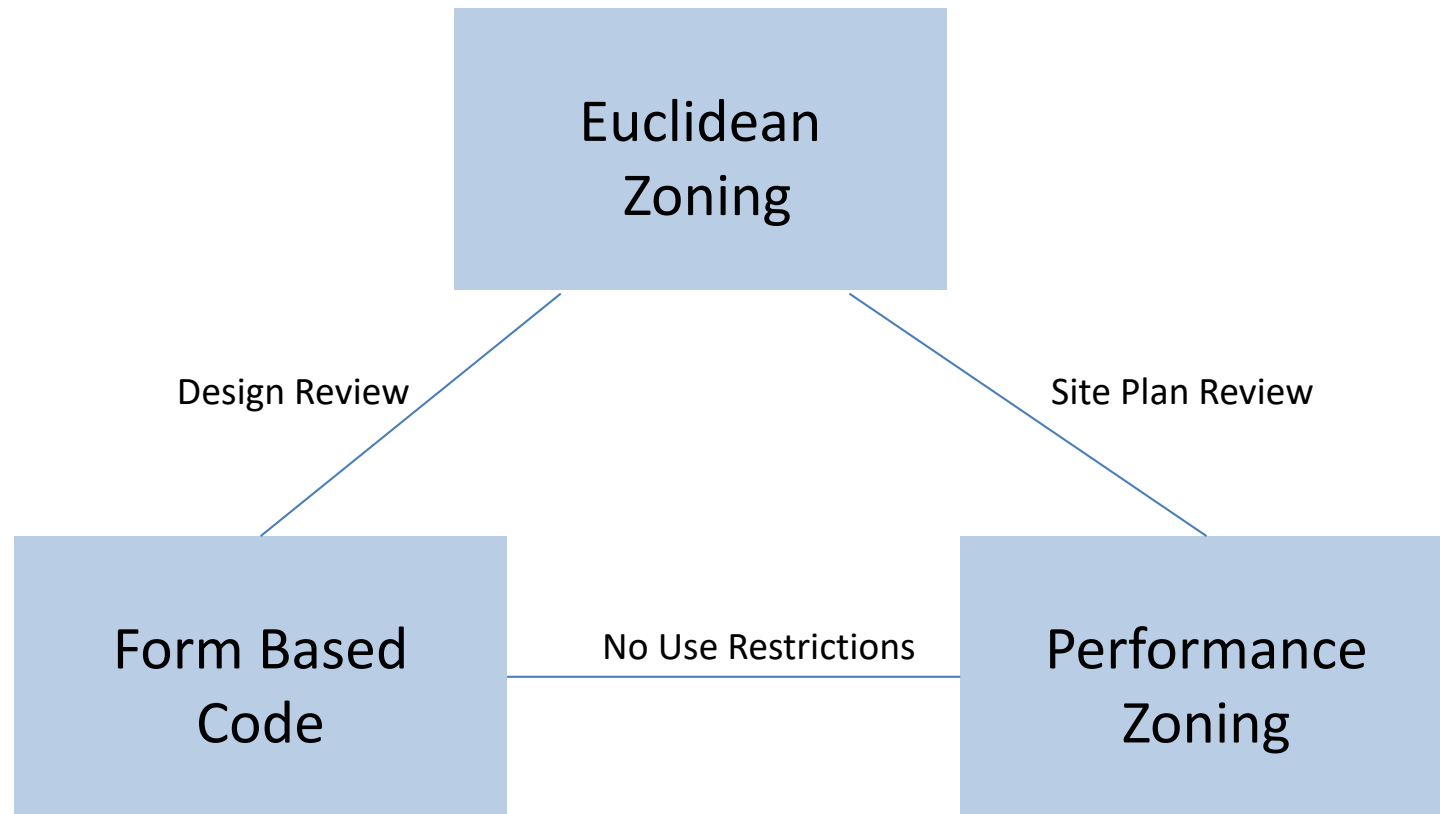
Form Based Code

- Emerged from New Urbanism
- Focus on the built form rather than uses
- Dimensions defined by relationship to the street, not the lot
- Many codes use elements of Form Based Code such as design standards
- Few “pure” Form Based Codes
- Use often matters after all

“Form-based codes address the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks. The regulations and standards in form-based codes are presented in both words and clearly drawn diagrams and other visuals. They are keyed to a regulating plan that designates the appropriate form and scale (and therefore, character) of development, rather than only distinctions in land-use types.”

Form Based Code Institute

A Continuum



Nonconforming Uses and Structures

- Governed in state law under c. 40A s. 6:

“[P]re-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.”

Grandfathering

- Again, c. 40A s. 6:

“Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure.”

Special Permits

- This time, c. 40A s. 9:

“Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.

Zoning ordinances or by-laws may also provide for special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide certain open space, housing for persons of low or moderate income, traffic or pedestrian improvements, installation of solar energy systems, protection for solar access, or other amenities.”

Not the only game in town...

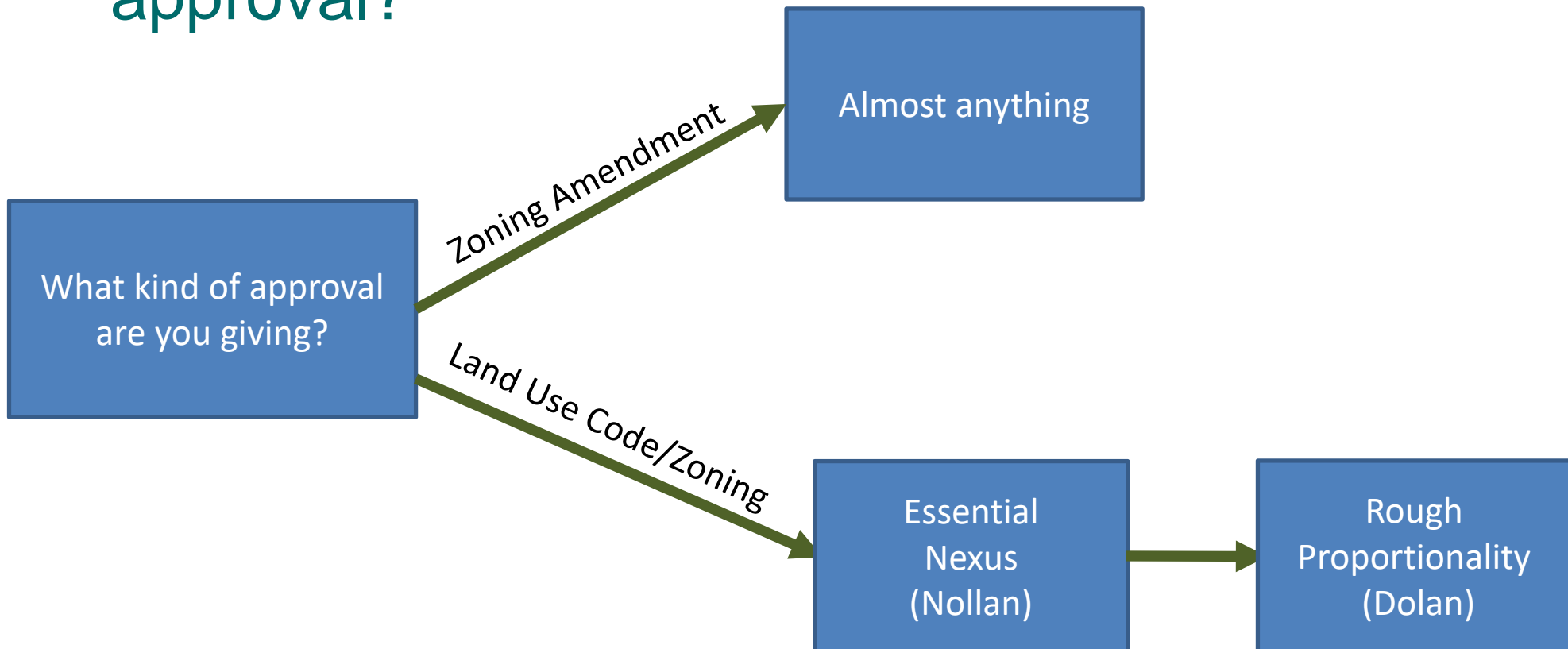
- Building Code
- Historic Preservation Bylaws (MGL c. 40C)
- National Environmental Policy Act
- Massachusetts Environmental Policy Act
- Shoreland and Riverfront bylaws
- Wetland Bylaws
- Special Permits
- Environmental Design Review (Site Plan Review)
- Subdivision Regulations – *and the Massachusetts zoning freeze*

What does this have to do with *Local Economic Development*?

“Negative Reasons”	“Positive Reasons”
Zoning may prohibit opportunities to create employment	Zoning may provide incentives to produce the right kinds of employment
Zoning can drive up the costs of housing, increasing wage needs	Zoning can provide affordable housing through tools like inclusionary zoning
By constricting supply, zoning can add to the cost of creating new economic opportunities	By constricting supply, zoning can maintain the economics of providing economic opportunities
Mixed use development can make providing commercial/industrial space compete with housing	Mixed use development can provide opportunities for creative new economic activity (live/work, startups)
and? ...	and? ...

Development Exactions

- Often a project gets “approved with conditions”
- What can you ask someone to do in return for approval?



Types of Development Exactions

- *Ad hoc (most common)*
- Inclusionary Zoning
- Commercial Linkage Fees
- Impact Fees

*Ad Hoc Exactions
More common in
certain circumstances*

Strong
Markets

Strong
Mayors

Ambiguous
Rules

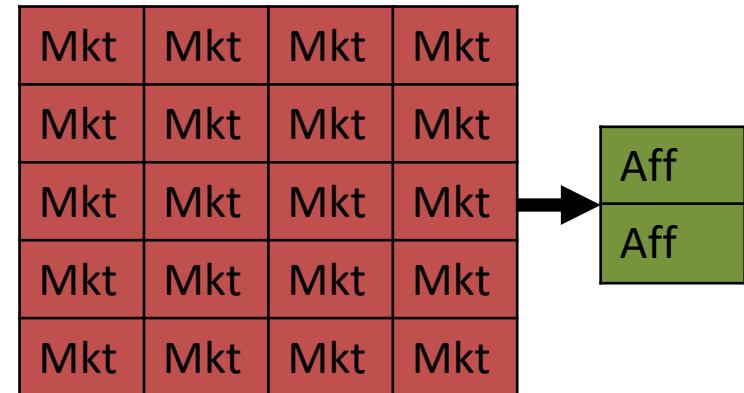
Active
Residents

Inclusionary Zoning

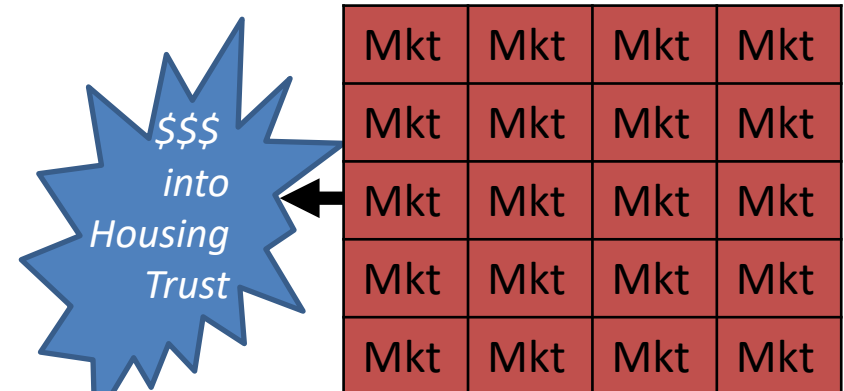
- Requirements that housing developments over a certain size provide a percentage of units affordable at lower incomes
- Good evidence that it is a successful tool and does not negatively impact overall development
- Land prices tend to go down to accommodate requirement

Mkt	Mkt	Mkt	Mkt
Mkt	Mkt	Mkt	Mkt
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On Site Provision



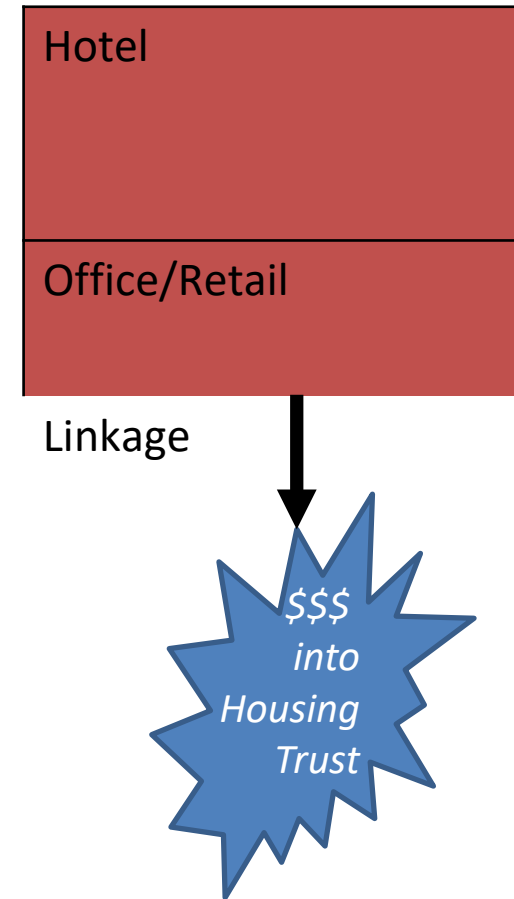
Off Site Provision



Fee-in-Lieu

Linkage Fee

- Per unit charge for commercial developments to fund affordable housing development
- Based on nexus study documenting how commercial development impacts housing
- Requires strong commercial market and political will to stay the course
- Impact on market less studied, likely also comes out in lower land prices
- Cambridge rate is \$12/sf.



Impact Fees

How it Works:



How to Create System:



What it Needs:



Case Study: Western Waterfront Portland, ME



Western Waterfront

Deep-water
Marine Industry
Freight

Central Waterfront

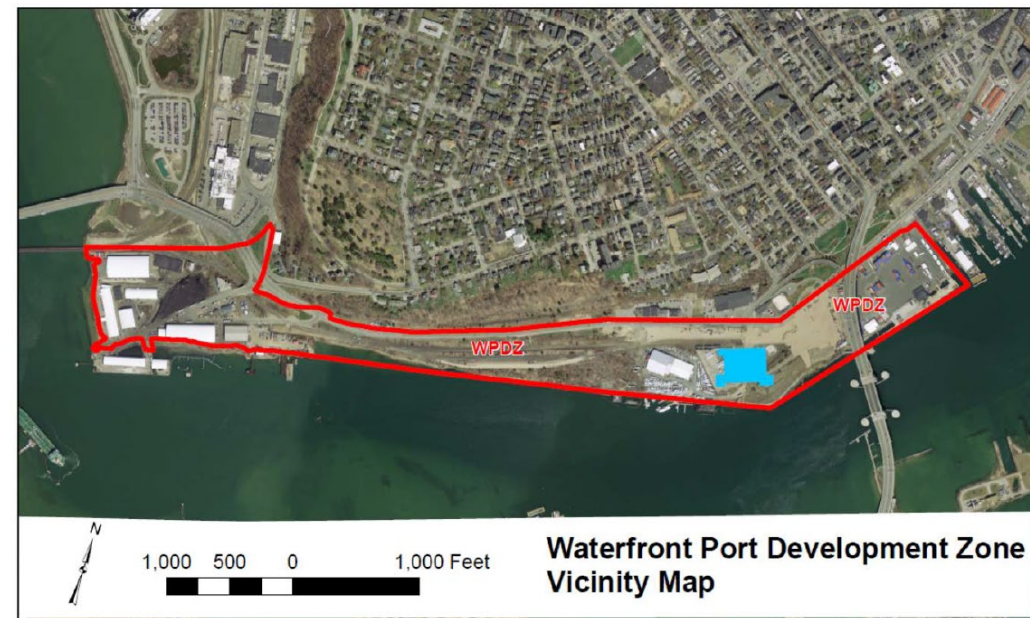
Lighter Marine Industry
Mixed Use/Non-marine
Tourism

Eastern Waterfront

Marine Passenger
Mixed Use/Non-marine

Policy Framework

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**Waterfront Port Development Zone
Vicinity Map**

Western Waterfront

- City leased International Marine Terminal (IMT) to the Maine Port Authority to operate under their “Three Harbors” plan
- Maine Port Authority received TIGER grant and leveraged for additional funding
- Attracted IMSKIP, Icelandic freight company, to make it their North American headquarters
- Reconnected rail to the site

Western Waterfront

- Owner of major boat repair facility relocated to western waterfront
- In 2017, area named Portland's only Opportunity Zone
- Need for cold storage facility, paired with reality that the IMT itself could not support a private cold storage facility
- Zoning had been adjusted down in the 1990's as part of Citywide height reductions

Case Study: Western Waterfront Portland, ME



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2016-7 Rezoning Initiative

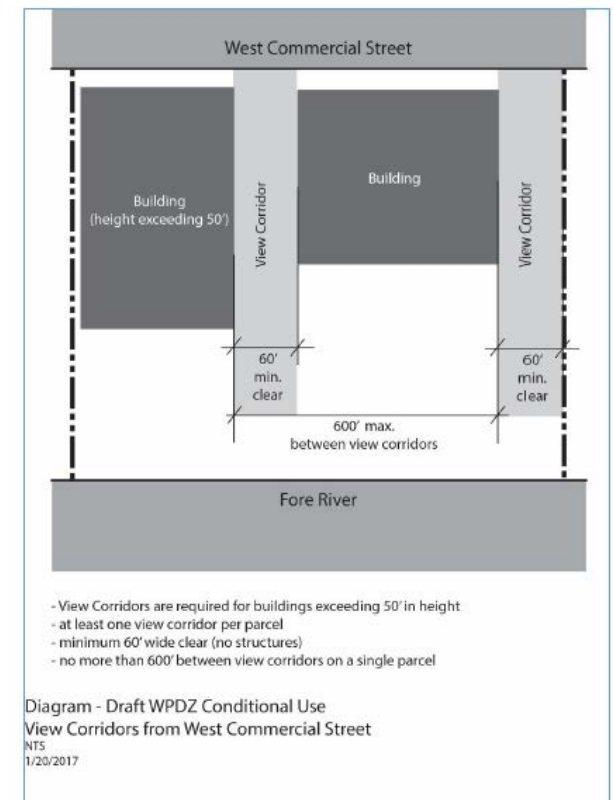
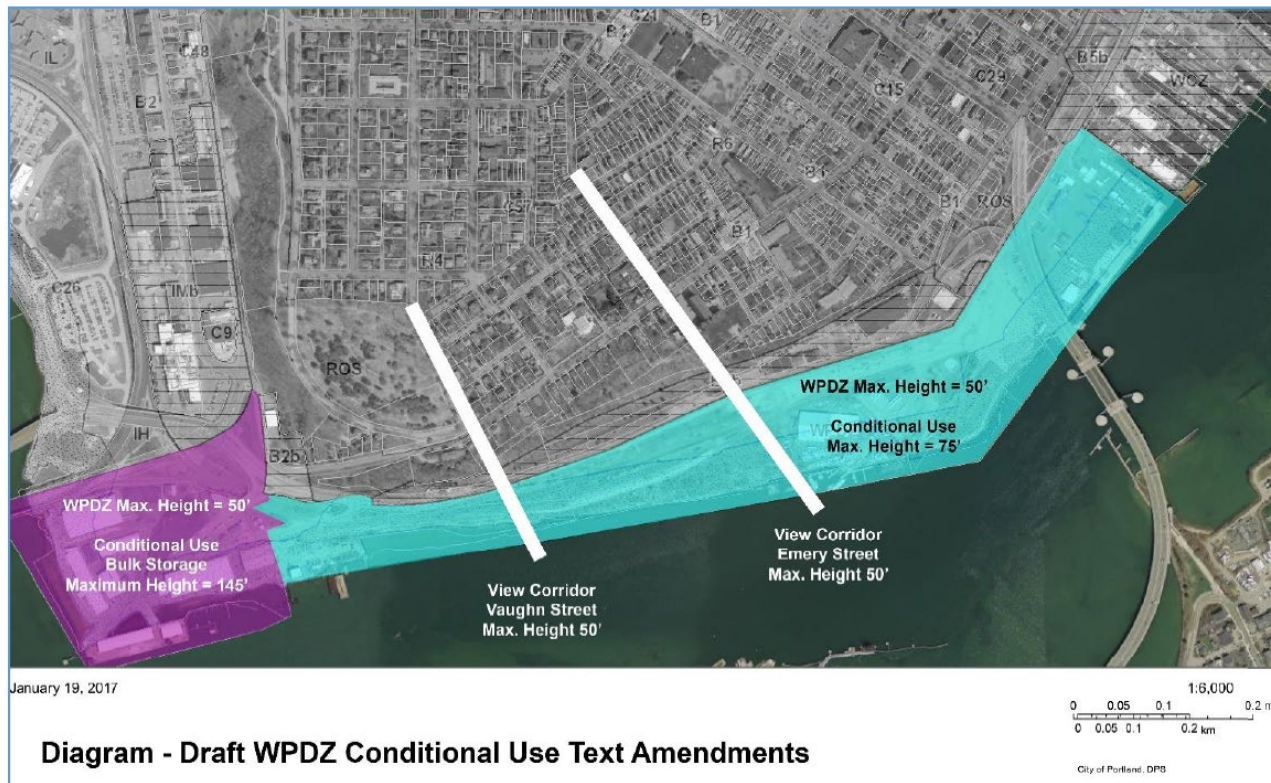
- City Manager agrees to submit rezoning on behalf of Maine Port Authority to allow for 70-75' heights required for cold storage
- West End residents - among the most organized in the City – concerned for views and character impacts of neighborhood
- Others supported initiative as allowing for working class jobs

Iteration #1

- Add Cold Storage as allowed use
- Allow 70' height in entire western waterfront district
- Understood this may be more than some could support.

Iteration #2

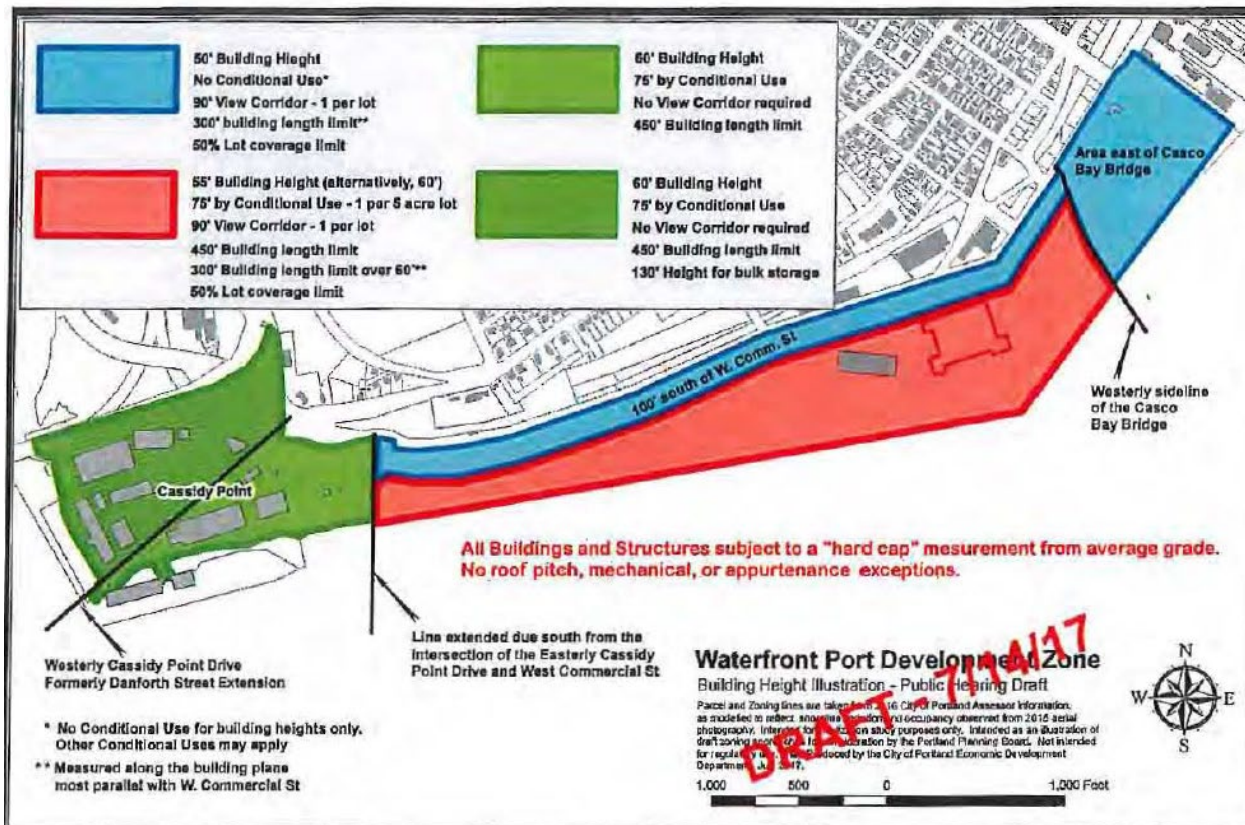
- Added “view corridor” requirements
- Broke zone into two areas



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Iteration #3

- Broke zone into three segments
- Added additional design standards



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City Council Passage – Summer 2017

- Local Councilor voted against it
- Part of City-wide referendum on zoning changes
- Implemented
- Cold Storage Facility operator withdrew- *but zoning in place for any new one*

West End residents file paperwork to block cold-storage warehouse on waterfront

pressherald.com/2017/09/07/west-end-neighborhood-files-paperwork-to-block-warehouse/

By Peter McGuire Staff Writer

September 7,
2017

A group of West End residents has filed paperwork to nullify a zoning change and block a proposed cold-storage warehouse on Portland's western waterfront.

The petition, signed by about 125 people who live near the industrial port district, would take effect only if a referendum giving citizens more say over zoning changes passes in November.



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Updated: March 5, 2020

Plans for Portland cold-storage facility are back on the front burner



RENDERING: COURTESY WOODARD & CURRIAN

A rendering of the the proposed Maine International Cold Storage Facility, for which a site plan has been submitted to Portland's Planning Board.



By Renee Cordes

Plans for a long-awaited cold-storage warehouse on the Portland



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Lessons Learned

- Fix planning problems with zoning, not development problems
- Use current development proposals as a test case for good economic development planning, not the end result
- Leverage other investment and governmental actions
- *Be efficient, not quick*

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Spring 2020

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