Reclaiming the Rules of Land Use

Demystifying Zoning as an Anti-Displacement Strategy

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# Table of Contents

**LIST OF TABLES, PHOTOS, AND FIGURES**

**ACKNOWLEDGEMENTS**

**EXECUTIVE SUMMARY**

**PROJECT INTRODUCTION**

**HISTORY OF ZONING**

**WHAT DOES ZONING DO?**

**ZONING 101**

**LEGAL BASIS OF ZONING**

**DRIVERS OF DISPLACEMENT**

**BOSTON’S ZONING PLAYERS**

**ZONING STRATEGIES**

**HISTORIC AND ONGOING COMMUNITY ACTION**

**CONCLUSION**

**REFERENCES**

**APPENDICES**

**ENDNOTES**
List of Tables

Table 1: Seattle Work Plan Matrix

List of Photos and Figures

Cover Photos: Reclaim the Night Nottingham, 2018
Figure 1: Community Land Trusts
Figure 2: Concentration of wealth and poverty in Greater Boston in 2010
Figure 3: Floor Area Ratio, basic explanation
Figure 4: Floor Area Ratio, comparison of low and high FAR
Figure 5: Renters in Boston that are cost-burdened
Figure 6: Zoning Player Flowchart
Figure 7: Zoning Pyramid
Figure 8: Dorchester Zoning Map
Figure 9: Neighborhood map of Chinatown, Manhattan
Figure 10: Affordable Housing Overlay Map in Cambridge
Figure 11: Transfer of Development Rights
Figure 12: Transfer of Development Rights #2
Figure 13: ONE DC Brookland Manor campaign against displacement
Figure 14: Photo of Participants at People’s Housing Assembly 2019
Figure 15: Thought Map for Stages of Methodology
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Executive Summary

Boston is a rapidly growing city, with a hot real estate market driving high levels of development citywide. Widespread discriminatory housing policies have shaped the landscape of the city, and today Boston is one of the most racially segregated cities in the country with an increasingly growing income and equity gap. With less and less real estate available downtown, new luxury developments are increasingly encroaching into neighborhoods that have traditionally been more affordable. This rapid gentrification process has left long-time residents and marginalized communities of color particularly vulnerable to displacement.

This transformation of neighborhoods has caused a steep increase in rents and cost of living to neighborhoods like Roxbury, Dorchester, and Chinatown that have long been home to significant immigrant populations and low-income families. Boston’s population is growing, and new construction has not kept up with that demand, let alone the demand for housing that is accessible and affordable.

Community land trusts enable the community stewardship of affordable housing that is permanent and effective at fighting displacement. The Greater Boston Community Land Trust (GBCLTN) is a coalition of community advocates who work to strengthen and promote CLTs, in addition to a broader mission of engaging in anti-displacement and land speculation in communities that are at a high risk of gentrification. The GBCLTN is just one part of the strong community coalition movement in Boston creating models of resilience and strength in the face of powerful development interests, including Dorchester Not for Sale and Reclaim Roxbury.

Though zoning plays a part in almost any city planning process, it is not often the main focus of anti-displacement work. It is a byzantine, overly technical, and bureaucratic system. The slow, political process of changing zoning means that zoning often serves as an afterthought in grassroots planning, and a tool more easily manipulated by those in power than by those impacted by it. This report explores the role that zoning has played in creating uneven and inequitable development in Boston, and alternative zoning strategies that might help address the historical wrongs of zoning. It also examines how greater community control of zoning and examining zoning through an anti-displacement lens can assist the GBCLTN in using zoning as a proactive tool to create a new blueprint for the city’s development rooted in inclusivity and equity.

The hyperlocal focus of most zoning decisions and unique characteristics and needs of each neighborhood mean that our report offers no clear-cut answers for how zoning can address displacement. But in creating a new framework to understand zoning and displacement, the report does offer some recommendations for the GBCLTN moving forward.
Though most of the existing zoning code is antiquated and caters primarily to those who hold wealth and power, with political will and community pressure it could be changed radically. The Boston zoning code is well over 3,000 pages long, but its length and intricacy can be deceiving—there really are not many restrictions for what a zoning code might look like. This report outlines which legal pitfalls might most impact the GBCLTN, and the possibilities that exist to push the boundaries of the zoning code to better serve those at risk of displacement.

Creative zoning overlays can help protect vulnerable tenants and level the playing field for affordable housing development. Inclusionary zoning policies can hold luxury developers accountable for creating at least a small portion of income restricted units that help keep low income families in place. Zoning that ties tenant protections to the code itself can create added layers of protection for residents already facing waves of gentrification.

Massive zoning changes are coming to Boston, as the city’s planning department has begun the process of updating many decades-old neighborhood plans across the city. In order for the members of the GBCLTN network and the communities they serve to make sure these zoning plans work to fight displacement, it will be crucial for community coalitions to actively engage in that process. If communities can take back the tools of planning and zoning, they can ensure that change and development happens not to them but with them. If zoning is grounded in the needs and desires of the community, rather than the interests of private developers, zoning can better serve the current and future residents of Boston.
Cities are dynamic spaces; there is constant growth & shrinkage, sprawl & consolidation. The movement of people into, out of, and within a city is pivotal in understanding a city’s dynamic. Historically, Boston is one of the most racially segregated cities in the United States. Racialization of spaces has an immeasurable impact on the welfare of marginalized communities past, present, and future. They reflect and perpetuate the racist and classist goals of our social and governing bodies. These spaces, and the communities that call them home, are also sites of resilience and adaptation. Places taken back and made home by those who were either forced or who actively chose to stay.

Boston is a rapidly gentrifying city with a hot real estate market driven by accumulation of profit and foreign investment. The forced movement of people and families from the places they call home has launched and stoked the mobilization of communities across greater Boston around campaigns and efforts to fight displacement. Our project partner is the Greater Boston Community Land Trust Network: a coalition of community land trusts (CLTs) launched in 2016 which has been acting to secure and preserve land in the communities in which they are situated.

**Community Land Trusts**

The organizational members of the Greater Boston Community Land Trust Network have chosen to pursue community land trusts as a strategy for anti-displacement and community control of development. There are many reasons why community land trusts (CLTs) are a compelling solution to displacement and gentrification. A community land trust is a community-controlled organization that stewards land for long-term public benefit as part of the commons. CLTs keep the land in trust—the land is never resold. Therefore, CLT land is removed from the speculative market and decommodified. In this way, CLTs protect land from the pressures of the real estate market.

*Under the CLT model, ownership of the land and the improvements made on*
that land—such as housing or urban farms—are separated. In the case of housing, the community-controlled land trust organization retains ownership of the land and sells or rents the housing on that land to low-income people. As Miriam Axel-Lute and Dana Hawkins-Simons explain in Land Lines, “in exchange for below-market prices,” home-buyers agree to restrictions on the resale, in order to “keep the homes affordable to subsequent buyers while also allowing owners to build some equity.”

**Figure 1: Community Land Trust, Image credit: https://parkdalecommunityeconomies.files.wordpress.com/2014/03/clt.jpg**

Community land trusts are powerful and sustainable tools, especially in gentrifying areas, in which they provide an effective way for lower-income residents to retain a stake in the neighborhood. CLTs are helpful in weak housing markets as well, as they provide “the financial stewardship that ensures fewer foreclosures, better upkeep, and stable occupancy.” CLTs have thus become a tool for promoting permanently affordable housing, urban farming, and other public goods.
**Our Goals**

We aim to demystify the zoning process and demonstrate how zoning can be used as a tool for anti-displacement, using examples that will expand the community’s imagination and spur creative ideas. Our preliminary research findings suggest that there is not a relevant comprehensive guide or framework for understanding zoning as tool for community control and anti-displacement. We have crafted an easily digestible primer on how to understand zoning. However, our intention is not to recommend strategies for specific neighborhoods in Boston. Instead, we are hoping to offer guidance on the possibilities of zoning and community control efforts.

The goal is for this report to inform popular education and organizing approaches around possibilities of zoning and community control efforts.

The following questions reflect the progression of our research:

**What is the lay of the land?**
- What is the current zoning landscape in Boston? How do municipal/community (actors) and processes maintain and craft this landscape?

**What is the relationship between zoning and displacement in Boston?**
- What role generally can zoning play in fighting displacement and building community control?
- What are the positive and negative impacts of strategies such as overlay districts, transfer of development rights, mandatory community plans, and inclusionary zoning?

**How can zoning, as an opaque and technical tool, function to enhance community control?**
- Historically, how has organizing and advocacy shaped zoning (and other forms of community development)? How might it do so moving forward?

As we sought information on the questions above, our overarching research questions crystallized into those listed below. This report seeks to address:

**How exactly does zoning work, and how can it be used as a tool by communities to fight displacement?**

**What information is important in harnessing community groups with the tools to organize around zoning?**
Since zoning is tied to politics, zoning strategies for anti-displacement are necessarily tied to community organizing and movement-building for community control. Zoning does not exist in a vacuum, so our research connects these strategies to the robust history of communities advancing community control of land and development in Boston, in order to support organizing around zoning for anti-displacement moving forward.
History of Zoning

Zoning, as a land use and social reform tool, has in many ways had a devastating impact on the welfare of vulnerable neighborhoods. It is a tool that has encoded the racialization of space as well as the concentration of poverty. Despite, or perhaps because, of its historical use against marginalized folks, zoning is an area in which communities can deconstruct the tools that have been used to promote displacement and begin creating tools that actively advance anti-displacement.

Prior to the early 19th century, there was not any formal zoning as we know it today in America. Some cities put a great deal of thought into the initial town plan, such as the clear orthogonal layout of Savannah, Georgia, and the L’Enfant Plan for Washington DC, both created in the 1700s, but neither of these plans had any legal weight behind it. When later structures were built that did not adhere to their plan, there was no basis to hold developers or planners accountable for not sticking to that plan.

With the rise of industrialization, there was a greater desire from many citizens to regulate their changing and growing cities. These initial measures typically took the form of nuisance laws. A typical example of a nuisance law would be slaughterhouses, which many cities banned from dense urban centers to areas further away from residential areas, or from dumping their waste in public streets. These policies were reactive rather than proactive. Because it was thought that nuisance laws infringed upon an individual’s right to use their property exactly as they wanted to, they did not get as granular as zoning does today.

Zoning made its first appearance in Washington D.C. in 1899. It was rapidly adopted in most of the other U.S. states by the early 1900s. Even in its earliest conception, zoning was considered both a tool for land use planning and for social reform. This distinction is important in understanding that planners, state government, and municipal administrations made value judgements about how society is organized in deploying new zoning.

Until 1917, there was a trend within Northern states’ zoning to protect and enhance property values, which succeeded in further consolidating and concentrating areas of wealth and poverty. In the South there existed 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. Communities of color fought these segregating ordinances from their onset. The National Association for the Advancement of Colored People (NAACP), founded in 1909, became a leading entity in orchestrating
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In the 1917 court case Buchanan v. Warley, a case initiated by the NAACP, the

![Figure 5: Concentration of wealth and poverty in Greater Boston in 2010. Source: http://apps.urban.org/features/ncdb/top-bottom/index.html#12/42.3355/-71.1109](image-url)
Supreme Court ruled racial zoning to be unconstitutional. Still, many Southern states, and increasingly Northern states experiencing the northward migration of black and brown folks, continued to enact zoning that was racially segregating, if not as explicitly.⁶ Planners created other exclusionary zoning tactics including redlining and other federal land-use policies to exclude Black families from homeownership.⁷ 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, SC: in the 1920s this city was the first to use zoning to further historic preservation, with an explicit interest in excluding racial minorities from moving to or developing businesses in designated areas of the city. Another example with widespread impact is expulsive zoning, which allows a city’s intrusion into neighborhoods of color with disruptive and incompatible uses, such as zoning areas where people of color live as industrial, and has since diminished the stability of many of those neighborhoods over time.

While seeming neutral on their face, single-family zoning and other exclusionary zoning tactics have played an important part in a wide suit of policies. These include law enforcement, housing finance, and explicitly racist real estate practices that have shaped and segregated our communities.

**Reclaiming Zoning**

Zoning cannot and should not be the main tool in an anti-displacement agenda. As it exists today, zoning is fundamentally flawed, rigid, and too often caters to real estate interests over the existing community. But it doesn’t have to remain that way. The bureaucracy around current zoning structures obscures the potential place zoning could hold in our toolkit.

Viewed through the lens of anti-displacement, zoning could be flexible, and more readily able to respond to the needs of the neighborhood. It could be shaped by and for the community who live there, rather than by the city. The legacy of zoning serving primarily as a tool to preserve the wealth of single family homeowners could be shifted, to create a new space for zoning to be a participatory, collaborative process. Zoning as it currently exists today may be narrow and rigid, but in actuality, the legal possibilities have few limitations. Once we start asking more questions about who is served by zoning today, we can begin to imagine how we can utilize it to take back its power to serve the community.
What does Zoning do?

Fundamentally, zoning helps municipalities regulate how land is utilized. Through the zoning process, land is divided up into different districts, or zones, and within each zone there may be different restrictions on height, bulk, placement, or intensity of development on land within that zone. When they were first implemented, zoning laws were marketed as a means to address issues created in industrializing cities such as factory pollution in residential areas, separating “incompatible” uses, or to ensure that crowded city streets could have access to air and light. 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 economic development. As land becomes more scarce due to high demand and more people moving into cities, that land becomes more valuable. As cities like Boston become magnets for ever more real estate development and investment, zoning plays a crucial role in determining the value of 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 can 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. As zoning bylaws and maps have become more sophisticated and detailed over the past 100 years or so, zoning has gained a reputation for being byzantine and opaque. The complexity and confusion around zoning has proven lucrative for some, as the going price for a rezoning plan that may never even be adopted (the controversial CodeNEXT plan that failed to pass in Austin in 2018 cost an estimated 8.5 million dollars), and there are plenty of lawyers that specialize in navigating municipal zoning. Zoning codes can prove difficult to navigate even for its own authors, as was the case in New York when city planners...
there made a map reading error in Astoria that almost cost the neighborhood dozens of lower income housing units.⁹

It is no wonder, then, that many people feel disconnected and disinterested in zoning, unless there is a zoning change that impacts them directly. But there is a growing awareness about the role zoning has played in shaping our cities and continues to perpetuate inequity. There is have created momentum in many cities to engage in conversations about how zoning can play a role in addressing different types of societal problems. Cities are experimenting with changing their zoning, to see if it holds the potential to create more affordable housing, to boost environmental resilience in the wake of the inevitable stressors of climate change and rising sea levels, and to correct past racial injustices.

Zoning Basics

Zoning possibilities are infinite. However, zoning possibilities are strongly affected by political landscape and development pressure.

In practice, this means that municipalities create broad categories of land uses, including common ones such as residential, agricultural, industrial, and commercial zones. Many zoning schemes now go much further than simply separating land uses. It is possible to require highly specific, specialized requirements in zoning, from creating minimum lot sizes and occupancy limits to requiring specific signage, determining what kind of porch you can construct, or even limit-
ZONING 101

Zoning is a set of rules for how land in cities can be developed. Zoning can restrict, encourage, protect, or diminish the land’s uses. At its most basic, it is a way of classifying land by usage. Local governments are responsible for approving and enforcing zoning laws.

Each “zone” has a different set of rules about what can be developed on it.

Zoning separates land by...

USE:

Would you rather live by a neighborhood park?

OR....
...near a toxic waste facility?

Types of uses in Boston:

- Residential
- Business
- Industrial
- Open Space

Zoning also separates land by...

SIZE and SHAPE

VS.
Zoning affects the size and shape of buildings by setting up rules about:

1. How tall it can be
2. How it sits on the building lot
3. How big it can be overall

One way that zoning measures and limits the size and shape of buildings is through **Floor Area Ratio (FAR)**.

What is **Floor Area Ratio**?

![Diagram showing floor area ratio](Image Credit: Proposal for a Chinatown/Lower East Side Special Zoning District, http://www.hunter.cuny.edu/ccpd/repository/files/rezoning-proposal-10_25_10final-draft.pdf)
Zones with a higher FAR allow buildings to take up more space (relative to the lot) than zones with a lower FAR would allow.
Legal Basis of Zoning

Governments derive their power to impose zoning regulations from the “police powers” outlined in the Constitution. Police powers allow governments to regulate the public health, safety, and welfare of the community. State governments usually pass this power along to local governments in the State Constitution, which gives municipalities broad power to pass laws such as speed limits, the power of eminent domain, or to enact environmental preservation laws. It also allows them, to an extent, to regulate private property. Case law in every state and at the federal level has consistently held that zoning is a legitimate legal use of police powers. As an act of government, zoning is presumed valid by courts, and the burden of proof will be on landowners if it comes to a lawsuit.

How does zoning change happen?

There are two governing bodies to keep in mind when envisioning zoning and development change.

1. The Legislative Body: Boston Zoning Commission

All zoning change has to happen through the legislative body. This is because zoning change, in theory, is meant to be a publically involved, democratic process. As will be explained further below, to pass zoning change the legislative body must post a public notice of the intended change, allow for a minimum of 20 days (this varies depending on the city) before the hearing on the proposed change, host a public hearing where different perspectives on the proposed change are heard, and finally have a vote.

2. The Adjudicative Body: Zoning Board of Appeals

Change that involves a certain amount of discretion, or judgement, must pass through the adjudicative body. This is where to submit building permits for specific projects, or where someone would apply for a variance. Variances are permitted deviations from the existing zoning or building codes, and in Boston they are granted on a case-
by-case basis by the ZBA. Cities are under no legal obligation to grant a variance, even if they meet the criteria, still variances are often granted due to local politics. To get a variance in the city, applicants must be able to show 3 things about their project:

1. Special circumstances that apply to the particular building or land, such as an irregularly shaped lot, or one that is especially small or shallow, or one that has notably odd topographical conditions where the lack of a zoning relief would deprive the applicant of the reasonable use of the structure or land.

2. For reasons of “practical difficulty and demonstrable and substantial hardship”, they need a variance for reasonable use of the land or structure.

3. A variance will allow the parcel to fit with the general purpose and intent of the underlying zoning code, and will not be impact the neighborhood in a harmful way or have a negative effect on public welfare.\(^{11}\)

“\textit{No Negative Impact}”

This last criterion, in particular, should make it fairly difficult to obtain a variance considering it is necessarily in violation with the current zoning code. A comprehensive plan for the city would give community actors another legal and political tool to protect against variances (See page 80-81 to learn more about this)
Though zoning has a reputation for being rigid and difficult to change, in theory it is flexible and does not have many explicit legal constraints. Below are seven main questions community groups and cities need to ask when proposing zoning change:

1. **Is the zoning proposal vague or unclear? (Void for Vagueness)**

   If a zoning ordinance is unclear in its application it is considered void and can be challenged in court.

   **Example:**
   A zoning change that states that development is limited in District X but does not specify what those limits are would be considered “void for vagueness.”

2. **Does the city have the power to make this kind of a zoning change? (Municipal Powers)**

   There are some powers not granted to municipalities in Massachusetts. Municipal powers may vary slightly between states depending on what authority has been ceded to city governments through the State Constitution. As communities create imaginative solutions that push the boundaries, understanding these limits will become increasingly important.

   **Example:**
   In Massachusetts, city government cannot regulate the growth or shape of religious or educational institutions through zoning.

3. **Does this city zoning conflict with state or federal law? (Pre-emption)**

   Zoning at the municipal level cannot interfere, contradict, or renege federal or state law.

   **Example:**
   A city cannot zone federally protected land for commercial development.
4. Is this a regulatory taking?

“Regulatory taking” is a term that is frequently misused. A regulatory taking refers to the devaluation of a property by the government without just compensation. While there are many instances where a property owner or developer may want to claim that zoning change is a regulatory taking, in reality it will only take two forms.

A). Permanent physical invasion by government: This sounds extreme, but a more relatable example might be that a government cannot require by zoning that private properties within a district to have WiFi. Because WiFi installation would require WiFi providers (acting as an extension of the government) to go onto someone’s private property, this would constitute a physical invasion.

B). A property is left with no economic value: determining what constitutes “no economic value” can be tricky because most municipalities do not go out of their way to define this term. That said, a regulatory taking claim can largely be avoided so long as a city allows at least one use “by right” to a property.12

Political pressure affects the willingness of city government to advocate for zoning change that devalues the property of powerful stakeholders. Regardless of how unpopular upholding zoning change might make the legislative body to certain stakeholders, they are legally capable of reducing the value of property via zoning so long as some value is left. Leveraging political pressure in these instances may be key for community organizations in securing more inclusive zoning.

5. Is there an Equal Protection concern?

Challenges to equal protection apply to federally protected classes of people (having to do with race, alienage, nationality, and a “class of one”). To raise an equal protection challenge one would have to show:

Example:

A developer owns a parcel on which they can build 20 housing units according to current zoning. The city announces a new zoning change that will rezone that property so that it can only accommodate 5 housing units. The developer has other opportunities to circumnavigate this change, but claiming a regulatory taking is not one of them because the property is still left with value (the 5 potential housing units).
1. That there is no rational basis for the disparate treatment they are receiving.

2. That the city has demonstrated “animus”, or targeted ill-will towards the person bringing the challenge.\(^{13}\)

Showing and proving hatred by a legal court’s standards is exceptionally difficult, therefore successful equal protection challenges in zoning cases are unlikely.

**Example:**

A city government airs an advertisement that uses explicitly sexist language defaming and attacking women-owned businesses. The city then rezones a commercial district that boasts many women-owned businesses in such a way that restricts the allowed uses on property within the zone without providing a study or sound logic for the change. A woman whose business is directly affected by this change would likely have standing to make an equal protection claim.

**6. Have the proceedings been fair? (Procedural Due Process)**

The Fifth Amendment also protects citizens by ensuring they are given the “due process of law.” Enacting zoning change is meant to be a public process. It requires that the legislative body (the Boston Zoning Commission) leave public notice for any proposed zoning change with a minimum of 20 days before the vote on the proposed change. There must be a public hearing where various perspectives on the change are represented. Finally, there must be a vote on the zoning change by the legislative body with 2/3 of votes in favor of the change for it to pass. If any of these

**Example:**

The city put out a public notice that there will be a public hearing on a zoning change in one week. The location will be announced the day of the hearing and there is no avenue for submitting written testimony. Any resident of Boston, regardless of whether their property is personally affected by the change, is able to bring a procedural due process challenge in court. In fact, the Zoning Board of Appeals in Boston has found itself in legal trouble in the past for a similar scenario: intentionally making important deals behind closed doors.\(^{14}\)
criteria are not met there are grounds to challenge the city in court.¹⁵

7. Does the proposed zoning protect the health, safety, and welfare of the community? (Substantive Due Process)

The legislature as the body that votes on zoning change, is charged with making decisions that protect the health, safety, and welfare of the community. Beyond ensuring that procedural due process is accounted for, substantive due process protects the rights of individuals guaranteed by the Constitution. It marks some actions as beyond the reach of the courts, regardless of whether due process was granted.

**Example:**
Successful substantive due process violation claims are difficult to come by. A municipality only needs to provide the logic behind the zoning that describes why it was an attempt to protect health, safety and welfare (regardless of whether it actually does). We felt it would be helpful for communities to understand that bringing this kind of challenge against the city is not likely to prevail in court. Conversely, should someone threaten to challenge a community-developed ordinance with a substantive due process violation claim, it is important that community groups standing by the ordinance feel empowered to urge local government not to settle with the entity bringing the challenge.

**Early and Late Vesting States**

Another legal consideration of zoning relates to the ease or difficulty of a parcel getting vested in the face of zoning change. What does this mean? Let’s say that a developer owns a vacant parcel on which they want to build 100 units of housing. The developer then receives 2 weeks notice (as is legally required) from the city of Boston that there will be a public hearing to pass a proposed zoning change that restricts the use of their parcel to single-family residential. This change renders the developer’s project impossible on their parcel. To maintain the previous zoning designation for future projects, i.e. to get “vested,” a developer (or landowner) must take certain actions according to the state legislation.

There are three different kinds of vesting states in the U.S.

1. **Early Vesting States**: Massachusetts is an example of an early vesting state. If a zoning change negatively impacts an owner’s ability to develop their property, all they have to do to maintain their current zoning is submit a subdivision plan to the Zoning Board of
Appeals before the public hearing date on the zoning change. Regardless of whether the plan is approved or is later changed or never followed, the developer or owner has then secured their current zoning (their vested rights) for 8 years.

2. Late Vesting States: In a late vesting state, when an owner wants to get their parcel vested, they must have already filed an application to the ZBA for a building permit before the date of the public hearing. A building permit is a far more precise and more permanent than a subdivision plan, requiring concrete information from the owner on the project they intend for their parcel. A building permit also requires more extensive scrutiny from the ZBA and deviations from it require additional processes.

3. Very Late Vesting States: In very late vesting states, like California, to get land vested an owner needs to have both filed their building permit application and received the issued permit from the city's adjudicative body, making it a highly restrictive process.

A caveat to keep in mind with an early vesting state like Massachusetts is that if a community advocates for and succeeds in passing zoning, developers who may not share the interests of the community can easily circumnavigate the change by hastily submitting a placeholder plan. That said, this flexibility goes both ways and may allow community groups to react to unwelcome zoning changes. The process for getting vested can be changed through the State legislature and, as far as we can tell, would require significant movement building to move the political will. Regardless, it is worth communities’ consideration moving forward.

Additionally, in a late vesting state developers unable to submit a building permit to the adjudicative body before the public hearing on the proposed zoning change are incentivized into entering into a Development Agreement with the city. A development agreement is a contract between a property owner or a developer and the local government (the legislative body) specifying the obligations of both parties in regards to development of the land in question. In a development agreement a city can extract funds and name conditions for the development project in exchange for freezing the zoning on that property for a determined, finite amount of time (ex: 5 years). This can be promising only if community organizations have a meaningful role in negotiating these contracts with the developer and the city.

Community organizations in greater Boston have a long history of fighting for a place in these negotiations, with significant push-back from their respective municipal governments. In Somerville, a coalition of community organizations called Union United formed to protect residents and business owners from displacement as a result of development around the Green Line T extension. Union United’s form and mission have since shifted to adapt to their on-going organizing strategy. The political context and organizing history around Union United are case-specific, but the story of Union United is rich with insight into the cultivation and amplification of a community voice.
SPECULATION STOLE OUR CITY...
Drivers of Displacement

Boston is, historically, and continues to be, one of the most segregated cities by race in the United States. Currently, the city is also one of the quickest gentrifying cities in the nation. The drivers of this gentrification can be traced back decades, to Boston’s historically discriminatory housing and public education laws. Redlining was a common practice by which areas where people of color and immigrants lived were deemed a risky investment for the real estate market and land owners. Thus, the federal government chose not to underwrite home mortgages and loans in such neighborhoods, leading to a regressive cycle of underinvestment in neighborhoods and blight.17

However, there’s a completely different narrative in these neighborhoods today. As a result of profit increasingly driving the housing market, inexpensive buildings have been bought and flipped to cater to high-income residents. Developers see significant potential in these properties and have power and capital to acquire these places. Residents and small business owners have little power against these corporate developers and profit-motivated interests. This ripple effect has created higher property values. For example, between 2010 and 2015 the median cost of housing in Roxbury rose 70% as opposed to a 36% rise in the rest of Boston.18 Most of the original residents of these neighborhoods cannot afford the rising cost of living, and are displaced from their homes and neighborhoods. Small business owners are also displaced with these rising costs of property, and this displacement is aggressively driven by real estate demands.

Currently, over 60% of Bostonians are renters, of which half are forced to spend more than 30% of their income on rent, and a quarter spends 50% or more on rent.19 Boston’s population is growing, and new construction has not kept up enough to affordably accommodate that growth. In Seattle, massive upzonings (explained in detail on page 58) have led to a flood of new units on the market with two times as many homes created per capita than in Boston in 2018. Condo prices have since dropped 7%. In comparison, Boston home prices rose 7%, and they are estimated to rise another 9% in 2019.20 However, this drop in price came only
after 7 years, and it is unclear what the effect of the upzoning will be long-term. Boston has been conservative with its upzoning and that, in addition to real estate driven development and lack of protections for vulnerable populations, almost guarantees displacement.

Figure 5: Renters in Boston that are cost-burdened. Image credit: http://www.bostondisplacement.org/
Figure 6: Zoning Player Flowchart
Image credit: Created in Canva by Amanda Centrella
Boston’s Zoning Players

Zoning is enabled in the city of Boston by the state legislature. Massachusetts has enabled zoning statewide, but the City of Boston is unique in that it has its own regulations that are separate from the rest of the state, and most of the statewide zoning requirements do not apply in Boston. In 1956 Boston passed the “Enabling Act” via an act of the Massachusetts Legislature, which was adopted in 1964 and has set the scene for zoning in the city ever since. These regulations established The Boston Zoning Commission and intended the commission to have the power to respond to the unique needs of the city.

Understanding zoning and development change is challenging because there are several agencies responsible for similar but separate tasks. The Mayor’s Office exerts considerable power in that appointments to the Boston Planning and Development Agency (BPDA), the Zoning Board of Appeal, and selections of applicants for the Zoning Commission. As the legislative arm, the Zoning Commission votes on zoning change within the city. The BPDA often petitions the Zoning Commission for a vote on zoning change, but this role can be taken up by any resident of Boston (explained in more detail below).

The Zoning Board of Appeal acts as the adjudicative arm for the city’s land use concerns. Despite the fact that the ZBA is an entity within the Inspectional Services Department of the City and unconnected to the BPDA, it is subject to its review and recommendations.

BPDA (Boston Planning and Development Agency) is the quasi-governmental planning and economic development arm of the city. The BPDA does not directly enforce or manage the zoning code, but it helps shape its creation through recommendations and a public planning process.

The BPDA is also in charge of reviewing development proposals under Article 80 of the Zoning Code. Article 80 projects are large development proposals that necessitate a more involved review process. The BPDA facilitates the review of density, uses, design, and potential social impacts of these large projects, and works with local communities in the planning process.
When an Article 80 project is under assessment, the BPDA will work with the Office of Neighborhood Services to identify community groups active in the area, and can then coordinate with those groups to set up public meetings.23

The BPDA formerly operated as the **BRA, the Boston Redevelopment Authority**. The BRA gained notoriety for large-scale displacement during the era of urban renewal, including the wholesale destruction of the working class West End neighborhood in the 1950s, which displaced thousands of residents.

In the years following the height of urban renewal, the BRA continued to erode the public’s trust. Long-time community advocates interviewed paint a picture of the BRA in the 90’s up to Mayor Menino’s exit as characterized by cronyism and a lack of transparency. A Boston Globe report from 2013 on the BRA revealed a number of questionable deals, including millions of dollars of subsidies granted to developers at the mayor’s whims, and millions more diverted away from affordable housing projects in favor of other developments.24

In many cities, urban development agencies operate as quasi-governmental agencies that work outside of the direct control of local governments, but are still somewhat beholden to them. Many of them operate like private businesses but act for the public interest in the way governmental bodies do. Many of these agencies have come under criticism for a lack public oversight and accountability for their actions, particularly as their work extended into controversial urban renewal projects.

But the BRA in Boston was unique in that it combined both planning and development functions. Critics held that this fusion of responsibilities compromised or weakened the planning functions of the agency since they had a clear incentive to generate development, since doing so would directly contribute to their operating budgets. In the BRA era, the mayor held an unusually large amount of power in that the agency answered directly to the mayor and in turn gave the mayor’s office a great deal of power to exert in the planning process.25

After a great deal of backlash against the BRA and several alleged corruption scandals within the agency, several mayor candidates for the 2015 election included a plan to abolish the BRA entirely or to create a new agency to do just planning, divorced from development, to provide a stronger check and balance on the development function. When Mayor Walsh was elected, he rebranded the BRA as the BPDA and overhauled much of its staff, but failed to split the two functions of the agency. Mayor Walsh’s administration has put more focus on community engagement and transparency in his tenure. However, many community stakeholders feel that while BPDA may voice an interest in fostering substantial, meaningful partnerships with communities, it has not amounted to much in practice.

A housing advocate we spoke to indicated they believe money, specifically foreign, has played an oversized role in determining development priorities biased towards profit rather than people. Many of the new luxury condos that have been built recently in Boston have
been purchased by either part-time foreign residents or investors using them primarily as long-term investment properties. A recent report by the Institute for Policy Studies examining luxury real estate projects in Boston found that in 12 buildings, 1,805 units had an average condo price of $3.02 million, a price 50 times higher than Boston’s median household income. The majority of these were owned by LLCs or foreign nationals not living in the United States to park their wealth. The report also points out that in 2015, though there were thousands of new housing units created on the market in the Seaport District and the Fenway, not even a home mortgage loan was issued for African-American or Latino families.

**Boston Zoning Commission** (within BPDA) maintains and updates Boston zoning code, and adopts changes to zoning regulations. The BZC is a body within the BPDA, but it is the sole legislative body that has the ability to vote on and change zoning. The BPDA may petition the Zoning Commission for a public hearing on a proposed zoning change. Besides being a Boston resident, there are no listed qualifications for members for the Zoning Commission. Applicants apply through the Mayor’s Office and once selected serve a three year term.

Through petitioning from the BPDA, the Zoning Commission can adopt a map or change text within the zoning code. Currently, the Zoning Commission consists mostly of pro-development interests. The Zoning Commission is not democratically appointed.

**ZBA (Zoning Board of Appeal)** is a city agency that is appointed by the Mayor. It is adjudicative body that interprets the zoning code as set by the Boston Zoning Commission. It has seven members that serve three year terms, and hear and approve/reject requests for any variance, conditional use permits, or proposed permission to change use. While the BPDA does not directly decide on requests for zoning variances from individual property owners, the ZBA does, and works separately. The ZBA does not participate directly in the BPDA’s development review process and they largely work separately, the ZBA may require BPDA design review as a condition of zoning relief. When someone appeals for a variance, the ZBA will host a public hearing that abutters or local community groups and officials are able to attend.

The ZBA holds a great deal of power in that they have the power to decide whether a project can receive a variance, which allows it to skirt existing zoning in that district. Compared with the BPDA, which hosts multiple rounds of public meetings and maintains a website with updated information about current projects, the ZBA is more opaque. It does not have a website, and it is much harder to get information about their agenda.

**Inspectional Services Department:** in charge of administering the Boston Zoning Code and the State Building Code, oversees building inspections, construction permitting, and registration of rental units. ISD staff make no recommendations on individual projects at their meetings, leaving it to developers and community members to air their opinions to the Zoning Board of
Who can propose an amendment to zoning in Boston?

Appeals. 27

The current Mayoral administration has expressed a lot of support for community zoning amendments, and many community advocates see that as a positive change from the previous administration. In a government with a strong mayor system, as Boston has, major changes to zoning can live or die by what the mayor decides to support. In his term in office so far, Mayor Walsh has supported development interests with regularity, often at the expense of community desires. Despite rhetoric indicating support for the community-led planning processes in places like Chinatown and Roxbury, community advocated policies have not been approved in a timely way.

Developers play an integral role in this process by providing money and influence towards the growing landscape of Boston.

According to some we interviewed, there may be current or past corruption or quid-pro-quo between developers and the zoning board happening. High land values in hot markets like Chinatown have led to numerous breaches of the established zoning code, with many developers granted variances for height and density, with little regard for the opinions or desires of existing residents and community members.

As community awareness has grown about the outsize influence developers exert over the planning process, real estate developers have become more savvy in dealing with pushback. Many developers have added staff members to deal more directly with community groups. Some people who were interviewed cautioned that while developers have increasingly started using coded buzzwords like Smart Growth and New Urbanism when marketing their projects—signaling their awareness of community interest in more conscientious growth—they are often hollow, and serve only to make projects seem more agreeable to the neighborhood. Prominent Boston area developers like Millennium Partners, Beacon Properties, the Pritzkers, and others have all invested heavily in public relations campaigns to ostensibly improve relationships with community members, but many view them mostly as a way for them to combat criticism. 28

Nevertheless, a degree of cooperation between developers and community groups can lead to a mutually beneficial path forward for new development in the area. Developers wield a lot of power, but since the ZBA often looks to the opinions of community groups when approving permits, it works in their favor to be on friendly terms.

Who can propose an amendment to zoning in Boston?

Essentially, anyone who is a resident of Boston can propose a change to the zoning code. That proposal would then go to the Zoning Commission for consideration. Though it is common enough for individual homeowners to appeal
for individual variances to the ZBA, from our conversations with stakeholders we have learned that it’s uncommon that an individual would propose a wider zoning change- and in fact, many residents are not even aware they can do so.

It is rare for the Zoning Commission to hold a hearing on a zoning amendment submitted by a resident. Amendments submitted by neighborhood councils hold more political weight, but even those hold only limited power to the Zoning Commission. Conversations with community advocates familiar with this process brought up a lot of questions for us: to what extent is the Zoning Commission even open to such proposals? What kind of political push or grassroots organizing would it take for these proposals to hold more weight?

A quirk of zoning in Massachusetts is the requirement of a “supermajority” vote to amend, modify, or adopt zoning ordinances or changes to its bylaws in most cities and towns. This can create substantial barriers to create zoning changes, as the voting 2/3 threshold can be an obstacle to new zoning or increasing density, especially in small bodies like zoning boards where there needs to be near-unanimity to reach the 2/3 threshold.

Dispersed interests like renters or future residents typically have less of an ability to influence the politics of urban land use decisions than existing homeowners, since decisions are made piecemeal. Homeowners and long-time residents participate more in local meetings, and are overwhelmingly more likely to oppose new housing construction and zoning changes that might alter their existing neighborhood.

**Enforcement**

In our interviews, a common thread and source of great frustration for many was the uneven and inequitable enforcement of zoning codes. Though zoning stentibly apples equally to everyone, the way it is enforced is not. Several interviewees shared that they were aware of multiple instances of developers in their neighborhoods in flagrant violation of zoning codes. Development projects were never granted an official variance and suffered no consequences. A number of those interviewed gave numerous examples of activities in their neighborhood that violate zoning rules: decks and wood sheds in spaces that should be setbacks, driveways feet wider than was allowed, and homes occupied by more than five unrelated people. (This last rule has proven controversial- some version of it has been used in communities with high performing school systems as a tool to limit enrollments, but it is sometimes also used in college towns to discourage student housing.)

Even in instances where developers did go through the proper channels to request a variance to the established zoning, several interviewees felt that the process is inevitably skewed in favor of developers who have the resources to purchase approval from the Zoning Board of Appeals.

In conjunction with the spotty enforcement of zoning, its impermanence and somewhat limited scope cannot make it the sole thrust of an anti-displacement strategy. An interviewee emphasized
how the real estate market is leveraged by power-brokers who seek to gentrify and displace communities for profit. As alternative or complement to zoning is advocating for more subsidization of land by government to be used for public and nonprofit use. We feel it is important to hold these tensions in mind when formulating and organizing around new zoning.

**Land Use in Boston**

More than half of the land in Boston is devoted to tax-exempt institutions, including land owned by the city and state, by educational institutions, and hospitals. Industrial use takes up 4%. Commercial use takes up 9% of the land. 36%, or 400,000 square feet, of the land area in the city is residential.

71% of that residential piece is zoned for single-family, two-family, or three-family homes. Even so, with much less land, 68% of the city’s 252,000 housing units are rental. Most residential land in Boston is not zoned for multifamily use, and almost all multifamily developments must be approved by a special permit, which creates barriers for those looking to build affordable housing.

Boston is an old city, and many neighborhoods have undergone dozens of major zoning changes. In years past the zoning code was only available in hard copy- and at over 3,000 pages long not including maps, it was not accessible to many. But all current zoning codes and maps are publicly available on the BPDA’s website, and you can look up zoning regulations by neighborhood or even by individual parcel. Comprehensive, accessible GIS data about land use in the city is now more available than ever, and communities may be able to use that data to better understand and measure zoning problems.

![Zoning Pyramid](image-url)  
*Figure 7: Zoning Pyramid, showing examples of allowed uses in zoning districts of Boston. Created by Cat Kemmett using image from Canva.*
Zoning does not work retroactively. When zoning is changed, parcels already on land being rezoned are called pre-existing nonconforming structures or uses. This means that they lawfully exist as they are, despite violating current zoning. Someone who wishes to expand, change, or alter a pre-existing nonconforming structure must apply for a permit from the city's adjudicative body, the Zoning Board of Appeal. The adjudicative body is under no obligation to approve the proposed change as it is not a use by right, rather it is not permitted in the current zoning district. Many parcels in Boston are con-
sidered to have pre-existing nonconforming structures. A report released by Somerville’s planning department revealed that in the whole city, only 22 buildings actually met the current zoning code—and if they had included parking requirements in their calculation, it is unlikely there would be any conforming structures. Though Somerville is a notable extreme, in any city that had significant development before zoning codes became more intricate, restrictions on density would make it impossible to build what exists there currently, as in New York where as much as 40% of the city could not be built according to today’s zoning.

Understanding pre-existing nonconforming structures is important for piecing together how zoning change works. A change in zoning will not change the requirements for buildings or uses constructed before the change. The lawful existence of these structures is also key in formulating new anti-displacement zoning strategies. In the next section of this document, downzoning is described as one such potential strategy. Downzoning can be an effective tool for preservation or protection of neighborhood structures as they are because of their status as pre-existing nonconforming structures. Buildings can remain as they are but cannot be built up, and therefore protected from development that might be displacing.
EVIC FREE

Image Credit: “Holiday vigil: Stop no-fault eviction of Dorchester grandmother, Yukun Zang, Boston News Service
An Introduction to Zoning Strategies

Throughout our research on zoning, we came across many different strategies being used both explicitly and implicitly to advance anti-displacement measures. We have focused below on the strategies that we feel best can be leveraged by communities for anti-displacement and community control. However, this is not an exhaustive list, rather, the top options we believe are the strongest tools for advancing the anti-displacement agenda.
Upzoning and Downzoning

WHAT IS IT?

Through downzoning, land that is zoned to allow for higher density uses is reclassified at a lower density level. For example, a block could be downzoned from allowing multifamily apartments to only single family homes. Typically structures that existed in the area before it was re-zoned are “grandfathered” in, and are able to retain their use, even if it does not conform. Though these structures are allowed to stay, they exist in somewhat of a limbo: it is generally not allowed to expand on them or rebuild without a variance or allowance from the zoning board. Any new projects moving forward are fully subject to the new, more restrictive zoning scheme. Downzoning often decreases the value of land: if before a landowner had the possibility of building 20 units, but then their land is downzoned to allow for only a duplex or triplex, the property owners might see that as unfair. Consequently, many landowners that have future development or expansion plans for their land will resist downzoning, claiming that it decreases property values, limits tax flow to municipal coffers, and stymies growth.

But there are also many homeowners who advocate fiercely for downzoning. In limiting allowed density, downzoning can help preserve the character of a space. In neighborhoods that are experiencing rapid growth or an influx of new residents, downzoning effectively puts a cap on that growth and “codifies the status quo.”

Advocates of downzoning often cite concerns about traffic congestion, school overcrowding, and maintaining a more small-town feel. Downzoning has had a massive impact in the greater Boston area. Most municipalities in the metro Boston area have downzoned parts of their town, particularly attractive, majority single family neighborhoods, in ways such that they could never be built again today at the same density. Through downzoning, the average lot size for a new single family home in metro Boston is now greater than
than an acre—the size of a football field.\textsuperscript{36} Restrictive zoning has a significant impact on housing throughout a region. Some estimates hold that almost half of the cost of homes in San Francisco can be attributed to zoning restrictions, and have driven housing costs up in New York as much as 50%. \textsuperscript{37}

Upzoning and downzoning often happen simultaneously, where one neighborhood adds density and another restricts it. Most rezoning measures in Boston, regardless of location, occur without a comprehensive review of its effect citywide. So if part of Chinatown were to be downzoned, there is no requirement that a different neighborhood would be upzoned to compensate, or any requirement in the current impact studies required of large projects (including environmental impact studies, transportation impact, historical impact, etc)\textsuperscript{38} that there be an assessment of the housing lost as a consequence of that downzoning.\textsuperscript{39}

Time and time again a similar story has played out in American cities: Wealthier, whiter neighborhoods have been preserved through downzoning, creating protected enclaves, while neighborhoods of color are given no such protections. In New York, Mayor Bloomberg’s administration downzoned the predominantly white Brooklyn Heights to protect the area from overdevelopment. At the same time, the administration upzoned large swaths of Harlem and Chinatown, allowing for a proliferation of hotels and luxury apartments.\textsuperscript{40} In Boston much of the core of downtown has long since been downzoned, but the city has allowed for increased density in areas vulnerable to displacement and home to large communities of color like Chinatown.

Downzoning has significant legal limitations as well. Some downzoning cases are litigated on the basis that they violate the Fifth Amendment because they constitute a “taking” of private property without just compensation. Some courts have interpreted this to mean that parcels can’t be rezoned to a category that leave them without a reasonable economic use. Developers and land owners subject to downzoning will often claim it is Fifth Amendment violation, and though it often fails to hold up in court,\textsuperscript{41} sometimes the public pressure is enough to derail a downzoning scheme.
NYC’s Chinatown has been the target of several top-down redevelopment proposals since the Lower Manhattan Expressway plan of 1929.

In 2008-2009 the city rezoned a portion of the East Village, and a little piece of Chinatown. The most affluent blocks of the East Village and the whitest blocks of the Lower East Side were rezoned to protect existing uses. Chinatown had been mostly a combination of vacant land or low-rise commercial buildings, and Chinatown blocks with a high proportion of low-income Asian, Latinx, and black residents were upzoned in order to promote new development.

In 2011, the city further rezoned 20 acres of public land for large-scale, market-rate development rather than creating “low-income housing to help mitigate displacement,” excluding organizations led by working-class people of color from the planning and negotiation process.

After being excluded from contributing to the City’s 2008 rezoning plan, three community boards and 40 neighborhood organizations formed the Chinatown Working Group to create a community-developed plan and zoning document for Chinatown. The Chinatown Working Group decided not to do a formal 197-a plan (see page 84-85) because it is legally non-binding, but to create their own formal rezoning proposal for Chinatown with the help of a consultant. This strategy would respond to the deBlasio Administration’s focus on rezoning, and would develop and assert Chinatown residents’ self-determination in demanding protective zoning designations, especially because Chinatown’s exclusion from these protections in the City’s 2008 rezoning led to documented gentrification and displacement.
The GOAL

The Special Zoning District downzoning proposal by the Coalition to Protect Chinatown and the Lower East Side stipulates zoning changes to match the context of the existing community. These zoning changes include:

1. New buildings taller than a five-six story tenement will only be allowed on a case by case basis so that it is subject to community review and provision of affordable housing.

2. Tenants in existing affordable apartments will be protected by a requirement for landlords to obtain a “certification of no harassment” (see page 91-92) in order to alter or demolish a building.

3. The small-business economy of Chinatown and the Lower East Side will be protected by a “Neighborhood Commercial District” requiring any chain with 11+ branches to obtain a special permit before opening a store in the district.  

4. There will be requirements to obtain a special permit for conversion of industrial space to residential.

5. Protection of the existing stock of affordable housing in the New York City Housing Authority projects by requiring special permits and a community review process for any new development on these properties. Under existing zoning, NYCHA developments in the Lower East Side have over 7.6 million square feet of unused development rights — enough to develop 9,000 new public housing apartments. City policymakers are already discussing how to use these rights in partnerships with private developers.
Political Context

The deBlasio Administration has been conducting rezoning in neighborhoods across New York City. These zoning actions have had racially discriminatory impact which have not been addressed by the City. NYC Council members supported the City’s 2008 East Village/Lower East Side rezoning even though they understood that it would result in evictions and displacement in Chinatown. The long history of the targeting of Chinatown for redevelopment demonstrates a pattern of discriminatory planning practices in New York City that is embedded in city government policy across administrations.

Possible Outcomes

The Director of the Department of City Planning, Carl Weisbrod, rejected the Chinatown Working Group’s rezoning plan out of hand. He called the plan too ambitious, saying there weren’t enough opportunities for new development and too much of a focus on preservation. A coalition of organizations involved in the Chinatown Working Group is still fighting for the grassroots rezoning plan. Chinatown and Lower East Side residents are protesting the Mayor’s planning priorities at various sites of power. Residents are also fighting new developments in court on the basis of discrimination.
Takeaway

Downzoning is a tool that can prevent displacement because it puts a cap on development, effectively slowing construction and decreasing the value of the land. This strategy can come with its own set of challenges, since landowners, who seek profits from higher property values, will be resistant to downzoning and usually have the power to influence political decisions, such as those to amend zoning. For a neighborhood preservation downzoning strategy to be most effective, the campaign must be strategic in its rhetoric and argumentation so that it is not derailed by claims that economic value of the land is being stolen from landowners. Especially because gentrification is being actively carried out in communities of color, a very strong case must be made for preservation and for the limiting of development.
What Is It?

Through upzoning, zoning rules become less strict and allow property owners more by-right development and intensive uses. Parcels that previously were restricted to single-family only development might be upzoned for multifamily uses, or for multi-purpose uses to include commercial development as well.

Many economists, urbanists, and affordable housing advocates have increasingly been calling for upzoning, particularly in urban cores, to allow for greater density to help address housing and transportation needs. Mainstream economic thinking holds that restricting supply, as zoning does, combined with increasing demand to live in Boston is driving up the cost of housing. Therefore, making the zoning code looser will allow developers to build up more than ever before, thereby increasing supply, which will drive prices down.

Why do people believe upzoning will make more affordable housing? Neoclassical economics holds that:

1. Upzoning creates incentives to redevelop parcels at higher densities
2. New construction will follow, creating more housing stock to feed demand
3. The new units will reduce demand on the existing housing in the area and accommodate growth
4. Housing will become more affordable overall

There is some evidence of this strategy holding promise in creating more affordable housing, particularly in Washington D.C. and Seattle, where recent upzoning schemes have created thousands of new units and led to an overall decrease in market rents. However, this decrease in rental costs does not always follow, and in fact upzoning can often accelerate gentrification. Upzoning increases the value of land by allowing for new uses and greater intensity of use, which can create displacement pressures as landowners sell or redevelopment properties to extract as much value as possible from their parcels. This can lead to residents getting pushed out, unable to benefit from possible but not guaranteed more affordable housing that may not come to fruition for years.

Some critics have also pointed to the piecemeal nature of upzoning as a challenge for its utility in fighting displacement: changing the zoning code alone in just a small area in isolation, if the rest of the city remains expensive, is a fairly weak way to create affordable housing to serve a whole city.
EXAMPLE: Minneapolis 2040

Location: Minneapolis, Minnesota
Name: Minneapolis 2040
Implementation Status: Newly Implemented

Origins

How did MN 2040 start? Minnesota is a planned state, and as part of that process they have to create a comprehensive plan every decade.

In December 2018, Minneapolis made waves when they adopted Minneapolis 2040, an ambitious comprehensive plan for the city. A critical part of the plan calls for the elimination of single-family zoning not just in one neighborhood but citywide. Under the new zoning, parcels that were previously zoned for single-family detached homes only allow up to three units as of right. For Minneapolis this holds the potential for transformative change, since over 75% of residents currently live in areas that were previously zoned exclusively for single family homes.45

The GOAL

The Minneapolis 2040 plan is explicit in its goals to not just address issues around the housing crunch in the Twin Cities area, but to confront the city’s history of redlining and intentional segregation via zoning. It seeks to find ways to mitigate the generational effects those practices have had on racial and economic inequity in Minneapolis.

Upzoning is a common tactic cities have been using in the past ten years to try to spur new housing development, but it is typically targeted to specific areas, such as along transit corridors. But Minneapolis’s plan is a blanket upzoning of the entire city.

Crucially also, it is not just zoning reform. Clocking in at 1100 pages, the plan also includes substantial city-funded subsidies to build more affordable housing, and discusses plans to supplement this development with better public transportation. They tripled the budget of the Affordable Housing Trust Fund, and plan to set aside money for tenant legal advocacy.
The mayor, Jacob Frey, and city council were very on board with an aggressive progressive agenda, and the mayor is trying hard to expand affordable housing options. Homegrown housing advocacy groups like Neighbors for More Neighbors were instrumental in pushing the city for aggressive measures to increase density.  

**Political Context**

**Possible Outcomes**

It is unclear for now if this sweeping upzoning will help affordability in Minneapolis. While some economists believe strongly that increasing supply will decrease demand, it’s hard to predict if this broad zoning shift will play out that smoothly.

**Takeaway**

This is a market based strategy: more supply is assumed to meet more demand. The land might be rezoned, but less restrictive zoning is not necessarily enough to create more density, and without policies in place to address potential displacement, it might leave some neighborhoods vulnerable. It also does not necessarily guarantee more construction, and since it fails to target particular areas, it might create disparate negative impacts on vulnerable communities.
Inclusionary Zoning

WHAT IS IT?

Inclusionary zoning ordinances require a given share of new construction to be affordable for people with low to moderate incomes, allowing the private market to partially subsidized affordable housing. Inclusionary zoning can require, or heavily incentivize, private developers to set aside a predetermined percentage of units for a development to be reserved for below market rate. In Boston, inclusionary zoning is mandated through the Inclusionary Development Policy, or IDP. The IDP applies to new residential developments with ten or more units where developers are seeking zoning relief or building on City of Boston owned land. Under IDP, developers are required to either set aside affordable units on-site, build affordable units in an off-site location, or, if the BPDA approves it, contribute money to the Inclusionary Development Fund.

The percent of units that are set aside as income-restricted varies by municipality. In Somerville, grassroots advocates used a citizen's petition to increase affordable units to 20% of large projects moving forward. Boston requires only 13% of projects be affordable, although in some areas a higher 18% rate applies (based on demands from advocacy organizations and community groups).

As a market-based solution, the IDP program only works if development is actively happening in the city- when development is slower, IDP has very little leeway to create new units.

Writer and architect Michael Sorkin takes a dim view of IZ as a policy to adequately address equity and displacement, arguing that “these deals are only viable when developers feel they have more to gain than they must give back, and so each of these exchanges is, by definition, a bad deal for the public.” We also heard some criticism about lax enforcement, and stories about instances where developers decided to disregard affordability requirements in inclusionary zoning requirements because in the past BPDA has not enforced it well, and the penalty for noncompliance is small enough that they still make a profit even if they are caught.
EXAMPLE: Boston, MA

Location: Boston, Massachusetts
Name: Inclusionary Development Policy
Implementation Status: Adopted in 2000

Politics Context

Many housing advocates and some politicians, including councilwoman Lydia Edwards, are fighting to increase the IDP threshold from 13% to 20% or even 35%. Developers and have been very resistant to this push, holding that increasing that rate would scare off potential investors and increasing the amount of subsidized units would be too much of a financial burden for them to bear.

While there is no legal requirement for a public process for changes to IDP, historically the BPDA has consulted with community stakeholders before making any major updates to the policy. Mayor Walsh has announced that strengthening the IDP is a goal of his for 2019, which may include changing the affordability threshold to allow for more deeply discounted units, increasing the amount of affordable units required per project, or increasing the fee developers must pay to the IDP fund if they do not create affordable units.

Origins

In 2000, former Mayor Thomas Menino signed an executive order creating Boston’s first inclusionary zoning policy. As apartment and condo prices increased through the 1990s, Menino created this measure as an attempt to prevent middle class residents from being priced out of the residential market.

The GOAL

To create new income-restricted residential developments in Boston.
Possible Outcomes

Since the IDP program started in 2000, developers have directly created 2,599 new income restricted units in the city, and revenue from the IDP fund has created 1,414 income restricted units.\(^{50}\)

According to the current IDP rules, all affordable rental units created through IDP must be affordable to households with incomes less than or equal to 70 percent or less of the Area Median Income (AMI), and for condos, half of the IDP-created units are dedicated to families with incomes less than or equal to 80 percent of AMI, and the other half are dedicated to households with incomes between 80 and 100 percent of AMI.

The majority of new units created via the IDP have been downtown and in the Seaport District, where the majority of large-scale new development has been happening. Though these affordable units are needed everywhere in Boston, this concentration of new units in just a few development hotspots means that neighborhoods that need affordable housing more but are not experiencing a development boom might be losing out.

Large developments are required to participate in IDP, while some smaller developers have instead opted to build nine-unit developments to get around the affordable housing requirements. According to BPDA records, the number of luxury units that are currently under construction is greater than the total number of affordable units built through the city’s IDP program from 2000 to 2017.\(^{51}\)

Takeaway

Inclusionary zoning has the potential to create needed affordable units in Boston, but it has significant limitations in addressing displacement concerns. Some believe that the provision of Area Median Income needs to focus more on the below 80%, as those are the folks that need the most support, and current IDP measures are catered more to median income residents. Others believe inclusionary zoning can actually be an accelerator in gentrification, if old buildings are torn down and replaced with luxury buildings (promising a small amount of affordable units), this will quicken the process of raising property values (as opposed to the luxury building never leveraging the inclusionary zoning ordinance). This strategy can be used for both anti-displacement and displacement efforts.
Overlay Districts

WHAT ARE THEY?

Zoning overlays create a layer on top of existing zoning that has additional requirements or incentives that apply just to that zone. Overlays might share common boundaries with just one base zone layer, or it can cut across different underlying zoning boundaries. Overlays can be added or removed without going through the political process of changing the entire zoning scheme. Overlays are often used to protect environmentally vulnerable areas, but they can also be used for other purposes such as to create protected historic districts or to allow for economic development projects. Many communities in Massachusetts and elsewhere are moving towards creating overlays to allow for transit-oriented development (TOD) which allows for greater density along transit lines.

Zoning overlays are a particularly powerful tool for two reasons: they can be created relatively easily, and they are incredibly flexible. Changing the underlying zoning code in Boston can be a slow, politically contentious process, but with political buy-in and community support, an overlay can be adopted fairly quickly. Overlays have the ability to directly and quickly address complicated growth and development issues, allowing for the kind of creativity and specificity of vision that is often missing from traditional zoning. As disagreements at the local level across Massachusetts have spring up about where recreational marijuana facilities will be allowed to operate, a number of towns like Somerville and Belmont have created overlays that solely determine where facilities that sell marijuana can be sited. More experimental overlays that can incentivize affordable housing for the elderly, help promote arts and innovation districts are being used in different towns across the state, and it is likely that municipalities will continue to expand on that and push the boundaries of what role overlays can play in their zoning.

Zoning overlays can create problems however. They introduce administrative complexity to zoning, especially in areas where multiple overlays apply, and sometimes create contradictions in the code that leave planning staff or community members unclear on whether the overlay or the underlying codes get precedence for certain aspects of a
Parcel.

Overlay districts currently in use in Boston include:

1. Plan Development Areas (PDA), which create more flexibility for specific kind of projects in that zone
2. PDAs and variances within them can be approved by the BPDA itself rather than the ZBA, raising questions of legality
3. Restricted Parking Overlay
4. Groundwater Conservation Overlay
5. Neighborhood Development Overlay District (NDOD), which requires BPDA design review for changes to structural exteriors or expansions
6. Interim Planning Overlay Districts (IPODS), which create interim land use regulations while the neighborhood goes through a rezoning process. IPODS may require ZBA approval for any new development
Origins

Last year the city of Cambridge released a proposal for what they call the 100%-Affordable Housing Zoning Overlay. This proposal came out of Envision Cambridge, a community wide process started in 2016 with the goal of creating an updated comprehensive plan for the city.

About

As the plan stands now, the overlay would only apply to developments that are 100% affordable. The plan would allow for:

1. As-of-right permitting for affordable multifamily units
2. Density bonuses (greater number of units and total floor area) with more flexible bulk zoning (height, setbacks, open space), and parking
3. Allow for multi-family developments in areas where they are not currently allowed
4. Conversion of larger residential buildings to affordable multifamily housing

Still requires community input and is subject to design review by Cambridge Planning Board

While the city expects that most of the 100%-affordable projects in Cambridge will be developed by the city or local nonprofit developers, private developers would also be allowed to make use of the benefits of the 100% affordable overlay, but it would be subject to deed restrictions (a restriction to how a property can be used, in this case, the rent that can be charged) to ensure permanent affordability on the properties. Typical inclusionary zoning, with some market-rate housing and some amount set aside as affordable, would be explicitly disallowed in the 100%-affordable housing overlay.

The overlay would allow 4-story buildings in 3-story zones (yellow), a maximum of 7 stories in medium zones (green), and would comply with district standards if the building exceeds 80 feet in zones where that’s allowed (purple).

In addition to zoning, the overlay would also be paired with a five-year annual contribution of $20 million to the Affordable Housing Trust to help assist in implementation of the program.
The GOAL

The goal of the overlay is to help affordable housing developers create more affordable units in a more streamlined and simple way, and to help them compete more competitively with private developers.

Cambridge, like many other cities in the metro Boston area, is experiencing a housing crunch, so the overlay is one part of their proposed plan to address increasing rents and displacement of residents.54
Political Context

The City Council has thus far seemed very supportive of the overlay, but it has proven contentious at public meetings, and its future remains uncertain. Cambridge also has a history of creating expensive planning processes (such as the Kendall Square Central Square Planning Study process of 2011-2012) that are quickly shelved, and their recommendations never implemented due to resident pushback.

Possible Outcomes

Critics of the plan have expressed concerns related to increasing density, such as increased traffic congestion, and fears that allowing for more affordable housing will change the character of the current neighborhood. However, 100% affordable projects would be subject to the same planning and design review process used now, and would still undergo the community input process.

Some members of the Cambridge City Council have proposed amending the overlay to include a “Right of Return” clause. This policy would add in a preference in projects created by the overlay for former residents of Cambridge who have already been displaced but who want to return. While current city affordable housing policies show a strong preference for current residents, as soon as they are effectively priced out of Cambridge and leave, there are no policies in place that can help them move back. A “right of return” could serve as a way to help communities impacted by racist urban policy and possibly to help reverse patterns of displacement. This proposal calls for 10% of gross floor area created to be set aside for former residents, many of them families of color, and help address generational equity issues. Right of return policies have significant limitations in that they are reactionary, and serve mostly to address dis-
placement that has already happened rather than prevent displacement.

**Takeaway**

This is an ambitious overlay, showing the innovation and ability to target affordability and equity. If the overlay passes, to have a strong impact it will be crucial to include the conversations about right of return to consider those that have already been priced out of their homes, and to make sure policies are in place to strengthen tenant rights. Overlay districts can go above and beyond Cambridge’s plan, and with creative thinking and community envisioning, they have the potential to serve a more important role than they do today in fighting displacement.
The Fairmount Corridor is the area around the Fairmount line of the MBTA commuter rail, which spans from Mattapan north to South Station. Due to anticipated displacement as a result of increased property values and gentrification along the new corridor, community groups have come together to propose Transit-Oriented Development Overlay District zoning codes to ensure anti-displacement measures.

The geography covered by the proposed overlay district encompasses a ½-mile radius of the entire rail corridor, not just a ½-mile radius of each rail stop. Another proposal included in Article 91 is a minimum of 40% affordable housing available, including more restrictive (localized and realistic) standards for defining affordable housing. In addition, the proposed code sets out employment standards to ensure neighborhood residents, people of color, and women will have an opportunity to obtain contracts and employment on Transit Oriented Development Overlay District projects throughout the City of Boston. This includes mandating all workers be paid prevailing wage/union wage, first source access to jobs in the corridor and city-wide for residents of the corridor, and permanent job status.

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Political Context

One of the organizers of this overlay district document indicated their strategy in crafting the document was to use language that the City uses in their zoning codes to advance their proposals, so that the City would pay attention and give due diligence to their demands. They are currently in discussions with BPDA to negotiate the adoption of the proposed zoning amendments.

Takeaway

This Fairmount Corridor Overlay District has the potential to shape progressive zoning amendments in the future. Furthering a transit oriented development plan with an overlay district, especially with such lofty goals, will be a blueprint for other development around the city.
Transfer of Development Rights in Overlay Districts

WHAT ARE THEY?

Through TDR, which is written into a zoning code as a bylaw or as a special overlay district, landowners can sell the development rights from their land to a developer who can then use those rights to increase the density of development at another location in a different district. The right to develop a certain tract of land is essentially “transferred” from one district (the sending district) to a different area (the receiving district). The overall density and development within the city remains the same, but allows for areas that are trying to stop or slow development to transfer that potential buildout elsewhere, often to a receiving district that is actively trying to achieve a higher density. TDR has been used often for environmental uses, to protect open space or farmland, but there is also a precedent for its use in preserving historic neighborhoods. It is also important to note that there is no limitation on how far apart sending and receiving districts from one another. There are examples of TDR from one city to another, and though it remains yet to be seen, it is certainly possible to transfer development rights across state lines.

The most famous example of TDR use was Penn Central Station in New York City. In the 1960s, owners of the station were experiencing financial troubles and hoped to profit by selling the rights to develop above the existing historic structure. Someone instead offered to purchase the air rights for use on a different building site, which could fund the preservation of the beloved historic station. That offer was declined and the building demolished, and the existing airspace built up rather than transferred. Though that deal fell through, selling air rights and development rights in highly developed urban cores has become...
more common, though it can be difficult to trace the effects on the city skyline. The use of TDR and transfer rights to preserve affordability and fight displacement is understudied, but has been proposed before. A design firm in Brooklyn has explored the notion of expanding the possibilities of TDR, proposing that poor neighborhoods, particularly those in outer boroughs, should have the ability to sell or bank their air rights more easily as a way to build equity and stabilize affordable housing in their communities.58

A well written TDR program can ensure there are no winners or losers, and serve as a middle path. In Massachusetts, the right to implement TDR programs is found in Chapter 40a, section 9 of the general laws of the state, and allows municipalities to use it by special permit. It requires TDR ordinances to include incentives like added density or intensity of use in the receiving district, in exchange for a transfer of those development rights in a way that protects open space, promotes housing for low income families, or otherwise “furthers other community interests.” 59

TDR programs can be complex and difficult to administer. They can only be executed successfully if there is a willing sending and receiving district, and the process can’t take place until the zoning is in place for such a transfer. These districts are situated as overlays over existing zoning. Writing TDR bylaws can be technically difficult. These added layers of complexity may serve as barriers to implementation. But TDR holds great potential for neighborhoods looking for anti-displacement tools, because by taking away the right to build density on a “sending” parcel in perpetuity, it creates a lasting restriction that is more permanent than traditional zoning.
EXAMPLE: Seattle Case Study

**Location:** Chinatown district of Seattle, WA

**Name:** Equity Transfer Development Rights TDR

In 2016, Seattle proposed the creation of what they call the Equity Transfer Development Rights TDR in their Chinatown district, as part of their wider equitable development strategy. This TDR would serve as an anti-displacement strategy to mitigate the effects of displacement in Chinatown of community owned small businesses. The city worked with residents to structure the TDR to allow property owners to sell development rights in low market neighborhoods outside of Chinatown to owners in high market neighborhoods, in Chinatown and Little Saigon. In return, the selling property owners would be required to also provide affordable commercial space to local residents in Chinatown, with a focus on culturally relevant commercial enterprises.

**About**

In 2015-2016 Seattle identified three neighborhoods at a high risk of displacement: the Central Area, Chinatown/International District and Southeast Seattle. All three neighborhoods have a long history of racial covenants and discrimination that shaped the physical and cultural identity of the communities. Real estate values in Seattle are on the rise, and the longstanding affordability and prime location of these neighborhoods near the city center makes them particularly vulnerable to displacement and gentrification.

**The GOAL**

The goal would be to create affordable commercial space long term for businesses critical to the Chinatown neighborhood, and to add revenue and stability for these districts that are at high risk of displacement.\(^6^0\) By supporting businesses and local community anchors, they hope to create well-paying stable jobs and support marginalized communities that have been cut off from many opportunities due to past flaws in Seattle’s zoning.
Political Context

In 2015 the Mayor of Seattle issued an executive order creating a new office, the Office of Planning and Community Development (OPCD). He charged them with helping close racial disparities in the city that developed over time due to systemic racism at all levels in the city. The OPCD has focused on assisting community-driven investment projects to help improve racial equity outcomes for the city, and focused particularly on communities at high risk of displacement.

Seattle has a history of using TDR to discourage sprawl, using rural “sending” districts to increase density in more urban “receiving” districts, and has used this tool to retain low income housing, encourage infill development, and preserve historic landmarks. The city has created a TDR bank that it uses to buy and sells housing TDR, so it has infrastructure in place to facilitate these transfers.

Possible Outcomes

As commercial and residential land in Chinatown becomes more and more expensive, Seattle is attempting to use TDR in a way that specifically addresses racial and economic equity. Allowing further commercial development in Chinatown for those who already live there but face the risk of being priced out might make it more viable for them to stay there long term, contributing to the economic and social fabric of the city.

However, programs like this one are fairly new, so the long term outcomes are not clear. This TDR scheme has yet to gain much traction outside of the OPCD, and without parties on either end ready and willing to send and receive those building rights, it might never come to fruition.
Takeaway

It is important to recognize the power behind a city-led initiative such as this Seattle OPCD. This example of TDR is crucial, as it illustrates how much can be pushed through when political will is strong. This strategy is a strong example of using zoning to both discourage inequitable planning and address racial and economic equity.

Figure 12: Neighborhood map of Chinatown, Manhattan
Image credit: Zoned Out by Tom Angotti
Adherence to a Comprehensive Plan

WHAT IS IT?

About half of all states require cities and towns to prepare comprehensive master plans before they can adopt zoning changes or make substantial infrastructure updates. These expectations are defined by the state legislature, and typically includes a public process of setting goals for different concerns like affordable housing, transportation, and environmental planning. These plans are prepared every few years (different states have different timelines), and help set the course for planning policies and priorities—and, crucially, they create a legal baseline to which all cities and states must adhere. Cities and towns must have plans that at least meet the baseline that the state requires, and if they fail to do so, their plans are void.

However, states in the other half of the country, including Massachusetts, do not require local governments to create and maintain comprehensive master plans to guide development. For years some lawyers have argued that these “non-plan” states could be putting themselves in a tricky legal situation if their regulations are challenged. Because their zoning ordinances are arguably arbitrary, since they were not developed to adhere to a plan adopted by the legislature, it’s possible they could be vulnerable to a lawsuit.

For example, one Boston community advocate has argued that even though Chinatown has zoning, it is poorly enforced and large developers are easily granted variances that undermine the purpose of zoning. Without a comprehensive plan to hold the city accountable, with stated goals, policies, and a plan for the future that zoning fits into, it’s easy for variances to be granted bit by bit. Though one variance might not be very noticeable at first, they happened more and more, and each one makes the future of the neighborhood less predictable. In a “plan” state like Oregon, which is very strict about adherence to the master plan, any variance that does not align with the goals in the approved plan is deemed void. Massachusetts is one of the most extreme cases of plans having little to zero legal weight.

Planning without a map for the future, as we do in Massachusetts, allows for a degree of
selfishness and self interest. But it comes at a cost. The housing crunch does not begin and end in Boston, it is a regional issue, as are the growing consequences of climate change and other major regional concerns that do not respect town boundaries that we have drawn on maps. States with comprehensive plans are able to better pass on some of the shared burden of the region to the towns, by making them incorporate environmental safeguards or requiring them to build a certain amount of affordable housing. Cities and towns still operate as separate entities, but it requires at least some degree of local and regional coordination.

There is also value in the planning process itself. “Planned” states must create a process through which their community develops the plan, and they then adopt regulations to make sure that plan is fulfilled and regularly updated and revised in a way that is predictable and defined. Until recently, Boston had not undergone a city-wide comprehensive planning process since the 1960s. Released in July, 2017, Imagine Boston 2030 is the city’s first comprehensive plan to emerge since then. The community planning process around crafting Imagine Boston 2030 in and of itself holds value. Still, though the plan lists worthwhile city goals and begins to plot how they might be achieved, there are no legal accountability mechanisms in place to ensure that action is taken to uphold them.

Massachusetts seems unlikely to adopt mandatory comprehensive planning anytime soon. It is a fairly obscure political niche that is rarely discussed, and no one in the current administration has taken up the cause. However, even if statewide legislation fails, there are ways to achieve that same level of legal rigor at the local level if there is the political will.
EXAMPLE: Cape Cod Comprehensive Plan
Location: Cape Cod, MA
Name: Cape Cod Commission
Implementation Status: Adopted in 1990

By 1990, Cape Cod had undergone a substantial transformation from a coastal, largely rural environment to a major luxury resort area. It experienced a lot of development in a relatively short span of time - the population of Cape Cod grew 26% between 1980 and 1990 - and new housing and infrastructure came along with it to support the thousands of new year-round residents flocking to the Cape. This uptick in development caused concern for both the state and local residents. With over 400 miles of coastline and as home to a number of unique ecosystems, the Cape is a particularly ecologically vulnerable area. Though a number of state-level regulations protected these areas, a great deal of erosion and damage had already taken place.65

According to Peter Ryner, Barnstable’s first town planner, the formation of the Cape Cod Commission was largely an acknowledgment that the preservation and protection efforts on the Cape through the 1970’s and 1980’s were a failure,66 and residents wanted a way to collectively act to form the future of development.

In 1990, Cape residents voted to establish a new countywide land use and planning agency and new regulations to control the Cape as a whole. The Cape Cod Commission was established that year by a special act of the Massachusetts General Court. It is a regional land use planning and regulatory agency that regulates all large-scale development through Barnstable County, which encompasses all 15 municipalities on Cape Cod.67

The GOAL

The goal of the Commission is to outline a “coherent set of planning policies and objectives to guide development and to protect its (Cape Cod’s) resources”. The Commission sets broad goals for the future and creates detailed policies that define how those goals are to be accomplished.

What the policy looks like: every 5 years the Commission publishes an updated version of the Regional Policy Plan. It contains mandatory regulatory requirements and policy recommendations for each town on the Cape. All local, state and federal laws still hold true, but the Regional Policy Plan also establishes a framework for comprehensive planning efforts at the local town level, and develops a policy for coordinating local and regional planning efforts.68

65
66
67
68
The Boston area has a regional planning commission as well, the Metropolitan Area Planning Council (MAPC), but it has no regulatory oversight. The Cape Cod Commission does, and that gives it power, and the responsibility to hold development accountable to established plans and zoning. If a variance is requested, it must align with the goals of the comprehensive plan, and if it doesn’t, the variance will be denied.

**Possible Outcomes**

1. Ineffective planning and bad zoning can happen anywhere, whether a state is planned or not. But in a planned state, there is an expectation of more predictability.

2. Plans provide a legal backbone you can use— if developers go outside the bounds of what they are allowed to do, a community advocate has more standing to sue than they would in a non-planned state.

**Takeaway**

The Cape Cod Commission is evidence that, given a window of opportunity and political momentum, regions within non-plan states are capable of instating mandatory plans of their own. Juxtaposing the regulatory reach of the MAPC and the Cape Cod Commission demonstrates the potential impact mandatory plans can have on shaping development and upholding a community’s goals as it grows. It should be noted that the political and socioeconomic context of Cape Cod are specific to the area, and this is a key element of the leverage the community had in advocating for the Commission’s formation.
EXAMPLE: 197-a Plans

Location: New York City, NY
Name: NYC’s 197-a Neighborhood Plans
Implementation Status: Adopted in 1975

These neighborhood-developed plans in New York City were first written into the City Charter in 1975 (in Section 197-a, hence the name). They were built upon the establishment of community boards in the 1963 Charter, which tasked the City Planning Commission with dividing the city into districts to be governed by an advisory planning board. These boards consisted of community residents who were selected by the borough president.

The new Charter in 1975 set up the advisory powers over zoning and land use of the community boards, expanding the window of opportunity for community-led planning and development. 197-a plans were a piece of the more proactive role communities were taking in planning their neighborhoods, yet as it was written in the 1975 Charter there were significant barriers to finishing and enacting these plans. The first plan to be approved and adopted by the City Council was that of the Bronx in 1992, made possible by a change in the 1989 Charter that, amongst other things, shifted the burden of environmental review from community boards to the Department of City Planning. The Charter’s changes were largely a result of community pressure.

The GOAL

197-a plans were part of a larger movement to channel authority over neighborhood planning and development from the city legislature to communities. They emerged out of a long history of organizing around policies that further community control, alongside efforts by community development corporations to utilize and promote community-based planning.
**Possible Outcomes**

1. The City Planning Commission has since interpreted the 197-a plans as policy “guides” for city agencies, as opposed to creating legally enforceable actionable items for the city’s implementation.

2. The plans are a powerful tool and process for communities to undertake. They establish collectively cultivated goals and desires for the future shape and character of a neighborhood, invaluable in future organizing efforts.

3. Though lacking legal enforceability, neighborhood plans can be used to challenge contrary zoning or land-use changes imposed by the city.

4. Despite frustrations over the lack of weight 197-a plans seem to hold, the fact that they are community-based plans officially recognized by city government is encouraging. The city has also come a ways in building support for community planning processes, moving from unsubstantiated ideas about what these plans might be to creating rules and mechanisms that guide the 197-a plans through their planning and review. There are instances of 197-a plans leading to negotiations between community boards and the Department of City Planning. An example: Chelsea developed zoning recommendations for densities for a housing development that were largely supported by the community. 70

**Takeaway**

197-a plans create meaningful opportunities for the distillation and activation of community goals. That said, the financial and time costs of developing these plans can be burdensome. Shifting the economic responsibility to the state has increased access to plan construction and implementation. There are occasions where plans have led to formal negotiations with the city. That said, this tool is limited in its capacity to enact planning goals because there is no legal mechanism to enforce them. With more ubiquitous use of the 197-a plans and continued organizing to increase their scope, continuing to push for expanded access to this community tool seems a promising way forward.
About

Seattle’s Department of Neighborhoods provides resources and guidance to civically empower neighborhoods through programs, funding, and leadership development. The department is notable for its proactive stance in incorporating neighborhood plans into Seattle’s Comprehensive plan. Neighborhood plan enactment unfolds in two-phases: the plan development process as well as subsequent plan implementation. Upon reviewing submitted neighborhood plans the Department of Neighborhoods takes three actions:

1. Derives specific neighborhood goals and policies and incorporates them into Seattle’s Comprehensive Plan.

2. Crafts and utilizes a “work-plan matrix” that outlines the intent of the City in enacting these specific neighborhood goals and recommendations.

3. Recognizes that all submitted plans to the City encapsulate the continued vision and desires of their respective communities.

The GOAL

Empower and connect the neighborhoods around Seattle to build strong communities and improve their quality of life.

Possible Outcomes

It is important to note that neighborhood plans as they are do not have legal power outside of the extracted goals and recommendations incorporated into Seattle’s Comprehensive Plan. That said, the fact that there are efforts made to adopt enforceable pieces of these plans and that there is support from the Department of Neighborhoods in coordinating neighborhood plans with one another and with an overarching city vision holds promise. There were 37 neighborhood plans in Seattle as of January, 2019. This impressive count may reflect something about the accessibility of Seattle’s process for enabling the development of these plans.

EXAMPLE:
Seattle Department of Neighborhoods

Location: Seattle, WA

Name: Seattle Department of Neighborhoods (neighborhood plans)

Implementation Status: Adopted in 1989
More on the Seattle Department of Neighborhoods

One of the department’s notable programs is the Neighborhood Matching Fund, which has been around since 1988 for the purpose of matching dollars for organizing, neighborhood development, or projects developed or implemented by community members. The fund functions around a community match, which requires awardees to match their award through volunteer time, donated materials or services, or cash. Since the creation of the fund, funding amounting over $64 million has been received for over 5,000 neighborhood projects in Seattle.73

Another department program is their Historic Preservation Program, which works to protect the eight historic districts and more than 400 structures, sites, and objects of historic, cultural, architectural, and social importance in Seattle. The program works fosters collaboration and dialogue between public, business owners, and property owners.
Anti-Displacement Zones

WHAT ARE THEY?

An anti-displacement zone is a neighborhood which aims to 1) protect current residents from displacement 2) maintain current demographic/racial/ethnic and economic character and 3) be designated in the zoning code as a new type of zoning district with special standards and programs. This zoning distinction is already implemented in neighborhoods in other cities like Washington, DC (Columbia Heights) and Portland, OR (Inner North and Northeast). This is both a zoning and programmatic strategy that empowers communities in keeping rent down and making it harder to flip units and evict tenants, reduce gentrification from new development, and increase income.75

Figure 13: ONE DC Brookland Manor against displacement.
Image credit:ONE DC, https://www.onedconline.org/pp_hearing_17
Takeaway

Many of the examples are in the test phase and have not yet been implemented. There is not much standardization of this strategy yet, so there is room for experimentation.
Tenant Protections

WHAT ARE THEY?

It is possible to attach certain protections for vulnerable tenant populations to zoning. Between 1979 and 1994, Boston’s rent control laws (which were repealed by a state-wide referendum vote in 1994) banned condominium conversion eviction of elderly, disabled, and other vulnerable populations. Certain protections were passed through a separate condo ordinance in 1999; amongst others these include a five year notice period for vulnerable tenant populations, relocation benefits, and right of first refusal. While these were written into the State Statute more broadly, it is possible to create overlay districts that attach similar protections to certain districts and land parcels.

Currently in the Massachusetts Charter chapter 40T there is language that protects public housing. There are requirements of developers and management- including giving tenants a necessary amount of notice before making changes- that make transforming or eradicating public housing a longer process, thereby allowing tenants time to react. One interviewee suggested that a similar law ought to apply to affordable housing in the private market, in effect helping to preserve affordable units already existing in MA. Zoning provides an opportunity to tie protections like those mentioned to development within areas of the city.
EXAMPLE:
Certificate of No Harassment

Location: New York City, NY

Name: Certificate of No Harassment

Implementation Status: started in the 1970s in one neighborhood (Hell’s Kitchen); still a “Pilot Program”

Origins

The idea of a Certificate of No Harassment goes back to the 1970s in New York, when community organizers in the Hell’s Kitchen in Manhattan—where at the time there was still a lot of working-class housing—introduced it. The organizers’ efforts led to the creation of the Special Clinton District, an elaborate zoning scheme designed to protect the small-scale, residential character of the community, and to shield low-income residents from the effects of aggressive development. Their organizing to amend the zoning was one piece of a greater struggle against displacement. What ultimately saved the portions of affordable housing in that neighborhood was city investment as a result of activist pressures.

About

In response to the criticisms that New York City’s inclusionary zoning program is contributing to displacement, with new zonings taking place throughout the City, the law now requires that owners of the newly constructed housing have a Certificate of No Harassment. The owners of the new housing cannot have had a track record of harassing residents—of buying them out or forcing them out in order to promote gentrification and displacement. This strategy for tenant protections is being implemented now because it worked to a limited extent in Hell’s Kitchen in the 1970s.

The GOAL

The owners of newly developed housing cannot have had a track record of harassing residents—of buying them out or forcing them out in order to promote gentrification and displacement. The idea is that this would be a legal mechanism to ensure there is no harassment of tenants in all new housing that gets developed.

Political Context

Tom Angotti, founder and previous director of Hunter College’s Center for Community Planning and Development, believes the Certificate of No Harassment is not very strong as a zoning tool, because big developers for the most part are not the ones doing the harassing. Most of the new housing being developed is luxury housing—and even when it is “affordable” by Area Median Income, it is only really affordable to middle-income and not low-income people. The primary tenants of new housing will be the millionaires and the professionals and the middle class.
Low-income tenants are the people who will more often struggle with harassment, and they live in small buildings with medium-sized owners—and a lot of times those incidents don’t even get reported. The developers also usually have the resources to fight back in a legal battle.

**Takeaway**

This zoning amendment needs to be strategically worded and applied so that it unambiguously addresses the actual harassment happening toward low-income residents. This strategy can be coupled with others, such as anti-displacement zones, to add greater protections for residents who are the targets of harassment. The strategy for the Certificate of No Harassment would be most effective if it is combined with grassroots pressure, as well as a broader campaign to reform the housing court system.
Community Action

Historic and Ongoing Community Action

Community Control of Development

Our criteria for evaluating zoning strategies includes political feasibility, potential impacts, and intent and who is being served by these strategies. However, community control of development is an integral focus in our evaluation of zoning strategies, since anti-displacement would be most effectively achieved if and when communities have control over the development of their neighborhoods. According to a research focus group from the 2011 Practical Visionaries Workshop at Tufts UEP, strategies for achieving community control can take three forms:

1. Community Control through government (e.g. zoning, influencing RFPs, etc.)

2. Community Control through direct negotiation with capital (landowners/developers) (e.g., Community Benefits Agreements)

3. Community Control through Direct Ownership (e.g., CLTs, cooperative housing)

The communities of Chinatown, Roxbury, and Dorchester have active grassroots activist organizations that are also members of the Greater Boston Community Land Trust Network. These organizations are pursuing strategies to win community control of development, and can benefit from the zoning strategies outlined in this report. Below is some of the history of each of these neighborhoods’ struggles for community control, in order to describe the circumstances in which these activist communities of Boston are organizing for anti-displacement, and to contextualize the ways in which these organizations could apply zoning strategies to advance their anti-displacement work.

Chinatown

The Chinatown neighborhood in downtown Boston is a residential, working-class neighborhood and the social, cultural, political, and economic hub of the broader Chinese community of New England. As a densely populated area, the Chinatown land base has been eroding for 50 years and housing is overcrowded, with new housing development projects that are quickly dis-
placing residents and small businesses. The land and homes on it are also historic, and thus preserving both are seen as crucial.

The Chinatown Progressive Association (CPA) is a grassroots community organization working to empower the Chinese community in Greater Boston through equity-based advocacy. CPA focuses on labor and housing campaigns to address issues working families and working-class people in low-wage industries face. Of the many programs that CPA runs, the Chinatown Stabilization campaign, aims to strengthen the voice of Chinatown residents to unite the community and advocate against overdevelopment and gentrification. This is done through tenant organizing, working for community-driven planning and development, and coalition-building for policies to stabilize the neighborhoods. The Chinatown community, led by CPA, has pursued all three forms of community-control strategies.

As part of its strategy for achieving community control through government, the Chinatown community developed a master plan with the City. Organizers worked with the City on the first master plan in 1990, which resulted in the Chinatown zoning. This zoning, however, has been ignored by the City in its planning. There has been a new Chinatown master plan developed by the community every 10 years. Chinatown is currently developing its 2020 master-plan with the City as part of the PLAN: Downtown process.

Chinatown CLT

Founded in 2015 through work at CPA, the Chinatown Community Land Trust has been advocating for local policies that prioritize public land control for permanently affordable housing and community control. As Chinatown faces rapidly rising property values coupled with little city-owned land, the CCLT is exploring ways to better these processes and opportunities for residents and advocates alike. Currently, the focus of the CCLT is less about acquiring land, as the property values are exceedingly high in that area. Given that, the CCLT preserves as much neighborhood land as possible - focusing on advocating for downzoning in row house areas, as well as against additional luxury development and upzoning around Chinatown.

Roxbury

Roxbury has been the prominent center of Boston’s Black and Latinx populations, located about 10 minutes from downtown Boston via transit. However, through decades of disinvestment and neglect, residents of the area lost housing and jobs due to policies like lack of public investment or large scale clearouts of neighborhood land for highways. However, the years of disinvestment in Roxbury are long behind, and currently the largest problem Roxbury faces is gentrification.

In the late 1980s, the BRA planned to invest $750 million in Dudley Square—trying to “Manhattan-ize” these neighborhoods, as someone we interviewed put it. A community-organized group, the Greater Roxbury Neighborhood Authority came together to develop community consensus around a develop-
ment vision and to demand community control over the development process. Through this process, the Greater Roxbury Neighborhood Authority pursued the strategy of achieving community control through government. They succeeded in getting a slate of representatives elected through their own public process to be seated on an interim project advisory committee.

Prominently working toward community control in Roxbury is the nonprofit, community-run neighborhood organization, the Dudley Street Neighborhood Initiative (DSNI). In the 1980s, DSNI was founded to rebuild the Dudley neighborhood surrounding, which had been overrun by the dumping of toxic waste and by abandoned homes. At the time, more than one-fifth of the neighborhood’s land (totaling 1300 parcels) was vacant. DSNI’s community land trust, Dudley Neighbors, Inc., was established in 1988 to increase community control of development, using the strategy of direct ownership.

The DNI CLT has exerted community control of development since the 1980s, but without mechanisms in place to preserve housing affordability, the neighborhoods surrounding the CLT have been facing significant land speculation. There are many planning processes happening in Roxbury and Dorchester. In 2004, Menino’s administration created a Roxbury Strategic Master Plan to guide economic growth for 10-20 years in Roxbury. Currently underway are the Uphams Corner Implementation Plan, PLAN: Dudley, and nearby PLAN: Mattapan.

**Dorchester**

Dorchester is a neighborhood adjacent to Roxbury. Prior to demographic changes related to white flight to the suburbs, Dorchester was primarily composed of Jewish, Italian, and Irish populations. From the 1950s-60s, the Great Migration of Black Americans from the South led to the formation of African American communities in Dorchester. From the 1960s-80s, there was another wave of migration to Dorchester, this time of Caribbean and Asian, particularly Vietnamese, populations.

Largely because of the white flight from Dorchester, the neighborhood experienced disinvestment in the 1960s-70s, which coincided with these demographic changes. Dorchester also faced a period of economic recession and high unemployment at this time. Plagued by blockbusting and redlining schemes, the community of Dorchester has struggled with these discriminatory wealth inequalities. With gentrification spreading to the Dorchester, this neighborhood that was once heavily disinvested is now seeing the construction of luxury condo buildings, as well as transit-oriented development along the Fairmount Commuter Rail corridor, of which five stations pass through Dorchester.

There are significant community responses to gentrification and displacement being organized in Dorchester, a few of whom are pursuing zoning strategies for anti-displacement—including the militant housing activism organization Dorchester Not for Sale and the coalition working to establish a transit-oriented development overlay district for
the Fairmount Corridor. By aiming to impact zoning, these groups are pursuing the strategy of community control of development through government.

**Fairmount Corridor Case Study**

Please refer to page 72 to learn about the proposed Overlay District that several neighborhood groups have crafted to protect communities along the Fairmount line of the MBTA commuter rail from displacement.

**Brief History of Community Control of Development in Boston**

Throughout the Greater Boston area, there are countless community organizations working to organize against displacement, mostly organized by neighborhood. Recently, groups like Reclaim Roxbury, Dorchester Not For Sale, and others came together for the People’s Housing Assembly, the second gathering of these groups with the eventual goal of forming a collective People’s Housing Plan for the City of Boston. An overarching goal of this plan is to end displacement in Boston and secure the many threatened neighborhoods around the city, through three focus areas: *affordable housing, collective governance and anti-displacement zones*.

These three areas are designed to collaboratively empower community control of development and protect against displacement. Specific demands that emerged from the assembly’s working groups include elected community boards, community veto power over development projects, recall of corrupt elected officials and 50% rate of affordability based on the average income of the neighborhood.81 This Assembly plans to meet three more times this year to produce the People’s Housing Plan.

**Current Citywide Action**

In 2008, the recession and foreclosure crisis influenced the course of local movements for community control. Coalitions like Right to the City and Whose Boston? emerged. Homes for All is organizing in response to the current planning processes underway in neighborhoods throughout the City. Groups are forming neighborhood councils to serve as a dual power to the City and demonstrate collective power and decision-making. The coalitions are also conducting citywide people’s assemblies to design and develop the Boston People’s Plan.

These community planning initiatives are key components for achieving community control of development in Boston, despite the need to overcome the City formally minimizing such processes into purely “advisory” input, as has been the case in official planning efforts in Boston and with some 197-a community planning processes in New York City.82 Unlike in Boston, New York City’s 197-a plans are written into the City charter. In Boston, these processes offer the community more symbolic than formal legal power. Nonetheless, the benefit of undergoing community planning processes, as Tom Angotti noted, is that “it is a way that communities can work together to iron out their differences and to develop strategies. That is what a plan
is—a plan is a strategic vision of what you want for your neighborhood, for your community - it’s what’s most important.” Community planning is a way to develop consensus and practice compromise among a community with a plurality of perspectives, and it is a political strategy that builds grassroots power.

Figure 14: Participants at People’s Housing Assembly 2019.
Image credit: People’s Housing Assembly
Conclusion

Findings

This report confirms that zoning is one of the most powerful tools for both land use and social engineering. Zoning has disparate impacts on different communities. It has proven an invaluable way to preserve wealth and land values for some, but it has also codified racial and economic segregation.

As the scope and complexity of zoning systems have expanded, public comprehension of the history and content of the zoning code has declined. The codes are confusing and difficult to navigate even for experts, which serves as a barrier for communities looking to use or change them.

A number of different bodies of local government have levels of ownership over zoning decisions. Not all of them have the same goals, and many of them have historically lacked transparency and honesty in their decision-making process, making it difficult to isolate and address issues that arise. While members of the community are welcome to contribute their voice at public meetings, their input is not always taken seriously or given an equal weight with development interests.

Displacement threatens many communities in Boston, and community groups are excluded from many of the most impactful parts of the zoning and planning process. Many of them are demanding a seat at the table to address systemic issues contributing to displacement, and they are organizing and creating their own plans and visions for their future. Unless

In many ways zoning has not kept up with the changing needs of cities, and Boston’s antiquated, uneven, and unjust codes have in many ways failed to serve its vulnerable neighborhoods. There are significant barriers to changing zoning and holding the governmental systems that create and enforce those codes accountable for the negative impacts of zoning. However, community advocates are taking action to actively create better zoning to serve the needs of their neighborhoods, and to take back some of the power to shape the future of their communities that top-down zoning has robbed them of.

Communities nationwide are grappling with the legacy of bad zoning. Some are
pushing the boundaries of traditional zoning, finding creative solutions that might be able to better address equity issues and displacement. One of the strengths of zoning is that it is not set in stone -- it can and will change. Legally, zoning allows for far more possibilities than our existing codes reflect. With political will and imagination, we can shape zoning to be more understandable, more equitable, and better able to change to account for the changing 

**Recommendations**

While zoning provides no silver bullet answer to communities faced with displacement pressures, we have several recommendations for the consideration of the GBCLTN, the city of Boston, and other groups interested in utilizing zoning tools in a way to slow or stop displacement.

**Engagement and Participation**

1. Boston has a rich history of organizing around community controlled development, including members of the GBCLTN, and the interest to get involved is there. Government should create meaningful pathways for engagement, like empowering neighborhood councils to have a seat at the table in the planning process beyond just in an advisory capacity.

2. Organizers and government should engage in public education around zoning and its effects in a way that is easily understandable and actionable.

3. GBCLTN and other activist groups should consider encouraging members to join zoning boards and commissions in their neighborhoods to make sure not just business interests are represented.

**Transparency and Enforcement**

1. The city should improve communication and transparency about zoning changes and planning processes impacting different neighborhoods.

2. When variances and unsanctioned zoning violations occur in vulnerable neighborhoods, there should be greater accountability.

**Address Displacement Explicitly**

1. Beyond just acknowledging the harmful displacement and impact zoning has had on vulnerable neighborhoods in the past, the City should continue to actively address how it will mitigate displacement today in its planning process.

2. The city should explore implementing a new, more broad assessment of the impacts of developments to encompass their effect on equity for historically disadvantaged neighborhoods, social cohesion, and housing to better examine the effects they might have on displacement.

3. Nonprofits and governments can learn from innovative and boundary-pushing strategies explicitly developed to address displacement and determine what tactics might work best for their goals and needs.

**Broaden the Conversation**

1. Zoning is often discussed in technical, neutral seeming terms, but it is never neutral. There should be more hones-
Further Research and Next Steps for GBCLTN

Our team found that the impact of zoning changes is difficult to track and measure over time, and plays out very differently from one place to another. This makes it difficult to make specific recommendations, as each neighborhood will have its own specific context and needs. The strategies and examples we discuss in this report are just a small subsection of all that is out there that the GBCLTN or other similar groups can use and learn from, and communities should thoroughly assess the needs and capacity of their own neighborhood before adopting any one zoning strategy.

In this report, we focus on some of the newer, more creative zoning tools that communities are using. Unfortunately some of these tools are still in the discussion phase or very early implementation phase, so the long-term effects and applicability to the GBCLTN are not yet clear. Nevertheless, there is value in understanding the rationale behind these strategies and possible path to implementation that the network can consider in their future work.

We believe the following focus areas within zoning hold the most promise for the future of the anti-displacement goals of the GBCLTN.

**Increase awareness of zoning and its impacts**

In order to demystify the complex zoning codes in Boston, the network can create popular education materials, workshops, or working groups to create a space for community members to better understand what zoning does and why it matters. Armed with this knowledge, residents will be better able to use the language of zoning in the same
way that insiders do, and use it to propose their own people-driven plans and push back against zoning that does not support local needs and vulnerable populations.

**Foster grassroots planning and zoning control**

The GBCLTN is well positioned to serve as a point of connection between different communities can advocate for grassroots planning processes, creating pathways for leadership among young people, immigrants, and communities that have traditionally been excluded from the planning process. To participate more meaningfully in zoning changes, the network can advocate for granting real power for neighborhood councils, who currently only serve in an advisory capacity.

**Write or advocate for innovative, inclusive overlays**

The contents of a people-driven plan will vary widely, but of the strategies we examined, overlays are among the most versatile and have the capacity for a lot of creativity. Anti-displacement overlays do not have a lot of precedent, but they could be a powerful tool to explicitly address displacement concerns in a specific area. The network could consider using demographic data to create a new overlay to protect low income neighborhoods of color, fight disinvestment, or prioritize city spending in that particular area. Or, overlays like the Cambridge 100% affordable overlay that primarily address affordable housing concerns could serve as a springboard for other creative solutions to displacement concerns.

**Tie tenant protections to zoning**

Massachusetts has fairly robust tenant protections in place, but there is room to strengthen and expand those protections by adding further protection measures to the zoning code. The Certificate of No Harassment in New York shows that non-structural zoning elements can be an important part of the code, and it may be possible to include further measures to Boston zoning such as a right of return clause or a right of first refusal.

**Zoning for Community Land Trusts**

Zoning has the potential to strengthen and grows CLTs in Boston. CLTs have proven to be effective and permanent in creating affordable housing, and while the city has expressed support for CLTs, the city has not stepped up to assist burgeoning groups like the Chinatown CLT to acquire the land necessary to develop a new CLT. Zoning changes could help smooth the way for the creation or expansion of CLTs. The IDP plan as it stands now does not discuss CLTs, but as the city makes changes to the policy, the GBCLTN can advocate for CLTs getting access to the IDP fund in order to acquire and preserve housing.
Concluding Thoughts

Zoning has traditionally been a tool wielded by planners and developers to mold cities for their own gain by controlling land in a way that explicitly privileges wealth and solidifies the power of those who own land. Its very foundation is rooted in exclusion and racism, which is evident in zoning codes still. It has served as a blueprint for future development that for too long has excluded those most at risk of being left out of that future.

But we propose that zoning is an arena where we hold the possibility to deconstruct these mechanisms that have been used to promote displacement and create tools that advance an anti-displacement agenda. Confronting zoning’s flaws can help us develop equitable and effective zoning codes to help positively shape our future communities.

If zoning is seen as complex and impenetrable, we, as planners and community advocates, have a duty to make it understandable.

Communities should feel empowered to propose their own zoning, whether it be minor tweaks or larger, more comprehensive changes. The city may not listen now, but it’s still critical to empower communities to push for their own control. We must ask ourselves, “What isn’t reflected in our zoning code now? What can we do with the current zoning, and what do we want to change?”

Displacement has already devastated parts of Boston, pricing out long-stand-
References


Article 91 of the City of Boston Zoning Code (Draft shared with UEP Field Projects team)


Brasuell, James. “When Planners Misread Maps: It’s Time to Rethink Zoning.” Planetizen, 9 Dec. 2014, www.planetizen.com/node/72753. Planners told the developer affordable apartments needed to be set aside for families making 80% AMI, when according to their own maps, families needed to be at 60% AMI.


In person interview with Tom Angotti, March 22, 2019

Jesse J. Richardson, Jr., Downzoning, Fairness and Farmland Protection, 19 J. Land Use 60, 63 (2003).


Loh, Penn et al. “Community Control over Development: A conceptual framework, brief history, interviews, case study, assessment methodology, and resources.” Practical Visionaries Workshop,


Quinton. Councillor Zondervan Cambridge Massachusetts, quintonzondervan.com/initial-thoughts-on-the-affordable-housing-overlay/.

Residential Land Use in Boston. Boston Redevelopment Authority, www.bostonplans.org/getattachment/62f2b1bf-c8b3-434b-89e4-ea8f5c8508b4


The Boston People’s Plan, Governance Committee, Draft


“The Illegal City of Somerville.” City Observatory, 15 June 2016, cityobservatory.org/the-illegal-city-of-somerville


“Welcome to Minneapolis 2040.” Minneapolis 2040, minneapolis2040.com/.


Endnotes

2. Ibid.
3. Ibid.
5. 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.
30. However, two quasi-governmental state agencies that have a strong influence on development and are almost entirely exempt from local zoning: the Massachusetts Port Authority and the Turnpike Authority http://omega.cc.umb.edu/~pubpol/documents/HogartyonAuthorities--Week8.pdf. Some agricultural, religious, and educational institutions are also exempted from zoning rules in Massachusetts according to Chapter 40A, Section 3 of Massachusetts general law, more commonly known as the Dover amendment.
31. Article 91 of the City of Boston Zoning Code (Draft shared with UEP Field Projects team)
32. Residential Land Use in Boston. Boston Redevelopment Authority, www.bostonplans.org/getattachment/62f2b1bf-c8b3-434b-89e4-ea8f5c8508b4
55. Quinton. Councillor Zondervan Cambridge Massachusetts, quintonzondervan.com/init-
al-thoughts-on-the-affordable-housing-overlay/.
56. Article 91 of the City of Boston Zoning Code (Draft shared with UEP Field Projects team)
58. “Uneven Growth | SITU BLOG.” SITU BLOG RSS, www.situstudio.com/blog/category/une-
ven-growth/.
61. There are no definitive patterns in which states are planned vs non-planned. In New England, Vermont and Rhode Island are planned, while Connecticut and Massachusetts are not. Each state decides for itself via the legislature whether they want to require mandatory plans or not, and among “plan” states, there is variation in the degree of strictness in their plans.


64. The American Planning Association has a name for more localized examples of land uses commonly resisted by residents that nevertheless ahs a regional impact, “Locally undesirable land uses,” or LULUs. They include “noncontroversial” uses such as hospitals and courthouses, and “controversial” uses such as airports, prisons, and sewage treatment facilities. https://doi-org.ezproxy.library.tufts.edu/10.1177/0885412206295845


66. Ibid, page 90


70. Ibid. pp. 11


82. In person interview with Tom Angotti, March 22, 2019

83. Ibid.

84. The Boston People's Plan, Governance Committee, Draft
Appendices

Methods

Our project involved three stages of output; to augment literary research each stage began with a series of informational interviews with professionals in planning, housing, community organizing, city governance, and legal fields. These interviews were unstructured and exploratory, collecting information and experience related to how zoning works and what zoning looks like in Boston, what are the needs particular to Boston communities, and what are zoning strategies other neighborhoods/cities/states are proposing. Each successive stage offered opportunities for more directed interviews as we narrowed our focus and sharpened our understanding. Stages all ended with a period in which we reviewed, organized and refined our findings to draw out key points to framing Boston’s needs, the current zoning landscape, and fleshing out certain strategies. Since the purpose of our deliverable is to be a popular education tool, we decided to make our report and the binder of zoning resources more interactive and engaging.

The diagram below illustrates how we organized our methodology. Each concentric circle is a different phase of learning, with every phase building upon the base of the others and narrowing our focus.

Figure 15: Thought Map for Stages of Methodology. Created by Amanda Centrella with icons from The Noun Project.
Stage 1: The Lay of the Land

The first phase of our project involved interviews with a host of professionals within a variety of different sectors and fields. Our aim was to establish a baseline understanding of how zoning functions, who are the stakeholders within greater Boston who play a role in its development and governance, and how are Boston neighborhoods experiencing displacement.

Stage 2: Crafting Categories of Zoning Strategies

This next phase of our project involved beginning to craft a mind-map which pieces together how zoning strategies interact with one another, with community organizing and efforts to promote community control, and with stakeholders and community actors alongside municipal processes.

Stage 3: Workshopping our Learning

We’ve organized our findings into a “Zoning Strategies Resource Binder” couched within this report to be used by GBCLTN as an educational tool. We’ve aimed to compile our learnings into a framework for understanding the place of zoning place and its function within municipal processes. Our hope is that this framework will act as a launch pad from which communities can further develop their own working framework and organizing.
AMI - Area Median Income: A figure that HUD, other government agencies, and developers use to define “affordability” based on the percentage of AMI ($107,800 for a family of four). Because Greater Boston AMI is defined by collecting income data from all the cities and town within Route 128, this figure it much higher than actual Boston Median Income (for those living in the city). A majority of Boston folks of color, especially renters, are in the below 30% and 60% AMI categories.

Article 80: The part of the Boston Zoning Code that outlines the Large Project Review process (large projects are a minimum of 50,000 sf in outer neighborhoods and 100,000 sf downtown).

Blight: A term historically used in planning to indicate areas of urban decay or deterioration as a result of neglect, aging, and/or disinvestment. It is important to note that “blight” has a history steeped in racism, as a term often used to condemn areas inhabited by racial and ethnic minorities and immigrants.

Ch 121A: A part of state law that defined urban renewal powers.

Designation: When a parcel is assigned for a specific purpose or a specific developer, that is called “designation”. There is first a temporary and then a final designation.

Diversity Preference Pilot Program: This is a pilot program that the City launched to try out neighborhood anti-displacement preferences for new affordable housing slots without violating the Fair Housing Act.

DPIR - Draft Project Impact Report: a report on environmental impact studies that a developer must do on a project. It’s then up to the BPDA whether or not to require a Final Project Impact Report, based on whether the DPIR has addressed the questions raised.

FAR - Floor Area Ratio: measures the density of a project.

IAG - Impact Advisory Group: a group of community representatives, nominated by district elected officials and appointed by the mayor, who negotiate with a developer over the community benefits a project will provide. The name implies that they should also evaluate the impact of the project on the neighborhood.

IDP - Inclusionary Development Policy: the City policy that calls for a housing project to have at least 13% of its units be affordable at levels ranging from 70% AMI for rental units to 80-100% AMI for home-ownership units. A developer can also choose to “pay out” or to develop “off site” affordable units, which is a higher requirement, ranging from 15%-18% of units, with a higher payout requirement in zones where the market is hotter and a higher payout for condo projects.
Land Speculation: a financial activity that involves the purchase of real estate based on the amount that the value (the price) is predicted to increase.

LDA - Land Disposition Agreement: an agreement between the City and the developer about what a parcel of public land will be used for and any other community benefits or agreements that have been made through the course of negotiation.

Linkage: a City policy that requires a commercial development of 100,000 sf and up to pay into City funds for affordable housing at $9.03 per square foot and job training at $1.78 per square foot.

Master Plan: a development vision that the City adopts the guide land development, transportation, and other decisions. BPDA leads a multi-agency planning process with a series of community meetings, surveys, and an Advisory Group appointed by the mayor after an open nomination process. After a master plan is adopted, zoning amendments follow.

Overlap District, IPOD: This is a special amendment to the zoning code; there may be special guidelines within an overlay district, such as historic protections, prohibitions on certain types of development, or different inclusionary development goals that are distinct from the ‘underlying zoning’. An IPOD (Interim Planning Overlay District) is a short-term zoning code for an area that is going through a longer-term planning/rezoning process.

Public Comment: There is a defined period at each stage of the review process for community and public input. At each stage of public comment, there will also be a public meeting.

RPF- A Request for Proposals: is issued by the BPDA to seek bids from developers or contractors. For development of public land, community meetings will be held to inform what should go into an RFP.

Use By Right: a use permitted in a zoning district, meaning that it is not subject to special review or approval by local government.

Urban Renewal: Urban renewal was a federal program brought to Boston in the 1950s and 1960s. The Urban Renewal program established the Boston Redevelopment Authority and gave it the powers of eminent domain, zoning control, and other tools supposedly for the purpose of promoting housing and economic development in the inner city. Thousands of families were displaced during Urban Renewal.

Variance: permission for a project to not follow the zoning code.

Zoning: The zoning code describes what height, density, and land use is allowed in an