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ZONING POLICIES IN THE UNITED STATES:
AN INQUISITION INTO THE INEQUITIES AND SOLUTIONS

by
Caroline Elizabeth Heavey

A thesis submitted to the faculty of The University of Mississippi in partial fulfillment of
the requirements of the Sally McDonnell Barksdale Honors College.

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Approved by

Advisor: Professor Jody Holland

Reader: Professor Christian Sellar

Reader: Professor Dwight Frink

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Abstract

This research examined the real estate zoning laws in the United States and the impact. Zoning policies regulate land use by codifying land parcels. These zoning policies dictate what type of construction, commerce, activity, etc. can happen where in a community. These policies intend to protect the common welfare and provide a stabilizing force in the real estate market to protect property values and create predictability. Nevertheless, these policies sometimes fall short of these goals and cast inequities into the community. By focusing on residential zoning policies, the researcher was able to examine these resulting inequities. The researcher utilized a systematic literature review. The researcher performed this search using Google Scholar and One Search. A detailed filtration process was performed, which is described in the Chapter 3 Methodology and Research Design. This process developed organically and produced significant themes that guided the research. These themes produced five key findings: (1) a hierarchy of intensity orders land use classifications, (2) rezoning is the source of most contention regarding zoning, (3) mixed-use zoning is a common solution but it has its drawbacks, (4) zoning impacts human health, and (5) market trends generally guide zoning policies. Therefore, it was determined that residential zoning policies can perpetuate historic inequities. The key results are the basis for which the researcher suggests to restructure the framework of current zoning policy. With understanding of the nuances and challenges facing the community, planning and zoning commissioners can structure and implement zoning policies while alleviating the inequities. Moreover,

implementing revitalization projects and subsidies can resolve some of the debilitated conditions previous zoning policies created. Crafted in a manner that adjusts for the ever-evolving changes to a community, this policy recommendation recognizes the need for zoning policies and sustainably ensures equitable impacts. When these policies institutionalize historic inequalities, they fail to achieve their intended purpose: to protect the community concerning safety, public health, economic conditions, and landscape. By implementing these recommendations, zoning policies can make equity a reality.

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Chapter 1 Introduction

Zoning laws and ordinances serve as land use planning tools by dictating where various categories of activity, commerce, construction, etc., can take place (Maantay, 2001). Moreover, zoning is the “most prevalent land use planning tool in the United States” (Maantay, 2001, p.1033). To clarify, zoning laws are not the same as eminent domain: zoning laws are policy tools used by the local municipality to control the type of land use in specific areas (Baker, 1925). For example, the government cannot acquire the land for its purposes, but rather it can direct the use of that land. Use of land is the key distinction that defines and categorizes zoning laws and separates them from eminent domain. Zoning laws play an integral role in the development of municipalities and affect the lives of all community members.

Zoning laws are a means of regulations on the development and market of a municipality by affecting land use. “Zoning is used to designate certain areas as ‘appropriate’ for certain uses (separated into broad categories such as residential, commercial, institutional, and industrial), as well as to determine ‘appropriate’ densities, building bulk, lot coverage, and a host of other factors” (Maantay, 2001, p.1033). These broad categories divide into districts in which policymakers define the permitted and prohibited type of structures, uses for these structures, and other activities in these specific areas of land (Baker, 1925). The underlying theory of zoning ordinances persists that these policies are created in accordance with the promotion of the public health and welfare of the municipality and the municipal community as a whole (Maantay, 2001).

Historically, records unveil that, “Zoning began as an attempt to control land use in order to protect the health, lives, safety, morals, properties, and welfare of the population within an existing constitutional framework of the state’s police powers” (Maantay, 2001, p.1035). Nevertheless, these powers have not gone without scrutiny and examination by the courts: “These police powers are upheld by the courts only when such powers pass tests of reasonableness and when they are clearly related to the general interest of the community as a whole” (Maantay, 2001, p.1035). This foundation and intent of zoning ordinances and laws serves to magnify the powers of the local municipality in attempts to control the direction and growth of the community.

The subjectivity of zoning laws and the reasonableness standard draw much skepticism and criticism. Many sneer at the way the municipality exercises the right to control the use of private property, despite the overarching goal of maintaining public good (Baker, 1925). This mechanism of control on the future establishes fear in the people by reflecting the potential for local planning and zoning committees to become the puppeteers, guiding the rest of the community members by their strings. This analogy highlights the mindset of the citizens that are the most skeptical and apprehensive of zoning ordinances. Other scrutiny arises out of concerns regarding the thoughtful consideration awarded to each policy before implementation, or the lack thereof. Some argue that, “Zoning is the result of economic and real estate market conditions and trends, rather than the result of a well-considered comprehensive plan, as is considered proper planning practice.” (Maantay, 2001, p.1036) This criticism warns against the precautionary approach to market factors. Moreover, this reflects a desire for a proactive approach as a means to control or influence the markets. As with any policy proposed by

a small group affecting the lives of many, there will be great scrutiny and a myriad of opinions on the matter. These criticisms, however, reflect significant issues crucial for consideration in the future of zoning policymaking.

Zoning laws embody an adaptable and amendable characteristic, which enables the ordinances to withstand the changes of time. More explicitly, “The goals of public protection have been interpreted according to the policymakers’ standards and the values of the day, and they have changed and increased over time” (Maanaty, 2001, p.1035). In his book *The Zoning Game: Municipal Practices and Policies*, Richard F. Babcock intensifies and humanizes the impact of zoning laws. Babcock asserts that zoning is the most universal of the legal tools for shaping the character of the municipality (Babcock, 1983). Zoning laws’ ability to shape character and transition with time positions these policies at the crux of cultural influence in a community. Zoning laws are a policymaking tool to guide the development and transformation of cultural identities and community customs. This ability empowers the government to assert an additional form of cultural influence.

Zoning ordinances reflect this capability to bring about change and wield influence over the culture and direction of the municipality. Nonetheless, “It can also be said that the purpose of zoning is to prevent change, or at least to seriously deter change, so as to make real estate investment a more predictable and less risky endeavor and therefore more profitable in the long run” (Maantay, 2001, p.1036). This power to prevent change and maintain stability is essential to the municipality. This stability of the markets protects the livelihoods of the community members and serves as a foundation for growth.

Zoning ordinances and laws play an integral role in the development, growth, and protection of the municipality. Zoning laws offer a framework for local governments to assert forms of control on the economic, real estate, public health, and cultural spheres of their communities. Nevertheless, zoning laws stretch influence beyond these areas. For instance, “Land use controls [such as zoning] can affect the quality of the environment, the provision of public service, distribution of income and wealth, the pattern of commuting, development of natural resources, and the growth of the national economy” (Fischel, 1985, p.19). As well, zoning policies can “affect the prices of housing and the location of economic activity in a metropolitan area and serves as the rationale for the preservation of farmland movement” (Fischel, 1985, p.xiv). Zoning laws’ ability to reach beyond the simple instruction of municipal development underscores the potential for inequities to result. Many zoning laws protect the higher income areas more so than low-income neighborhoods due to the usual correlation of income and land value. Moreover, these less advantaged areas usually face the disparate impact of the health outcomes correlated with poor air and water conditions that result from pollution. However, it is important to clarify that these negative externalities resulting from zoning laws do not occur intentionally. Nevertheless, this does not justify the continuance of these ramifications once brought to light.

There are several imperative questions to ask when analyzing zoning laws and ordinances. The research question that will be the driver for this thesis is as follows: do residential zoning laws perpetuate inequities, and what policy solutions can reduce inequities? By illuminating this question, this research attempts to discern the answer as a means to transfigure the current framework used to develop residential zoning laws.

Transfiguration guides toward a goal of resolution. The researcher aims to provide more information on the inequities of residential zoning laws, mechanisms to avoid the perpetuation of these disparate impacts, and potential policy recommendations to alleviate these inequities in the future.

Zoning laws are a form of land planning tools utilized to direct the future development of a municipality in order to mirror the goals set forth by the local government for the community. These ordinances affect the real estate and economic markets of these communities as well as the public health, provision of public services, flows of traffic, etc. Zoning laws directly as well as indirectly affect the lives of all within the municipality. Local governments construct zoning laws with the intention of protecting the welfare of the community as a whole. This idea of welfare shifts with the circumstances of time and is leveled typically using a cost-benefit analysis, as with every consideration there is a give-and-take in which the presiding government officials must weigh the overall net benefits to the community as a whole. Absolute equity of zoning laws seems to be a daunting task. Zoning laws are a significant power of local authority that necessitates examination and research.

Using a systematic literature review, the researcher will develop a deeper understanding of residential zoning laws. Using this foundational knowledge, the researcher will examine the zoning law trends over the course of history and the effects to determine potential social and economic inequities. Chapter 2 of this research aims to develop a historical background of zoning laws to detail its evolution and shift in purposes over time. Chapter 3 will provide a methodology and research design section explaining the systematic literature review utilized to conduct this research. Chapter 4

presents the findings. Chapter 5 will recommend policy changes and amendments to improve, or possibly eliminate, the inequities due to residential zoning laws. Lastly, Chapter 6 will offer a conclusion of the research. This research helps to develop a better understanding of the policies utilized and provide recommendations to catalyze a shift in current zoning policy.

Chapter 2 Historical Background

Zoning laws have developed historically as a means to protect and secure different areas of real property for specific purposes. Zoning laws first came into existence in the United States in the early part of the twentieth century as various state and local governments sought to regulate property development to promote efficiency and to regulate land use (Schultz, 2009). Throughout the years, the specificity of these purposes has come into light and received judicial scrutiny. For example, at one time zoning laws and ordinances were established to separate neighborhoods of people based on race. This use of zoning as a means of racial segregation has been tried and reviewed in *Buchanan v. Warley (1917)* as illegal by on the Fourteenth Amendment (Schultz, 2009). The courts have tried the constitutionality of zoning laws as well: In *Euclid v. Ambler Realty (1926)*, the U.S. Supreme Court upheld zoning as a valid use of a state or local government's police power (Schultz, 2009). Police power is the ability of the states to regulate behavior and enforce order for the general welfare. This applies to zoning since at some level within the state power applies this legislation as a means to control and regulate behavior of development. Zoning laws have been instigated to regulate adult businesses in *City of Renton v. Playtime Theatres, Inc. (1986)*, picketing in *Frisby v. Schultz (1988)*, freestanding newsstands in *City of Cincinnati v. Discovery Network (1993)*, and even the number of unrelated individuals living together *Village of Belle Terre v. Boraas (1974)* (Schultz, 2009). However, zoning still serves as a means to separate certain different demographics today, just not race. Many zoning ordinances of

today indirectly separate people based on socioeconomic factors because of property value controls: “Zoning policies, therefore, can have adverse impacts on ... equity” (Maantay, 2001, p.1033). Zoning originally developed with the purpose to control and regulate quantitative measures, such as building height, population density, etc. This designation of purpose shifted with the close of World War I and propelled with the cessation of World War II. In accord with the general shift in public policy design, zoning focused on coordinating qualitative norms. These included the social, economic, public health, and environmental concerns. The shift in the purpose of zoning resulted from the different needs of an advancing society. The shift from quantitative to qualitative characteristics may seem like a generic difference; however, this specification exemplifies the flexibility and underscores the change in history of zoning. Zoning plays a critical role in the development and growth of municipalities by directing development; therefore, zoning necessitates further historical review.

Zoning before Zoning

Before zoning came the Modesto Ordinance of 1885 in Modesto, California. With passage of this policy came the forerunner to zoning policy. The Modesto Ordinance read:

It shall be unlawful for any person to establish, maintain, or carry on the business of a public laundry or washhouse where articles are washed and cleansed for hire, within the City of Modesto, except within that part of the city which lies west of the railroad track and south of G Street (Whitnall, 1931, p.9).

As a precursor to zoning, this ordinance prohibits the use of land within the city limits, note the exception, for laundry and garment cleaning. Scholars do not identify this as the earliest zoning law because it fails to categorize land into districts. Nevertheless, this policy parallels many concepts of zoning, thus citing it as the earliest form of zoning.

The Modesto Ordinance of 1885, interestingly enough, demonstrates the focus of qualitative norms, rather than qualitative measures, despite its early adoption. The Modesto Ordinance aims to protect against encroachment of the foreign cultural and ethnic enclaves. At the time, California experienced high levels of Chinese immigration populations. The Chinese immigrants often clustered themselves in small communities preserving much of their ethnic and cultural way of life, despite residence in the new country. Moreover, many of the immigrants made their living as launders; thus, “laundry was almost synonymous with Chinamen” (Whitnall, 1931, p.9). By using this ordinance as a safeguard against the permeation of this Chinatown community into the Modesto community, the Modesto Ordinance echoes the purpose of many early forms of zoning: racial segregation. Note, however, that this purpose is not openly stated. The racial element is not overt, and early legislative action would permit this to be an acceptable form of zoning (Whitnall, 1931). The Modesto Ordinance exemplifies the early stages of thought leading to the advent of zoning.

In sum, the Modesto Ordinance serves as the predecessor to zoning. The Modesto Ordinance underscores the attempt to control the further growth and development of a municipality by employing police power in the form of a policy action, an ordinance.

Early Zoning

“New York City was the nation’s first municipality to adopt a comprehensive zoning ordinance” (Maantay, 2001, p.1033). In 1916, New York implemented a zoning policy that not only regulated use, but also introduced new considerations for regulation in height and area. New York was facing rapid development, and with the limited land space available, naturally development went up instead of out. New York originally attempted to control this trending development upward with the Commission on Heights of Buildings of the City of New York. This body researched the subject and produced their findings, which were the basis for the New York zoning ordinance measures. Because of this inclusion of height and area regulations coupled with the traditional use controls, the zoning policy implemented in New York in 1916 is the first comprehensive zoning ordinance “from which all subsequent laws were largely patterned” (Whitnall, 1931, p.11). This provided the framework of zoning that other cities across the nation could adopt. Additionally, New York zoning officials offered innovations in zoning policies in how to convey these policies. Deemed the “New York Type,” the legislation included maps as an integral element (Whitnall, 1931). The zoning policy implemented in New York corresponded to the needs that resulted from the regulated growth and development that happened prior. The new ordinances “generated single-use zones of business and industry and well-articulated, mixed-use streets of commerce and residence, functional patterns customarily codified by zoning” (Baics & Meisterlin, 2016, p.1171). The zoning implemented in New York sought to control development all the while allowing it to continue generally in the direction that it had begun. Nevertheless, the new

policies protected against the nuisances and negative externalities that result, such as population density, pollution, and poor sanitation conditions.

Two men central to the construction of the New York 1916 ordinance were Edward M. Bassett and Frank B. Williams. These two men collaborated to pioneer the policy all the while heeding and offering caution “against too rapid or unreasonable application of police power for this new purpose” (Whitnall, 1931, p.11). Mr. Bassett and Mr. Williams coordinated and developed a lasting framework which combined use controls, bulk regulations, and mapping with the comprehensive zoning ordinance of New York in 1916. Soon afterward, St. Louis adopted this framework. A variety of cities across the nation then quickly followed.

The Pacific coast was also innovating zoning policies. Zoning officials in Los Angeles, in an effort to consolidate a number of zoning ordinances into a more systematic piece of legislation, implemented the framework established in New York but with a new addition. Los Angeles zoning policy in 1920 followed the mapping method to define boundaries and classifying land use. However, Los Angeles incorporated a new classification, the *single-family detached home* as a means “to protect it against intrusion of other use” (Whitnall, 1931, p.12). This new land use classification sought to protect a great American institution. Quickly after Los Angeles marked this separate classification, many other cities followed suit aiming to protect neighborhoods from an intrusion into the homes of their residents. Los Angeles exemplifies how “zoning was adopted primarily as a means of controlling nuisances that could lessen property values” with the new demarcation of the single-family detached home (Lehavi, 2018, p.27). Los Angeles

is significant for this classification of land use and how it emphasized the goal of zoning to be one of protection of property owners from intrusive developers.

Both New York and Los Angeles affirm, “The principle that private development ought to be regulated in the public interest” (Lehavi, 2018, p.30). These examples highlight two key additions to original land use controls and the development of comprehensive zoning ordinances. Mapping of boundaries, land use classifications including the category of single-family detached home, and bulk regulations became the blueprinted for zoning adopted by countless other cities.

Recognition of Zoning

Zoning policies started to become a trending norm in many American cities. Even though many followed the blueprint established with the ordinances in New York and Los Angeles, there was no standard for zoning ordinances and no true framework. Secretary of Commerce Herbert Hoover instituted a campaign for standardization across a range of practices, products, and industries, including real estate and housing (Lehavi, 2018). In the 1920s, coordinated with his efforts for consistency, Secretary Hoover launched an Advisory Committee on Zoning, which quickly adopted the name the *Hoover Committee*. Committee members consisted of Charles B. Ball, Edward M. Bassett, Alfred Bettman, Irving B. Hiatt, John Ihlder, Morris Knowles, Nelson P. Lewis, J. Horace McFarland, Frederick Law Olmsted, and Lawrence Veiller who were experts on zoning. Some of the men were engineers, lawyers, realtors, consultants, architects, and investigators (Advisory Committee on Zoning, 1926). The diversity of the committee correlated with the robust nature of zoning.

Zoning quickly become part of many cities planning agendas. In a report released on January 1, 1926, the committee noted the overwhelming presence in zoning in the United States:

48 out of the 68 largest cities in the United States, having in 1920 a population of more than 100,000 each, had adopted zoning ordinances, while most of the others had zoning plans in progress; nearly 380 smaller municipalities had passed zoning regulations as well (Lehavi, 2018, p.34).

With zoning becoming so prevalent, Secretary of Commerce Hoover and his Advisory Committee sought to provide standardization to practice, rather simply relying on precedent from other municipalities.

The first undertaking of the committee was to draft a model for states to use to draw up legislation authorizing cities and neighborhoods the right to zone (Whitnall, 1931). Before the committee started publishing their draft Enabling Act, many cities that had zoning policies established these laws with the guidance of specialists; however, these policies were, essentially, experimental. With the appointment of the committee, zoning, a previously unknown word to most, became commonplace (Whitnall, 1931, p.12). In 1926, the Hoover Committee issued the Standard State Zoning Enabling Act under which municipalities may adopt regulations (Lehavi, 2018). The committee found that zoning ought to be part of planning (Lehavi, 2018). Zoning mirrored Secretary Hoover's goals of efficiency in the economy.

The purpose of the legislation was to ensure zoning be implemented "without injustice and without violating property rights" (Advisory Committee on Zoning, 1926

p.III). Moreover, the Standard State Zoning Enabling Act defines what zoning policies can regulate:

The height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts, and other open spaces; the density of the population; and the location and use of buildings, structures, and land for trade, industry, residence, and other purposes (Advisory Committee on Zoning, 1926 p.4-5).

The definition clarifies the distinct characteristics of regulation in order to provide transparency and fairness. The Hoover Committee chose this language specifically for its ambiguity and clarity. Ambiguity limited restriction, while clarity offered direction. To ensure fairness, the committee also detailed the purpose of zoning as “promoting safety, morals, or the general welfare of the community” (Advisory Committee on Zoning, 1926 p.4). Moreover, the Act established punishment for violations or non-compliance: fines, imprisonment, or both as well as civil penalties (Advisory Committee on Zoning, 1926). The committee sought to use language vague enough to include everything it should, all the while being fluid in order to adapt to changing circumstances to withstand time.

The Standard State Zoning Enabling Act serves as a guideline for municipalities to use in designing zoning legislation as a part of a comprehensive planning agenda. The Act is careful to emphasize that zoning ought to be an element of a larger comprehensive plan for the municipality. Secretary Hoover and his committee acted very deliberately with the findings and instructions for future zoning. The creation of the Advisory Committee on Zoning by Secretary of Commerce Herbert Hoover catapulted zoning into

the conversations and daily lives of people across the country, making the term and usage a mainstay in American municipalities.

U.S. Supreme Court Decisions on Zoning

Zoning is a legislative act; therefore, it faces judicial scrutiny. The Court will uphold zoning as valid so long as it finds rational basis to support zoning as a means for public health, safety, and welfare (Mandelker & Ross, 2000). Questions of Section 1 of the First Amendment¹, and/or The Equal Protection Clause of the Fourteenth Amendment² serve as the basis for most cases to reach the Supreme Court. The Court also considers the impact of zoning on traffic and congestion, compatibility with adjacent uses, and impact on land values of neighboring properties (Mandelker & Ross, 2000). The Supreme Court has handed down judgments affecting zoning techniques and practices throughout the years, but by no means has the Court answered every question regarding zoning. For example, there is still yet to be a ruling on the remedies available for those damaged by the zoning administrative process. Nevertheless, there are landmark cases involving zoning that direct the current and future use of zoning policies.

The earliest U.S. Supreme Court decision on zoning came in 1917, just a year after New York implemented their comprehensive plan. In *Buchanan v. Warley (1917)*, the Court had to discern if Louisville's ordinance violated the Due Process Clause of the

¹Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

²All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fourteenth Amendment. The Court, in a unanimous decision, reversed the judgment of the Kentucky Court of Appeals and remanded it back to the lower courts for further processing, “Effectively making it unconstitutional to use zoning for racially discriminatory purposes” (Schultz, 2009, p.1204). The Court’s opinion stated:

This attempt to prevent alienation of the property in question to a person of color was not legitimate exercise of police power of the State, and is in direct violation of the fundamental law enacted in the Fourteenth Amendment of the Constitution preventing state interference with property rights except by due process of law (Buchanan v. Warley, 1917).

Early in zoning history, the Supreme Court was clear to ward against it as a form of discrimination. It is imperative to recognize the time of the decision and the unanimous condition of the Court.

The next major case the Supreme Court had to rule on regarding zoning was *Village of Euclid et al. v. Ambler Realty Company (1926)*. In a 6-3 decision, the Court “upheld zoning as a valid use of a state or local government’s police power” (Schultz, 2009, p.1204). Justice Sutherland delivered the opinion of the Court. Justices Van Devanter, McReynolds, and Butler were in dissent. This judgment stemmed from questions based in the Due Process and Equal Protection Clause of the Fourteenth Amendment. This case is significant because it legitimized zoning on a nation scale. By reversing the ruling, the Supreme Court declared zoning to be an authoritative practice of states to control the direction of development punishable by means of police power. This official recognition provided the pathway for zoning to become a central component of all community planning initiatives.

It was not for nearly another fifty years that the Supreme Court found it necessary to rule on zoning policies. In *Village of Belle Terre et al. v. Boraas et al. (1974)*, “the Court held that zoning ordinances that barred more than a certain number of unrelated individuals from living together did not violate First [or Fourteenth] Amendment(s) associational rights” in a 7 - 2 decision (Belle Terre v. Boraas, 1974, n.p.). Justices Burger, Douglas, Stewart, White, Blackmun, Powell, and Rehnquist formed the majority opinion of the Court. Justices Brennan and Marshall were in dissent. This case focused on the land use classification of “one family” dwellings. The Court addressed this consideration through the lens of the Fourteenth Amendment once again. The Court decided that this classification does not violate the Equal Protection Clause. This judgment also necessitated First Amendment rights of assembly and expression. *Village of Belle Terre v. Boraas (1974)* is significant for the powers it grants to the government to restrict the rights of landlords through zoning policies. This shift of power is significant, reflecting a greater trend in American policies.

Two years later, the Supreme Court again ruled on zoning. *Young, Mayor of Detroit, et al. v. American Mini Theatres, Inc., et al. (1976)* posed questions regarding the “operation of any ‘adult’ movie theater, bookstore, or similar establishments... or within 500 feet of a residential area” (Schultz, 2009, p.1205). These questions surfaced were similar to the following considerations: (1) did Detroit’s 1972 ordinance violate the Due Process Clause of the Fourteenth Amendment, and (2) did the ordinance qualify as a restriction on free speech in violation of the First Amendment? In a split 5 - 4 decision with Justices Burger, White, Powell, Rehnquist, and Stevens in the majority, and Justices Brennan, Stewart, Marshall, and Blackmun in dissent, the Court reversed the decision.

The majority opinion declared, “We hold that the zoning ordinances requiring that adult motion picture theaters not be located within 1,000 feet of two other regulated uses do not violate the Equal Protection Clause of the Fourteenth Amendment” (Young v. American Mini Theatres, 1976, n.p.). The Court’s ruling justified zoning as a means to limit or control the type of development with specific guidelines to prevent the infringement of rights in order to protect the general welfare of the people.

Five years later, the Supreme Court took up the issue again in the case of *Schad et al. v. Borough of Mount Ephraim (1981)*. *Schad v. Mount Ephraim (1981)* assessed the power of zoning to control the type of business within its ordinances. In a 7-2 decision, the Court’s judgment ruled that “while zoning may create adult zones or limit the placement of adult entertainment businesses within a community, the community may not zone them out completely or restrict them to small and highly inaccessible areas” (Schultz, 2009, p.1205). Justices Brennan, Stewart, White, Marshall, Blackmun, Powell, and Stevens were in the majority. Justices Burger and Rehnquist were in dissent. Moreover, the judgment remanded the case back to the lower courts for further proceedings (*Schad v. Mount Ephraim, 1981, n.p.*). This case is significant because the Court ruled to place a check on the power of zoning and government’s ability to dictate, direct, and determine the development of a municipality.

Despite the judgments in the cases of *Young v. American Mini Theatres (1976)* and *Schad v. Mount Ephraim (1981)*, communities were still quarreling over the right of municipalities to use zoning to limit the presence of adult entertainment. With courts still trying cases over the issue, the Supreme Court decided to take on a case to put the issue to rest. In *City of Renton et al. v. Playtime Theatres Inc. (1986)*, the Court declared,

“Zoning ordinances that seek to regulate the secondary effects of adult entertainment, such as increased crime or decreased property values, do not violate the First Amendment” (Schultz, 2009, p.1205). *Renton v. Playtime Theatres, Inc. (1986)* was a 7-2 decision: Justices Burger, White, Blackmun, Powell, Rehnquist, Stevens, and O’Connor formed the majority opinion, while Justices Brennan and Marshall were in dissent. The Court’s opinion read:

Renton has not used ‘the power to zone as a pretext for suppressing expression,’ but rather has sought to make some areas available for adult theaters and their patrons, while at the same time preserving the quality of life in the community at large by preventing those theaters from locating other areas. This, after all, is the essence of zoning (*Renton v. Playtime Theatres, Inc., 1986, n.p.*).

Based on these rulings, it is clear that the Court aligns itself with zoning. This limitation on development concerned some; however, the Court’s judgment asserts an emphasis of zoning to protect the general welfare.

Zoning policies causing limitations on communication once again reached the floor of the U.S. Supreme Court to face constitutional scrutiny. In *Frisby et al. v. Schultz et al. (1988)*, the Supreme Court faced a question of the First Amendment once more, this time in the form of residential picketing. The city ordinance prohibited picketing in front of residential homes (*Frisby v. Schultz, 1988*). The Justices decided *Frisby v. Schultz (1988)* in a 6-3 count. Justices Rehnquist, White, Blackmun, O’Connor, Scalia, and Kennedy joined in majority, whereas Justices Brennan, Marshall, and Stevens were in dissent. In the opinion delivered by Justice O’Connor, the Court declared:

Because the picketing prohibited by the Brookfield ordinance is speech directed primarily at those who are presumptively unwilling to receive it, the State has substantial and justifiable interest in banning it...The ordinance also leaves open ample alternative channels of communication and is content neutral. Thus, largely because of its narrow scope, the facial challenge to the ordinance must fail (*Frisby v. Schultz*, 1988, n.p.).

The Court was careful to emphasize how the scope of the ordinance affected their decision. Moreover, the scope was limited to in front of residential homes. This small restriction allowed for other means of communication and protest; therefore, the zoning ordinance did not violate the First Amendment. This case is significant because it highlights how the scope of zoning must be limited in order to not outlaw or severely restrict individuals from practicing their constitutional rights. The zoning ordinance under scrutiny in this case provides a template for other ordinances in regard to scope.

The most recent case to reach the Supreme Court regarding zoning came in *City of Cincinnati v. Discovery Network, Inc. et al.* (1993). Cincinnati officials prohibited newsstands from selling from their newsracks on city sidewalks. The city declared that it implemented this ordinance because of the congestion and safety hazards caused by the newsracks. The newsstand argued that these ordinances violated the First Amendment. The Court offered a 6-3 decision in *Cincinnati v. Discovery Network, Inc.* (1993). Justice Stevens delivered the Court's opinion with Justices Blackmun, O'Connor, Scalia, Kennedy, and Souter joining. Justices Rehnquist, White, and Thomas were in dissent. The opinion read:

The regulation is not permissible regulation of commercial speech, for on this record it is clear that the interest Cincinnati has asserted are unrelated to any distinction between ‘commercial handbills’ and ‘newspapers.’ Moreover, because the ban is predicated on the content of the publications distributed by the subject of the newsracks, it is not a valid time, place, or manner restriction on protected speech (*Cincinnati v. Discovery Network, Inc.*, 1993, n.p.).

The Court’s opinion made it clear that the city of Cincinnati failed to justify the ordinance. The court decisions regarding zoning and adult entertainment previously mentioned predicated this ruling. Zoning cannot prohibit access to protected speech.

The Court scrutinizes the purpose and effects of zoning ordinances. All of these cases mentioned above demonstrate the tension between personal freedoms and protecting the general welfare. Most of the cases posed questions relating to the First and Fourteenth Amendments. Table 2-1 *United States Supreme Court Decisions on Zoning* summarizes the aforementioned U.S. Supreme Court judgments.

Table 2-1 United States Supreme Court Decisions on Zoning

Case	Implication
<i>Buchanan v. Warley (1917)</i>	Zoning cannot be used for racial discrimination.
<i>Village of Euclid et al. v. Ambler Realty Company (1926)</i>	Zoning is a valid use of state or local government police power.
<i>Village of Belle Terre et al. v. Boraas et al. (1974)</i>	Zoning can restrict the number of unrelated individuals living together.
<i>Young, Mayor of Detroit, et al. v. American Mini Theatres, Inc., et al. (1976)</i>	Zoning can limit and regulate the development of adult entertainment.
<i>Schad et al. v. Borough of Mount Ephraim (1981)</i>	Zoning cannot limit adult zones to inaccessible areas or restrict them entirely.
<i>City of Renton et al. v. Playtime Theatres Inc. (1986)</i>	Zoning can be used to regulate the secondary effects of adult entertainment.
<i>Frisby et al. v. Schultz et al. (1988)</i>	Zoning can be used to restrict picketing if it does not impede other alternative channels of communication.
<i>City of Cincinnati v. Discovery Network, Inc. et al. (1993)</i>	Zoning cannot be used to restrict the sale of protected speech or expression.

The Supreme Court ruled to protect the general welfare in most cases. Nevertheless, the Court made sure to limit the power of zoning as a government tool. The highlighted cases exemplify the evolution of zoning as well as the actual implication of these policies. The Supreme Court has ruled to allow zoning to direct community development; the Court has also ruled to check this power. These cases are significant as they highlight the legal and illegal ways municipalities have attempted to use zoning.

Shift in Purpose

Zoning, in its simplest form, is a tool to control chaos. Chaos ensues with the advancement, growth, and development of cities. This chaos necessitates order; thus zoning seeks to protect property owners and taxpayers by providing predictability. There are four primary objectives of zoning that work in coordination with one another to serve a fifth overarching objective. First, zoning aims to “control threats to health and safety” (Lehavi, 2018, p.29). Second, it sets forth to “manage the quality of streets and other spaces” (Lehavi, 2018, p.29). Third, it attempts to “consolidate social distinctions in physical space” (Lehavi, 2018, p.29). Fourth, it tries to “improve the efficiency and reliability of municipal government” (Lehavi, 2018, p.29). Lastly, fifth, zoning seeks to shield property owners from fiscal losses and/or burdens as well as diminished use or value of property (Lehavi, 2018). Central to zoning is the preservation of high property values and low property taxes. Identifying the purpose of zoning using this five-prong definition fails to highlight the historical context and shift overtime that distinguishes the significance of zoning.

At the origination of zoning, the foremost purpose served to curtail and accommodate quantitative standards. This use of zoning concentrated on building height, material used, density of people, etc. The goal of using zoning to control these measures rested in concerns of public safety. These measurable standards dominated the primary purpose of zoning until World War I (WWI). After WWI, zoning purposes shifted to qualitative norms rather than quantitative standards. The cessation of World War II catapulted this shift even further. It is important to note, however, this shift in purpose characterized public policy in general and was not unique to zoning. Nevertheless, this

shift offered a great change in the direction and utilization of zoning. This new incorporation of qualitative norms allowed for subjectivity to enter into “the purview of municipal regulation” (Lehavi, 2018, p.39). This change in outlook enabled externalities and other influences to become prominent figures shaping the future of zoning.

New concerns in zoning, justified as pertaining to general welfare, surfaced. Zoning as means of historical preservation became commonplace starting in the 1950s and 1960s (Lehavi, 2018). In the 1960s and 1970s, zoning began to serve as a form of environmental protection. Recently, zoning has seen a resurgence of this idea with the eminent danger and publicity of climate change (Lehavi, 2018). At the turn of the twentieth century, public health concerns, as related to zoning, sought to contain and protect against the spread of contagious diseases such as tuberculosis (Lehavi, 2018). Today, public health is also once again at the forefront of zoning concerns, this time in the form of lifestyle-related ailments and diseases (Lehavi, 2018). Aesthetics also play a role in zoning regulations, particularly due to the advent of the suburbs. The affluent sought to establish the suburbs in order to protect their ideal lifestyle. For these individuals, this included the facade and design concept of the houses in developments protected with restrictive covenants. These covenants are a form of zoning restricted to the same delineation of the residential development of which they govern. These examples only illustrate a limited number of the various ways zoning incorporates qualitative norms and considerations.

Today, “A multi-layered system of actors using multi-layered system of standards and norms, participates in the regulation of urban development” (Lehavi, 2018, p.40). This interactive approach to zoning used today developed because of the historical shifts

and culmination of areas of concern. For instance, “Planners resort to zoning not only to shape the built environment but also to make the city more equitable, lively, and green” (Lehavi, 2018, p.27-28). Further, zoning can alleviate concerns of safety and public health by the same action, such as “regulations on human activities and building techniques helped to lessen the threat of fire, exposure to pollution, and disease” (Lehavi, 2018, p.29). Moreover, zoning policies can address concerns for the environment, public health, and aesthetics by mandating setbacks and height limits to help impede circulation and access to sunlight (Lehavi, 2018). These goals are juxtaposed or overlain to develop a comprehensive zoning policy that must evaluate the imperative needs of a municipality.

The shift in purpose of zoning resonates with the concerns of the time and place of the day. The adaptive framework aligns zoning with the ever-evolving social and political climate. Moreover, this flexibility offers potential for zoning to be an effective policy and planning tool. Nevertheless, zoning, particularly residential zoning, still presents cause for reconsideration. There is proof that zoning can perpetuate inequities. This characteristic rings clear the need for further analysis of the effects and drivers of residential zoning.

Zoning can perpetuate inequities directly as well as indirectly. Inequities that result directly from zoning policies are those that construct inequities because of the policy itself. For instance, policies that restrict a minimum lot size, therefore, out-pricing the zone for those of lesser income exemplify how zoning policies can perpetuate inequities. Indirect inequities arise out of the impact of the zoning ordinance, not from the policy design itself. Nevertheless, this disparate impact does not preclude these zoning policies from this evaluation of inequities. For example, proximity to industrial

pollutants, which cause severe health concerns, most often impacts the neighborhoods of lesser economic status and more ethnic and minority communities due to zoning policies that authorize mixed-use zones, such as industrial and residential in the same area. These result most often when new industrial development needs a site and a lesser-desirable, residential only zone offers the necessary space. The new need of more industrial land space for greater economic growth, in this scenario, clashes with the need to protect residential areas. Far too often, zoning policies indirectly perpetuate inequities, preventing the original intent of equity.

Inequities can present themselves in different forms. No matter how inequities materialize, most often these inequities result when policymakers fail to consider their disparate impact of their decisions. Zoning policies faced scrutiny over the years for the potential violation of constitutional rights. Moreover, municipalities have designed zoning policies with different purposes throughout the years. Despite the purpose or level of scrutiny from years past, zoning laws, particularly residential zoning policies, need further analysis in order to devise a path that will lead to a more equitable future in zoning.

Chapter 3 Research Design and Methodology

Using a systematic literature review, the researcher developed a deeper understanding of residential zoning laws. The researcher performed this review by means of computer research using Google Scholar and One Search. The researcher searched for articles containing information regarding zoning policies and ordinances in the United States. The resources selected for this research analysis provided insight into the basis of zoning, the government as well as the citizen perspective, and the effects since implementation. Moreover, this research offered a particular emphasis on residential zoning policies. The research design of a literature review aided the researcher since there is a plethora of research already published on zoning. This research included analysis of the drivers of these policies as well as the impact of the development, implementation, and shift in purpose over time. By utilizing a systematic literature review, the researcher presented a holistic examination of residential zoning by compiling different areas of research into a cohesive and comprehensive policy analysis.

The data collected range from scholarly peer-reviewed articles to government reports and Supreme Court decisions. The systematic approach to reviewing the available sources proceeded in the following manner. First, the researcher used the advanced search mechanism in One Search using indicator words. Second, the researcher filtered responses for *peer-reviewed* and *full article available online* in the order of the *most relevant*. Third, the researcher skimmed titles, article descriptions, and abstracts for content particular to the objective. Fourth, the researcher selected articles with diverse content that together provided the clearest and most precise synopsis of zoning in the

United States with an emphasis on residential zoning. The indicator words used include *zoning, zoning policies, zoning ordinances, United States, history, residential, impact,* and *inequities*. Once again, the advanced search filtered for only full text online and peer-reviewed. This process produced 128 results, which the researcher evaluated for relevance by conducting an overview of titles, article descriptions, and abstracts. The researcher then saved to a folder the articles deemed pertinent to the research. The researcher then categorized these articles into themes. These themes appeared organically through the research collection and evaluation process. The researcher selected the specified Supreme Court decisions on zoning mentioned in Table 2-1 based on information gathered from one of the referenced articles. The researcher searched the Supreme Court decisions by name using Google Scholar, which produced a single result for each search.

This detailed and evolutionary process aided the researcher by developing organically and chronologically as the researcher matured in the scope and goals of the proposed research question. By focusing on these indicator words and breaking down the research into smaller, more detailed themes, the researcher was able to outline and organize the findings to present a coherent, well-conceived analysis of residential zoning. In sum, the researcher used a systematic literature review as the methodology to gather and perform this research due to its ability to provide an expansive overview of zoning, particularly residential zoning, in the United States.

Chapter 4 Findings

Zoning policies and ordinances are acts of governance employed to direct the expansion and growth of urban areas by implementing restrictions and categorizations of real property use. Zoning policies operate as governmental controls over personal property under the guise of protected collective interest. Zoning laws and ordinances have been adapted and changed overtime to meet the new needs of the day. Originally, only heavily populated, large metropolitan cities with a focus on density and height regulations of buildings constructed zoning laws. As zoning policies evolved to meet more specific interests and purposes, zoning began to impact the daily lives of more individuals. Modern day zoning policies affect every person in a community, be it directly or indirectly.

Essentially, zoning laws and ordinances exist to “specify what types of buildings go in what parts of the community” (Warden, n.d., n.p.). Developers and planners regulate real property use with zoning in order to create a predictable economic market to increase consumer confidence and attempt to stabilize the market forces. Zoning determines what can be built in previously undeveloped space as well as determines what can be built in already developed areas. This means that, “Zoning restrictions influence the conversation of farmland” to meet the needs of expanding urban areas (Zellner et al., 2009, p.356). However, zoning also includes the preservation of green spaces, such as parks and conservations. As many seek to focus on the building and development regulations set forth by zoning legislation, they often overlook the use of zoning to

preserve green space. Zoning laws are not always a permanent application. Actually, the main contention regarding zoning stems from the concept of rezoning, or adjusting and/or creating new zoning policies for a particular urban area.


Through the lens of inquisition in the form of a systematic literature review, this research examined the inequity and impact of residential zoning laws. To clarify, inequity refers to an injustice or unfairness; this research does not focus on inequality, which pertains to differences in size, circumstance, degree, etc. This research highlights the institutionalization of historic inequities through the implementation of residential zoning policies. After thorough analysis of the research, it has been determined that the following are the key findings.

Hierarchy of Intensity

The previously mentioned identified needs dictate the land classifications, categorizations, and/or specifications established by the zoning laws and ordinances. “A hierarchy based on the intensity or restrictiveness of development” organizes these land code classifications (Fleischmann, 1989, p.337). Intensity categorizes as follows: low, moderate, high, and special. Low intensity includes Agricultural (A), Rural Center (RCN), and Estate Residential (ER). Moderate intensity refers to Suburban Residential (SR), Neighborhood Residential (NR), Suburban Multi-Family (SMF), and Traditional Neighborhood Business (TNB). High intensity consists of Suburban Center (SCN), Suburban Corridor (SCO), Urban Center (UCN), and Urban Corridor (UCO). Special intensity pertains to Historical Urban Center (HCN), Industrial (IND), and Institutional (INST). (The acronyms, or land use code, are included to draw reader recognition;

moving forward, they will be not referenced.) Figure 4-1 *Land Use Code: Neighborhood Residential* offers an example of the types of regulations that are associated with the Neighborhood Residential (NR) land use classification. Figure 4-1 is borrowed from the Lafayette County, Mississippi Planning Commission. This example highlights the various regulated areas that fall within the context of zoning laws.

Figure 4-1 Land Use Code: Neighborhood Residential

2.6.5 NR - Neighborhood Residential		
Purpose and Description		Allowed Structure Types
<p>The Neighborhood Residential District is intended to implement the residential portion of the Traditional Neighborhood Place Type of Vision 2037. These neighborhoods are designed to contain a mix of housing types including detached and attached, but excluding higher intensity multi-family.</p> <p>These neighborhoods include formal parks and open spaces within a 10-minute walk from any dwelling.</p>		<p>Detached and attached residential structures</p> <p>Limited use of lower intensity multi-family structures</p> <p>Structures customarily accessory to residential uses such as garages, carports, gazebos, porches, and tool sheds</p>
Dimensional Standards		Lot, Street and Use Patterns
Lot Size, minimum	<p>SFD - 5,000 sf</p> <p>SFA - 10,000 sf</p>	<p>Triplex - 12,000 sf</p> <p>Quadplex - 15,000</p>
Site Size Minimum,	Townhouse - 1 acre	
Residential density, minimum/maximum	9 DU per acre	
Non-residential density maximum	FAR 2. / .4 for institutional uses	
Min/Max land allocation for development when more than one structure is proposed	<p>Detached: 25%⁵/100%</p> <p>Attached: 0% / 50%⁴</p>	<p>Townhouse: 0% / 50%³</p>
Impervious coverage, maximum	60%	
Street frontage, minimum	20 feet	
Lot width at the front yard build-to line, minimum	<p>Detached: 80 feet</p> <p>Attached: 85 feet</p>	
Front yard build-to line, minimum/maximum	10 feet/ 20 feet ⁴	
Side yard setback line, minimum	<p>Detached: 10 feet</p> <p>Attached or Townhouses: 0 (zero) (15 foot building separation)</p>	
Rear yard setback line, minimum	<p>Attached or detached: 25 feet</p> <p>Townhouses: 30 feet</p>	
Structure height ^{1,2} , maximum	38 feet, no more than 2 stories	
Uses	See Table of Uses in Article 3	
Parking	See Article 3 and Section 4.9	
Site Plan Review	See Article 9	
2.6.5.1	<p>Neighborhood Residential. The district shall consist of certain older areas of Oxford (indicated on the zoning map) in which the following uses, otherwise allowed in the Neighborhood Residential District, are not allowed: Zero Lot Line Development, Townhomes, Attached Triplexes and Quadplexes. In addition:</p> <ul style="list-style-type: none"> a. The standard lot size shall be no less than 7,500 square feet for detached, 15,000 square feet for duplex b. When duplexes are proposed, they will require a special exception approval if more than 25% are proposed to be 3 bedrooms, or if any are proposed to be 4 bedroom units. c. A development of more than one structure in NR shall require a minimum of 50% detached units, and a development of more than four structures shall require a minimum of 25% of detached units. 	

(Lafayette County, Mississippi Planning Commission, n.d., p.9)

This hierarchy of intensity is the basis for the terms *inclusive* and *exclusive* zoning. Inclusive zoning refers to areas that allow for a variety of land uses and, therefore, are less restrictive or intense. Exclusive zoning policies draw stringent regulations of use by limiting the types of development within its boundary. Sometimes wealthy municipalities implement exclusionary zoning strategies, such as requirements that houses be built on large, thus expensive, lots to prevent low-income people from moving in the community (Gregory et al, 2009). Additionally, in the 1880s when Chinese immigration into the United States was high, some white communities in San Francisco, CA took action through zoning to prevent “encroachment” of “undesirable” ethnic groups (Gregory et al., 2009, p.816). These communities used exclusionary zoning tactics in the form of “ordinances that only permitted their [the Chinese immigrants’] businesses, such as laundries, in specific areas” (Gregory et al., 2009, p.816). Even more, these policies prohibited these businesses be established in residential areas to prevent the Chinese immigrants from moving into white neighborhoods (Maantay, 2001). Exclusionary zoning policies can come in a less explicit form. Some wealthy community will utilize open-space preservation techniques to prevent the zoning of land space for dense housing construction. Many times land space suitable for apartment complexes and other similar forms of residential construction is also suitable for open-space preservation. Thus, wealthy communities push for open-space preservation instead of affordable housing projects (Schmidt & Paulson, 2009). Community constituents argue the benefits that parks and green spaces offer a community and the potential increases in property values. Nevertheless, some municipalities implement this tool to keep lower income individuals out of the community, thus excluding those (Schmidt & Paulson, 2009). This suggests

that these individuals do not have the housing opportunities to move into the community. The wealthy constituents know these ramifications and seek to ensure these consequences in order to uphold their wealthy enclave. These examples offer illustrations of how exclusionary zoning can entrench inequities.

These inequities create a “potential for discriminatory social exclusion” (Gregory et al., 2009, p.816). The balance of inclusivity and exclusivity of zoning regulations is crucial to maintaining a positive public opinion regarding the community zoning policies. Moreover, more research on sociological patterns must be conducted as part of the zoning process as a means to understand current community dynamics and not impose inequitable circumstances upon any certain group.

Rezoning

Rezoning requires balancing vocal interests, expert advice, and the resulting effects. Rezoning draws skepticism about its objective nature. Moreover, many argue over the effects. Further, “Developers and landowners often lobby for changes in zoning to increase the value of their holdings (a tract may be more valuable if its zoning is changed from industrial to residential, for instance)” (Gregory et al., 2009, p.816). Alternatively, “Environmentalists or neighborhood activists often oppose such changes when they seem to create negative externalities” (Gregory et al., 2009, p.816). Zoning boards and community leaders must balance “the challenges of preserving lands and protecting landscapes, while also needing to ensure an adequate supply of affordable and/or higher-density housing” (Schmidt & Paulsen, 2009, p.112). Community planning and zoning commissions must accurately identify community needs and zone to make the

best and most equitable use of land. Additionally, they must act with unbiased judgment. However, this is not always the reality of what happens with zoning.

For example, in the 1960s, “Milpitas (CA) immediately zoned an area for industry after a union proposed building housing there for African-American workers” (Whittemore, 2017, p.237). Once again, “In 1990, St. John the Baptist Parish, Louisiana rezoned 800 residential acres of an African-American neighborhood for industry use despite the availability of other land zoned for industry in the vicinity (Whittemore, 2017, p.237). These two examples illustrate the wrongdoing and inequitable impact zoning policies can have.

Moreover, “Groups lacking adequate representation or the resources for legal action have historically received less favorable treatment in zoning decisions” (Whittemore, 2017, p.238). This lack of representation is a key element at the root of resulting inequities. Therefore, for a zoning commission to be able to identify accurately the needs of the community, it must be composed of a unique group of individuals and experts: “better representation of a city’s racial, ethnic and class diversity can thus lead to fairer zoning outcomes” (Whittemore, 2017, p.238). For example, once the zoning and planning commission in Atlanta, GA increased African-American representation, rezoning policies treated white and African-American areas more equitably (Whittemore, 2017). Measured annual rejection rates for rezoning applications support this abovementioned conclusion (Whittemore, 2017). Atlanta, GA highlights the positive results of equitable zoning approaches.

Rezoning requires assessing the needs and wants of the community. Quality rezoning does that while understanding the sociological patterns of the community and

the potential impacts of future zoning decisions. In order to advance equitable zoning practices, zoning commissions must be composed of individuals with expert knowledge on zoning and city planning as well as accurately represent the whole community.

Mixed-Use Zoning

Due to these mixed needs and interests, there are areas zoned for mixed-use. Mixed-use zoning allows for multiple land uses to be allocated to an area that would generally be zoned for only one land use. For example, an area zoned for suburban multi-family can also be zoned for industrial, or industrial can be zoned for the neighboring land area of suburban multi-family. Mixed-use land classifications have also gained popularity as they offer an alternative to heavily criticized single-use zoning (Gregory et al., 2009). This is an important concept to note due to the impact these zoning policies have that go beyond socioeconomics.

Moreover, “In 1959, a model single-family residential community aimed at African-American buyers opened in South Phoenix (AZ), but as the city expanded zoning for industry in the area and failed to prevent the encroachment of substandard dwellings, homeowners in the community saw their property values decline by 85%” (Whittemore, 2017, p. 237). Similarly, in 1928 in Austin, Texas city planners zoned East Austin, at the time known as an African-American district, for industrial use (Whittemore, 2017). These two examples highlight how historically “the high-minority, low-income tracts had more zoning for commercial and industrial use, whereas the low-minority, high-income tracts had less commercial and industrial zoning and more areas of single-family residential use” (Whittemore, 2017, p.237). Zoning commissions originally conceived mixed-use

zoning as a solution to single-use land codes, but many times, it has adversely affected the areas as illustrated by these examples.

Human Health Impact

Zoning laws and ordinances have an impact on individual health (Jennings et al., 2013). Mixed-use land classifications do not always have a negative impact on human health. Nevertheless, far too often areas of mixed-use are plagued with negative health impacts, such as unclean air from pollution produced by nearby industrial parks, unclear drinking water from runoff, and other important issues afflicting the daily lives of far too many. However, not only mixed-use areas face the ramifications of noxious land uses, but also residential areas located near, or in proximity to, manufacturing and industrial areas realize the effects of these activities as well. For example, Triana, Alabama suffers from high levels of serious illness (Maantay, 2001). The suspected cause is DDT contamination from a nearby chemical plant (Maantay, 2001). Sunnyside, Arizona residents endure rare cancers and immune system disorders suspected to result from the pollution of nearby aircraft industries (Maantay, 2001). The population of West Dallas, Texas struggles with high levels of cancer, heart disease, liver damage, and blood disorders suspected due to the lead smelt and several toxic waste dumps (Maantay, 2001). Although many are skeptical of a cause-effect relationship with noxious land uses and human health effects, science supports that there is undoubtedly a correlation worth noting. It is because of the difficulty to prove cause-and-effect that the research uses the word *suspects*. Nevertheless, the presence of these zoned land uses and resulting detrimental health effects necessitates awareness and recognition. Moreover, future

avoidance of these negative health effects ought to be a priority. These negative externalities, such as exposure to lead and heavy air pollution, inflict those less able to deal with them disproportionately, thus instigating an inequity (Whittemore, 2017). Further, “Zoning policy is recognized by modern public health practitioners as a potentially relevant structural intervention strategy for health promotion” (Jennings et al., 2013, p.62). Therefore, these negative externalities are significant and must be a consideration for future zoning policies, so that communities can mitigate these negative human health effects.

Many times, there is research supporting these correlations between noxious land uses and human health. The neighborhoods that face these failing residential zoning policies are oftentimes those of lesser economic status and/or concentrated with minorities. Whether this trend results due to more affluent areas ability to collectively bargain and/or cast influence on zoning officials or market trends dictating the allocation of land use, it does not matter. The results present patterns. Identifiable trends, such as the ones mentioned above, are the reason why too many claim residential zoning to be a discriminatory and inequitable practice. It is inequitable to relegate low income and minority groups to neighborhoods with negative human health consequences not of their own making. These communities cannot combat the pollution and noxious land uses from nearby industry and manufacturing. By asserting this undue health burden on these communities, this type of zoning policy institutionalizes historic inequities.

Role of Market Trends

Nevertheless, zoning policies generally follow market trends. Zoning commissioners suggest that by following market trends that land is not “overzoned,” or zoned more restrictive than is warranted by the market conditions, thus creating a less intrusive tool (Fleischmann, 1989). Proponents suggest that by following market trends, zoning infringes less upon personal property rights. However, it has its downfalls. “Better” land use classifications are awarded to areas of higher property values compared to areas of lesser real estate value. Therefore, residential zoning laws traditionally protect the areas with high real estate values. One can find evidence of this in the results of longstanding zoning policies, which “reflect the highest-valued land use for the affected parcels, indicating that the market influences zoning” (Shertzer et al., 2017, p.21). Zoning ordinances protect these land values by classifying these areas with more sought-after land use codes. Moreover, the areas facing mixed-use classifications and other less protected categorizations are generally land of lesser property value. This trend associated with property values and land use codes stirs up controversy. Some argue it is simply economics at work, while others argue that it perpetuates inequities.

The issue many focus on when arguing against residential zoning is the effect zoning has on housing. Many assert that zoning has a negative effect in low-income areas but a positive effect in high-income areas (Locke et al., 2017). Moreover, some assume a relationship between zoning and income clustering exists: this “rests on the idea that if a community’s [zoning] policy drives up the price of housing, then increases in housing price will reduce the housing options for people on the lower income scale” (Neiman, 1980, p.666). These arguments present some important issues, but is this really an issue

with zoning or income inequality? This research suggests that this debate is a matter of income inequality, not a failure of zoning policies.

Summary of Findings

In sum, zoning laws and ordinances in the United States have come to result in the aforementioned impacts. Once again, the scope of this research focuses on residential zoning. Table 4-1 *Findings and Implications of Zoning in the United States* summarizes the key findings and resulting implications. Many argue that these impacts produce overt inequities that necessitate stringent restructuring or even the abolishment of such laws and ordinances. Proponents of zoning policies highlight the goals and purposes of the ordinances. This proposes an opportunity for further discussion and evaluation of the framework and these key findings.

Table 4-1 Findings and Implications of Zoning in the United States

Finding	Implication
A hierarchy of intensity codifies land use classifications.	The land use code dictates the type of development, qualities of development, such as lot size and architectural style, and limitations of development. More specifications are awarded to the more intense land use codes. The terms inclusive and exclusive zoning come from this hierarchy of intensity.
Most of the contention regarding zoning is a result of rezoning.	Rezoning requires balancing vocal interests, political motive, and collective public interests. Community planning and zoning commissions must accurately identify community needs and zone to make the best and most equitable use of land.
Mixed-use zoning is a common solution to meeting the new needs of communities.	Mixed zoning allows for multiple land uses to be allocated to an area that would generally be zoned for only one land use. This oftentimes draws inequitable consequences.
Zoning can have an impact on human health.	Residential areas can face unclear drinking water due to runoff and unclear air from industrial pollution if zoned to close to industrial areas.
Zoning generally follows market trends.	Areas of higher property values are awarded the better land use classifications compared to areas of lesser real estate value.

Chapter 5 Policy Discussion and Recommendations

This research examined residential zoning policies and the institutionalized inequities as well as the policy solutions that can reduce inequities. This necessary consideration can aid the design and implementation of future zoning laws. Zoning laws, especially residential zoning laws, play a significant role in communities. Therefore, it is essential to answer and understand the proposed research question.

Communities need green space for parks and trails, areas economic development and productivity, as well as residential spaces for single-family homes, multi-family home, townhomes, and condominiums. Zoning urban areas for these land uses meets these needs. Zoning commissions design ordinances and laws with consideration of geography, transportation, land prices, political factors, and pre-existing uses (Shertzer et al., 2016). Political factors are the root of the controversies surrounding zoning. Manipulation and abuse of political factors can taint the predication for zoning. Nevertheless, the sphere of influence surrounding zoning is great. Economics, geography, sociology, and science influence zoning policies. This supports the conclusion that zoning is a complicated tool.

Proponents of zoning laws and ordinances tout that these regulations help to ensure predictable growth to protect the health, safety, and welfare of the public. Opponents of these regulations argue that the public favors the wealthier, upper class, majority groups while creating an inequitable impact on minority groups and those of lesser income. Moreover, this disparate impact perpetuates the status quo preventing change, growth, social mobility, and prosperity for these individuals. This tension

between objective purpose and realistic consequence necessitates a re-evaluation and adaptation of practice. The solution need not be as extreme or severe as to either implement or abolish zoning laws and ordinances. Furthermore, the solution ought to reform zoning laws and regulations in order to eliminate the negative consequence and more accurately perform the intended purpose. This purpose being the true heart of zoning laws and ordinances: crafting sustainable management practices to guide growth in a predictable fashion and protect the quality conditions of all the public's real estate investments. By sustainable management practices, this research outlines an approach to residential zoning that acknowledges the inequities and plans accordingly to minimize and/or eliminate these effects in the community. Moreover, the sustainable quality stems from an adaptable framework that allows for adjustment or reallocation of land as new needs arise. Thus, sustainability refers to the adaptability and ability to avoid inequities. Following this direction of thought and reaction to residential zoning, the following discourse will offer a proposed policy recommendation to the identified misgivings of many current residential zoning policies and practices.

The United States Supreme Court has taken action to combat inequities in zoning. The Court ruled to eliminate racial discrimination in zoning. Moreover, the Court has ruled to protect family environments from the corruption of adult entertainment through zoning regulations. However, the Court has also ruled protecting the adult entertainment industry disallowing inaccessibility. These rulings balance each other to create equity. The Court has ruled that zoning cannot impede on free speech, but it has also ruled that zoning can disallow certain forms of expression (i.e., picketing) if other forms of

communication are available. This ruling, too, ensures equity. Despite these judgments by the U.S. Supreme Court, residential zoning policies still harbor inequities.

Zoning policies tend to protect high value real estate while adjusting the land uses of less valuable areas of property as a means to increase its property value, drive new or increased tax revenues, or offer some other argued benefit for the community as a whole. Moreover, zoning policies follow market trends by preserving the highest-valued land use for the most desirable parcels of land (Shertzer et al., 2017). However, individuals who earn a greater income are able to afford the areas with the higher property values, while those who make a more modest income cannot. Moreover, this assertion rests on the premise, “If a community's policy drives up the price of housing, then increases in housing price will reduce the housing options for people on the lower income scale” (Neiman, 1980, p.666). Therefore, it is too rash and complex to argue that it is the consequence of zoning that there is an identifiable difference in impact associated with level of income. This impact rather is a culmination of income inequality and the debate over the right to housing,

Nevertheless, zoning policies do create disparate impacts on communities of lesser socioeconomic status. Specifically, communities “disproportionately zone for industry within lower-income communities... [which may lead to] increasing exposure to lead, air pollution, and other hazards” (Whittemore, 2017, p. 237). For instance, formerly residential only areas face the prospect of new zoning legislation rezoning the area to mixed-use allowing for residential as well as industrial or commercial use. In mixed-use zoned areas, unclean drinking water due to runoff and unclean air due to factory pollution are a threat. Although specifications and limitations in the details of land use laws can

combat this fear, these details are ultimately, what guide the characteristics of the development within the zoned areas. These details provide lawmakers with the tools to combat the undesirable consequences that result from zoning legislation. These specifications can counteract the claims of inequity in zoning if lawmakers seek to utilize them to their potential. Nevertheless, these specifications and limitations on development will not resolve all problems.

Legal but undesirable development will occur. The location of where it might occur is what zoning can control. Ultimately, there is no world where every constituent will be happy with the zoning regulations. Nevertheless, that is not the object of zoning; the objective of zoning is to protect and provide for the most common good.

Zoning guides development and controls urban sprawl. Land use mechanisms aim to protect the general welfare and not impede on personal liberties. Zoning laws and ordinances aim to create the most opportunity and good for the entire community. Mitigating the undesirable consequences of some policies is a reality. Planning and zoning commissions must be aware of the inequities plaguing the community, the potential consequences of policy designs, and the needs of the community. Moreover, they must act with the utmost understanding and nuance to design intelligent and opportunistic policies to guide the community, development, and redevelopment for the future.

One way policymakers can combat this issue of income inequality is by incentivizing private development in lower income or diminished communities. Policymakers ought to entice revitalization projects by offering tax incentives to developers for projects that create jobs for the local constituents to help them to promote

their self-interests and social mobility. This idea must account for nuance, however. Many revitalization projects ultimately out-price the local community forcing the original constituents to move out of the neighborhood. Forcing community members to relocate creates a vicious circle in which the revitalization process continuously moves people from community to the next without end. That is not the goal of the revitalization. The goal is to uplift and enhance the community without the degradation of another. With this knowledge, parameters for the project must restrict development projects to opportunities that do not alienate the local constituents, but rather encourage ones that enhance their lives while drawing others into the community. Far too often revitalization projects displace the community by creating new enclaves that perpetuate the problem that the development projects aim at eliminating. By implementing revitalizations projects that provide jobs, do not out-price the market for current residents, and draw in other investment, policymakers will be able to enhance the community as a whole. This will diminish and eventually eliminate the presence of inequitable zoning policies.

Further, the zoning policies must account for and ward against the negative externalities of industrial and manufacturing areas on residential zones. Zoning commissions can help mitigate these negative health impacts is to implement quality testing of the air and water by collaborating with a local nonprofit or research group. Moreover, local officials can subsidize companies, encouraging them to follow green and health-minded policies. Some researchers suggest buffer zones as an alternative; however, buffer zones impede upon already limited land space. Buffer zones create gaps of space to separate community members from negative externalities of some land uses, such as noxious gases and pollution. Buffer zones are not a long-term solution though.

Simply, creating these barriers or buffers does not provide a viable solution, nor does it resolve the root issue. Moreover, land scarcity, or the threat of, is a real problem affecting several communities. Plainly stated, many communities do not even have the option of buffer zones because they do not have the land space available. The suggestion of buffer zones is ill conceived and shortsighted. Municipalities must take bigger steps as suggested, such as partnerships for testing, subsidizing, and prioritizing equitable policies.

In sum, this approach focused on supply side economics as a form of change. By offering tax incentives for better development and green practices, the government does not need to extend itself in the form of heavy regulations. Moreover, zoning commissions can create a new land use code, *revitalization district*, an area in which the community focuses efforts to enhance by increasing jobs and opportunities. By collaborating with private investors, these revitalization projects will enhance the city without having the large undertaking of community funds. Moreover, the zoning commissions established to craft and enact these policies must be composed of experts in the field and equitable representation of the whole community. Zoning is a highly charged political process; therefore, the committee members must be educated and equipped to adjust for the nuances set forth by this research. Zoning commissions can enact policies to protect the interest, safety, and wellbeing of *all* the community. Zoning can help guide the future development and growth of the community while warding against the longstanding inequities such practices formerly entrenched. In the Preamble of the United States Constitution, the framers declared to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and

secure the blessings of liberty to our prosperity and ourselves. These same goals are at the crux of effective and equitable zoning policies. It is imperative that American policies stay true to the heart of the American Constitution. By implementing the policy and practice recommendations offered above, zoning can be an equitable community planning tool.

Chapter 6 Conclusion

This research investigated the relationship between zoning, specifically residential zoning, and inequities by asking a key question: do residential zoning laws and ordinances perpetuate inequities, and what policy solutions can reduce inequities? By framing this research through the lens of an inquisition of inequities and impact of residential zoning policies in the United States, the research was able to ascertain the goals and realities of such policies. Zoning ordinances define areas and regulate land use. Thus, zoning policies intend to protect the investment and value of real estate, preserve the desired community landscape, and aid the common welfare. However, as identified in the research, zoning laws can perpetuate inequities. These inequities stem from other matters of controversy, such as income inequality and the right to housing.

Zoning laws aim to protect the community and guide future development. Zoning committees, however, should better design and implement zoning ordinances and laws by accounting for these nuances. Planners and zoning commissioners should recognize these issues and zone to best protect the livelihood of all within the community. With this awareness, zoning and planning commissioners could implement zoning laws to eliminate, or drastically diminish, these inequitable consequences. These impacts can be resolved with the aforementioned policy recommendations. Land use codes create restrictions as identified in Figure 4-1. Within these restrictions, zoning commissions can identify approved and unapproved mechanisms. For instance, in the case of mixed-use areas where the residents have poor drinking water due to industrial runoff, the

specifications in the mixed-use code could identify a process for regulating and eliminating the runoff that is ruining the drinking water of that community. Zoning laws already draw limitations on personal property rights; thereby, zoning laws that provide further specifications to eliminate undesirable consequences thread a thin line, but do not impose unnecessary regulation *if* the specifications are limited in scope and effect. Lawmakers must be cautious not to over-regulate. This awareness will improve the future of zoning laws by drawing a less contentious response. Zoning laws will no longer facilitate inequities, but return to the intended purpose: to be a tool used by the community to protect the interests of *all* the community. Zoning ordinances will be a matter of collectivity, not separation.

In sum, this research explored the inequitable impact of real estate zoning laws and policies in the United States. This research provides an understanding of the policy practices and application of residential zoning as well as a mechanism to provide a recommendation for future real estate zoning. Zoning laws guide the direction of urban development based upon allocation of land use. This can create a seemingly inequitable impact. Nevertheless, creative design of zoning policies as recommended by this research can mitigate these issues. Zoning acts as the guiding hand to best control urban sprawl through thoughtful consideration for the collective community interest.

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