2

HOW THE SYSTEM WORKS

Most stories are told chronologically. As I said in the Introduction, this one I will be telling backward. First, in this and the next chapter, I will define the basic terminology related to land use and advance my primary empirical claim: that contrary to implicit conventional assumptions of the normalcy of the U.S. zoning model, it is quite distinct from the models used in the rest of the West. This U.S. distinction is the empirical puzzle that later chapters try to explain by examining the adaptation of the original zoning idea, which was first applied in Europe and inspired U.S. reformers of the early 1990s, to fit American conditions. This structure of the argument—first empirical claim, then historical or theoretical explanation—justifies the otherwise counterintuitive chronological arrangement of the book.

To begin though, let us first establish a baseline by identifying the principal tenets of the traditional land-use control system in the United States. The following questions will also be addressed: Why is the traditional system attracting so much criticism lately? And if this criticism is justified, what contemporary alternatives have emerged? Finally, what is the current state of affairs of the American system: Has the traditional land-use-based zoning approach been substantially modified or do its basic principles persist?

What Zoning Is and How It Works

In the United States, zoning is the "the mother lode of city rules" (Talen 2012a, 3). It is used almost universally across American cities, towns, suburbs, and villages.

As mentioned earlier, zoning is a law adopted by a local government that separates the land in a particular locale into sections, or zones, with different rules governing the activities on that land (Pendall, Puentes, and Martin 2006, 2–3; Levy 2006, 121).[1] In each zoning district, the rules address three main aspects of land and buildings (Kayden 2004, 2):[2] their use (function) or the activities that occur within them (typically categorized as residential, commercial, industrial, etc.), their shape (their two- or three-dimensional configuration on land or in the air; for example, building height), and their bulk (the amount of building that can be placed on a unit of land). Common techniques include defining a ratio of built to open space, or floor-to-area ratio (FAR[3]), defining the maximum number of buildings that could be built on a land unit, and defining the minimum size of the land unit on which a building could be placed.[4] Although all these techniques exert powerful influence on the built environment, it is the first aspect of traditional U.S. zoning regulation—land use or function—that forms its "structural core" (Kwartler 1989, 195). The surest thing that would doom a development application in front of a planning commission would be failure to comply with the list of permitted uses in the pertinent land-use district. It is debatable whether human activities on the land should inevitably be classified into the popular land-use categories of residential, commercial, industrial, and so forth (as we will see later, they are a product of the nineteenth-century imagination). But the fact remains that these categories are the standard fare of zoning, and they are often presented as part of its definition. For example, according to Kelly and Becker (2000, 203–204), zoning is a system of local regulations that defines "districts by uses and intensities," where the "basic use categories" are "agricultural, residential, commercial (or business), industrial (or manufacturing)." Such contemporary definitions are almost identical to definitions written seventy years ago:

> Zoning is the division of a city or town by authority of law into districts, in each of which there is prohibited the use of the land for any purpose, which though harmless in itself, impairs the public welfare by interfering with the devotion of the district to the use for which it is best adapted. Zoning usually also includes restrictions upon the size of lots, the height and bulk of buildings, and density with which land may be occupied, which differ in the different districts, so as to be appropriate to the uses permitted in each district. . . . The use of districts almost invariably established by zoning are: respectively, residential, business or commercial, industrial or manufacturing. (Nichols 1943, 143)

Today, municipal zoning of the type described above may seem routine and commonsensical, but at the beginning of the twentieth century, many American lawyers, politicians, and citizens questioned both its wisdom and its legality. The controversy, which I discuss in greater depth in the historical chapters, was grounded in the fact that

zoning is an exercise of *public* control over the *private* sector. Under zoning doctrine, if private-sector losses result from the regulatory restrictions, as they inevitably do on many occasions, the government enforcing the zoning law is not necessarily obliged to provide compensation to the private party. Yet as most U.S. citizens surely know, the U.S. Constitution constrains the government's ability to take over private property without due process and compensation. (And the decrease of private property value from regulation *could* fit under the umbrella of a government takeover.) The Fourth Amendment states in part that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"; the Fifth Amendment states in part that "nor [shall any person] be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation"; the Fourteenth Amendment states in part that "nor shall any state deprive any person of life, liberty, or property, without due process of law." Applying zoning (or other) regulations that tie the hands of private property owners could be construed as a "regulatory taking,"[5] and the story of land-use debates in the United States has been very much the story of what the courts have said about these takings—more so than in any other nation.

This is exactly where the case for U.S. exceptionalism in land-use control begins. Most other western countries lack strong "taking" clauses in their constitutions. Private property is protected in all democratic nations, and the core legal documents in those nations do contain language restricting government takeovers (for an excellent in-depth comparative analysis, see Alterman 2010). International conventions also protect private property: for example, the 1948 UN Universal Declaration of Human Rights states, among other things, that "no one shall be arbitrarily deprived of his property." Some scholars claim that many western countries have recently moved to strengthen the protection of private property rights by changing or reinterpreting their core legal texts (Jacobs 2006, 2009). Still, some obvious differences with the U.S. case remain. Take, for example, the German Constitution. Article 14 (1) states that "property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws." This is immediately followed in Article 14 (2) by the statement "Property entails obligations. Its use shall also serve the public good," suggestive language that is absent from the U.S. Constitution.[6] The difference likely underpins in part, the greater role the German government at all levels plays in shaping urban environments and constraining urban sprawl (see Schmidt and Buehler 2007). The Dutch constitution guards against expropriation without full compensation but lacks explicit language that protects private property from being taken by regulation. The Dutch government, again at all levels, has tools for guiding urban development that far exceed what would be politically or legally acceptable in the United States (e.g., preemptive buyouts of farmland on the outskirts of urban areas at relatively low values in anticipation of future growth, thus limiting the ability of private parties to make a profit by converting rural land to urban uses; see Lefcoe 1979;

Thornley and Newman 1996; Alterman 1997; van der Krabben and Jacobs 2013). England, of course, has no written single constitutional document. English planning doctrine stipulates no direct legal right to compensation for financial loss caused by the particular designation of land in a development plan (Purdue 2006)—the type of financial loss that could lead to a charge of regulatory taking in the United States. In fact, English doctrine prevents local authorities from considering loss of private property value when making decisions. Planning Policy Guidance 1 states this:

> The planning system does not exist to protect the private interests of one person against the activities of another, although private interests may coincide with the public interest in some cases. It can be difficult to distinguish between public and private interests, but this may be necessary on occasion. The basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest. (Office of the Deputy Prime Minister 1997)

In the United States, land-use control through zoning became legally sanctioned by the Supreme Court in the famous case of *Euclid v. Ambler* in 1926 (see Schulz 1989, 59–86; and Wolf 2008 for an excellent account of this case and Haar and Kayden 1989 for an analysis of its twentieth-century legacy). In this case, a private developer, the Ambler Realty Company, wished to develop industry in the Town of Euclid, a suburb of Cleveland, Ohio. The company claimed that the value of its property was diminished because the town had zoned parts of Ambler's 68-acre lot for single-family homes only. The court ruled in favor of the town. *Euclid v. Ambler* has been so important that zoning took its name from the case: for decades the traditional practice has been known as Euclidean zoning.[7] Since that time, municipal land-use control through zoning has been considered a legitimate exercise of the police powers of government. Municipalities are granted the power to regulate the use of their land by enabling state acts.[8] Municipal powers vary, however, depending on the state charter. In the so-called home rule states, local governments can typically invent zoning (and other) tools as they see fit, whereas in states operating under the doctrine of Dillon's rule,[9] local governments need explicit state authorization (typically by the state enabling acts) for the specific zoning (or other) techniques they use (Kayden 2004, 3).[10] Either way, zoning in the United States is not embedded in national legislation—another aspect of U.S. exceptionalism in land-use law. Unlike European national governments, the U.S. government has generally remained silent on matters of urban land-use control. Only one model act on zoning has been authored by a federal body. This is the Standard State Zoning Enabling Act (U.S. Department of Commerce, Advisory Committee on Zoning 1926),[11] which encouraged states to

pass their own enabling acts granting zoning power to locales. The act dealt mostly with procedural matters, but it arguably helped shape discourses on the basic zoning taxonomy by mentioning that in addition to regulating things such as "height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied," zoning can designate land for "trade, industry, residence or other purpose." It also hinted, in a footnote, at the desirability of "one-family residence districts" (4–5). The act paved the way for the basic police-power justifications of zoning by dressing them in the language of "health, safety, morals, or the general welfare of the community." This language can be found on the first pages of many current ordinances in the country. Still, the act had no authority over what states and locales would do. To this day, there is no federal law on urban land use.[12] Zoning thus remains primarily a local matter (Fischel 2010).[13]

As we will see in detail in chapter 4, urban codes including rules that restrict the right of private parties to build a certain way have existed throughout the history of human civilization (Ben-Joseph 2005; Talen 2009b; Marshall 2011). In the United States, a number of large cities such as Boston and New York passed regulations that restricted bulk and shape well before the twentieth century (as we shall see in chapter 5). In an early experiment with land-use separation, some cities and even some states banned specific noxious industries from certain locations (Talen 2009b, 2012a). Private neighborhood rules in the form of neighborhood deed restrictions preceded municipal zoning as well (Garvin 2002).[14] But the way zoning distinguished itself from these other means of controlling the urban fabric was through greatly expanding the extent and scope of municipal control. Furthermore, zoning took an unprecedented interest in regulating the perceived *nature* of human activities on land and in buildings. It introduced a system of land-use categorization under which the activities were placed into the now-conventional land-use (or functional) classes (residential, commercial, industrial, etc.), which was followed by a system of land-use separation (i.e., placing these classes in different parts of town).

The land-use taxonomy system grew much more complex over time, and the number of land-use-based districts greatly proliferated (see Elliott 2008; Talen 2012a). The first comprehensive citywide zoning ordinance in the country, New York City's 1916 ordinance, introduced only three basic land-use categories: residential, business, and unrestricted (the latter encompassed most industries; see Willis 1993). But by the mid-twentieth century, the categories had grown much more intricate. First, the residential category was split into a few basic subtypes: single-family, two-family, and multifamily. The single-family district, which was initially absent in New York because of concerns about its constitutionality, became ubiquitous nationwide. By the late 1920s, it covered nearly 50 percent of land in the typical U.S. city (Bartholomew 1928, 1932)[15] and much larger

portions in suburbs. Protecting this district from other uses was often presented by lawyers and scholars as the very purpose of zoning, as in this example:

> The design of our zoning laws has been to restrict the use of certain property, and thus to guarantee to the homeowner that the area in which his home is located shall not be subjected to uses which might have a tendency to destroy the area for home purposes. (Pollard 1931, 15)

In addition, the single-family and the multifamily housing categories were split into multiple subtypes (e.g., single-family homes on various lot sizes and with various numbers of maximum units per lot, two-family homes, multifamily homes of various sizes and maximum number of units per lot).[16] Likewise, subcategorization was applied to the commercial and industrial land-use classes. Add to this the various new types of districts that have become part of the land-use lexicon over time: public districts, institutional districts, agricultural districts, open space districts, historic districts, parking districts (not to be confused with park districts), downtown districts, special-purpose districts, planned unit development districts (more on these later), university districts, urban design districts, public utility districts, and so forth. Eventually, the zoning system created urban and suburban worlds in which everything was not only in its place but was also in its own *separate* place (Perrin 1977; Boyer 1983), as the ordinances began to commonly allow only one land-use class per zoning district to the exclusion of all the others. Tables 2.1 and 2.2 provide two current examples of the intricate land-use taxonomy used in American cities today: one from Jacksonville, Florida, and one from Fort Worth, Texas.

Of course, not all land-use-based districts exclude all else. For example, in the original New York ordinance, as I will discuss in greater depth in the historical chapters, only the residential districts placed restrictions on where other (nonresidential) structures could be located. Business districts allowed residences alongside commerce, and the unrestricted districts permitted more or less all uses. This approach is often referred to as hierarchical zoning. The concept is based on an imaginary pyramid consisting of three basic land-use classes: residential, commercial, and industrial (hence the other commonly used term: pyramidal zoning). Residential, which in the American tradition is deemed the least intense but the most "delicate" land use, occupies the top of the pyramid, and industrial is located at the bottom. Land uses located higher in the pyramid are permissible in areas designated for lower uses, but not vice versa.[17] In other words, under the hierarchical principle, just as in New York in 1916 and in the 1926 Euclid system, an owner can build homes in commercial and industrial areas and commercial facilities in industrial areas. But industrial facilities were banned in residential

TABLE 2.1 Land-use districts in Jacksonville, Florida

LAND-USE NOTATION	LAND-USE DISTRICT	LAND-USE SUB-DISTRICT
RR-Acre	Residential	Rural
RLD-120	Residential	Low density
RLD-100A	Residential	Low density
RLD-100B	Residential	Low density
RLD-90	Residential	Low density
RLD-80	Residential	Low density
RLD-70	Residential	Low density
RLD-60	Residential	Low density
RLD-50	Residential	Low density
RLD-TND	Residential	Low density
RLD-TNH	Residential	Low density
RMD-A	Residential	Medium density
RMD-B	Residential	Medium density
RMD-C	Residential	Medium density
RMD-D	Residential	Medium density
RMD-MH	Residential	Medium density
RHD-A	Residential	High density
RHD-B	Residential	High density
CO	Commercial	Office
CRO	Commercial	Residential office
CN	Commercial	Neighborhood
CCG-1	Commercial	Community/general
CCG-2	Commercial	Community/general
CCBD	Commercial	Central business district
IBP	Industrial	Business park
IL	Industrial	Light
IH	Industrial	Heavy
IW	Industrial	Water related
AGR	Agriculture	
PBF-1	Public buildings and facilities	Governmental use
PBF-2	Public buildings and facilities	Public and private
CSV	Conservation	
ROS	Recreation/open space	
PUD	Planned unit development	
PUD-SC	Planned unit development—satellite development	

Source: City of Jacksonville (2011).

TABLE 2.2 Land-use districts in Fort Worth, Texas

A. Special Purpose Districts

1. Agricultural district (AG)
2. Community facilities district (CF)
3. Historic preservation overlay districts (HSE, HC, DD)
4. Planned development district (PD)
5. Conservation district (CD)
6. Manufactured housing district (MH)
7. Design overlay district (DO)
8. Downtown urban design district (DUDD)

B. Residential Districts

1. One-family[a] district (A-2.5A)
2. One-family district (A-43)
3. One-family district (A-21)
4. One-family district (A-10)
5. One-family district (A-7.5)
6. One-family district (A-5)
7. One-family restricted district (AR)
8. Two-family district (B)
9. Zero lot line/cluster district (R1)
10. Townhouse/cluster district (R2)
11. Low-density multifamily district (CR)
12. Medium-density multifamily district (C)
13. High-density multifamily district (D)
14. Urban residential district (UR)

C. Commercial Districts

1. Neighborhood commercial restricted district (ER)
2. Neighborhood commercial district (E)
3. Low-intensity mixed-use district (MU-1)
4. Low-intensity greenfield mixed-use district (MU-1G)
5. General commercial restricted district (FR)
6. General commercial district (F)
7. Intensive commercial district (G)
8. Central business district (H)
9. Trinity uptown district (TU)
10. Near Southside district (NS)

D. Industrial Districts

1. Light industrial district (LI)
2. High-intensity mixed-use district (MU-2)
3. High-intensity greenfield mixed-use district (MU-2G)
4. Medium industrial district (J)
5. Heavy industrial district (K)

Sources: City of Fort Worth (2011).

[a]The notation used for the residential districts is sometimes confusing. In Fort Worth's case, the A-2.5 notation refers to a one-family district in which the minimum required lot size is 2.5 acres. A-43 means a minimum lot size requirement of one acre (43,560 square feet), etc.

and business areas, and residential areas were destined only for housing. This means that, unlike the residential districts, the business and industrial districts permit a variety of uses (figure 2.1 illustrates the hierarchical method).

During the mid-twentieth century, however, the zoning system was substantially modified, especially in suburban areas. The hierarchical principle was rejected, and flat zoning ordinances became much more common. In these ordinances, each land-use class became exclusive; that is, residential uses in commercial or industrial districts were banned (figure 2.2 illustrates the flat principle).

This approach made the co-location of various activities in American municipalities increasingly difficult. The issue was further compounded by the fact that individual zones became much larger (Gerckens n.d.; Elliott 2008; Talen 2012a). In fact, initially, even if the land-use districts were mutually exclusive (e.g., even if housing could not be built in commercial areas and businesses could not be built in housing areas), the districts were small enough that people could easily access whatever they needed by simply walking from one city block to another

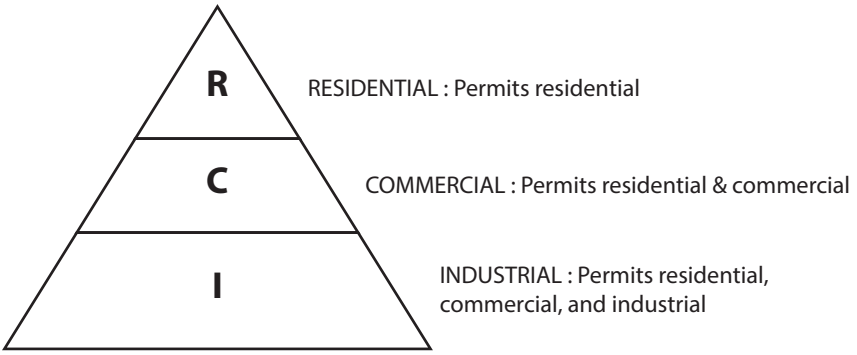

FIGURE 2.1 Hierarchical zoning.
Source: Prepared by Shraddha Nadkarni.

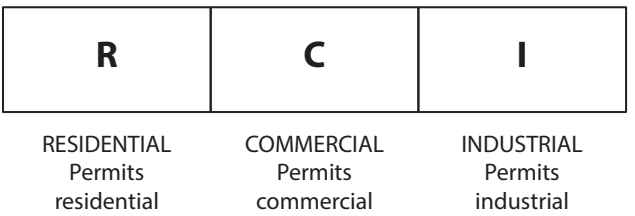

FIGURE 2.2 "Flat" zoning.
Source: Prepared by Shraddha Nadkarni.

(Talen 2012b). But during the mid-twentieth century, in response to Americans' growing reliance on the automobile as their chief means of transportation, the zoning districts became larger and more distant from each other. Also, shape and bulk standards in residential areas were increased to the point that in some districts whole classes of people could not afford to construct large enough homes on large enough lots ; these classes of people were "zoned out" (Levine 2006). This gave rise to the term "exclusionary zoning" (see Davidoff and Brooks 1976), and today, fairly or not, this term is often used interchangeably with the term Euclidean zoning. Much of the contemporary debates on zoning center on the extent to which the exclusionary and segregationist elements of the system have been softened; some authors foresee the "twilight" of traditional zoning (e.g., Ohm and Sitkowski 2003) and others argue that tradition persists (e.g., Levine 2006; Hall 2007).

A zoning ordinance has two basic components: text and map. The rules pertaining to each zone can be properly applied only if the precise areas they cover are clear. The areas are spatially articulated and are usually color-coded on a map. Since zoning districts have multiplied over the course of a century, zoning maps are often wonderfully vibrant creations showing dozens of shades of yellow, green, orange, brown, blue, gray, green, and whatever other hues the human eye can grasp and distinguish in intricate gradations.[18] In a powerful exercise of Euclidean spatial mastery, these maps represent cities as two-dimensional planes composed of geometric boxes, each distinguishable from its neighbors by a specific set of attributes related to use, shape, and bulk. The fact that zoning maps are excellent examples of Euclidian geometric maneuvering and that U.S. zoning is called Euclidean is a pure coincidence. Yet one could hardly wish for a historic accident that would produce a name that more accurately reflects the way zoning principles are articulated on a map. Take, for example, the map of Fort Worth, Texas, in figure 2.3, which spatially defines the city's thirty-seven land-use zoning districts.

Each of the districts shown on a zoning map typically allows land uses under three banners: permitted (principal) uses, accessory (secondary) uses, and conditional uses (special, limited uses or those that are permissible by exception). Permitted uses are those that are considered primary or integral to the basic purpose of a zoning district (e.g., single-family residences in a single-family district). Accessory uses are those that are considered to be closely associated with the principal uses; they could not exist without them (e.g., a garage by a single-family home in a single-family district). Conditional uses include activities that may be beneficial to a district but may also create conflicts and thus are listed separately in the ordinance for potential approval at the discretion of

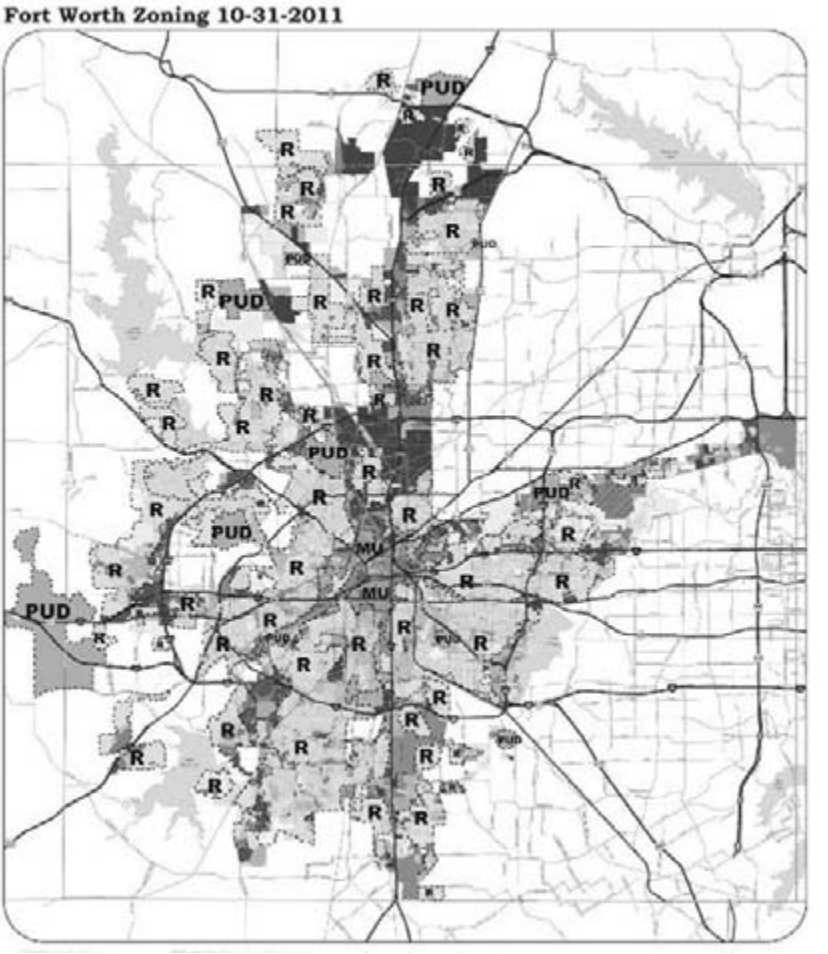

FIGURE 2.3 Zoning map of Fort Worth, Texas. Courtesy of the City of Fort Worth, with additional notation by the author: R designates residential districts, MU designates mixed-use districts, and PUD designates planned unit development districts.

authorities, often under certain conditions (e.g., day-care centers in residential districts).[19] Table 2.3 shows what is permitted today in the medium-density multifamily districts of Jacksonville, Florida: the principal land uses are dwellings, parks, cultural and religious buildings, and certain home-based occupations[20]; the conditional uses are facilities that sell basic convenience goods but *only* to the residents of the multifamily structures; and the uses permitted by

TABLE 2.3 Permitted uses in medium-density residential districts in Jacksonville, Florida

(a) *Permitted uses and structures*
- (1) Single-family dwellings
- (2) Multiple-family dwellings (RMD-B, RMD-C, and RMD-D districts only)
- (3) Townhomes, subject to Section 656.414
- (4) Housing for the elderly
- (5) Family day care homes meeting the performance standards and development criteria set forth in Part 4
- (6) Foster care homes
- (7) Community residential homes of six or fewer residents meeting the performance standards and development criteria set forth in Part 4
- (8) Essential services, including water, sewer, gas, telephone, radio, television and electric, meeting the performance standards and development criteria set forth in Part 4
- (9) Churches, including a rectory or similar use, meeting the performance standards and development criteria set forth in Part 4
- (10) Golf courses meeting the performance standards and development criteria set forth in Part 4
- (11) Parks, playgrounds, and playfields or recreational or community structures meeting the performance standards and development criteria set forth in Part 4
- (12) Country clubs meeting the performance standards and development criteria set forth in Part 4
- (13) Home occupations meeting the performance standards and development criteria set forth in Part 4

(b) *Permitted accessory uses and structures*
- (1) See Section 656.403
- (2) In connection with multiple-family dwellings, including housing for the elderly, coin-operated laundries and other vending machine facilities, day care centers, establishments for sale of convenience goods, personal and professional service establishments; provided, however, that these establishments shall be designed and scaled to meet only the requirements of the occupants of these multiple-family dwellings or housing for the elderly and their guests with no signs or other external evidence of the existence of these establishments.
- (3) In connection with housing for the elderly, in projects with a minimum of 150 bedrooms, facilities for the sale of alcoholic beverages to occupants and their guests in accordance with (i) a Special Restaurant Exception beverage license issued pursuant to F.S. Ch. 561, as may be amended from time to time, and (ii) Part 8 of the City's Zoning Code; provided, that there are no signs or other external evidence of the existence of these facilities.

(c) *Permissible uses by exception*
- (1) Cemeteries and mausoleums but not funeral home or mortuaries
- (2) Schools meeting the performance standards and development criteria set forth in the Part 4

(3) Borrow pits subject to the regulations contained in Part 9
(4) Bed and breakfast establishments meeting the performance standards and development criteria set forth in Part 4
(5) Essential services, including water, sewer, gas, telephone, radio, television and electric, meeting the performance standards and development criteria set forth in Part 4
(6) Day care centers meeting the performance standards and development criteria set forth in Part 4
(7) Nursing homes
(8) Residential treatment facilities
(9) Private clubs
(10) Commercial neighborhood retail sales and service or professional office structurally integrated with a multi-family use, not exceeding 25% of the structure which it is a part
(11) Churches, including a rectory or similar use, meeting the performance standards and development criteria set forth in Part 4
(12) Home occupations meeting the performance standards and development criteria set forth in Part 4
(13) Emergency shelter homes (RMD-C and RMD-D Districts only)
(14) Community residential homes of seven to 14 residents meeting the performance standards and development criteria set forth in Part 4
(15) Golf driving ranges
(16) Boarding houses (RMD-D and RMD-E Districts only).
(17) Group care homes (RMD-B, RMD-C, RMD-D and RMDE Districts)

Source: City of Jacksonville (2011).

Key: RMD-A: Residential medium density-A; RMD-B: Residential medium density-B; RMD-C: Residential medium density-C; RMD-D: Residential medium density-D; and RMD-E: Residential medium density-E.

exception include civic facilities such as schools and "soft" commercial uses such as day-care centers and bed and breakfasts.

No matter how good a zoning code is, it must be modified on occasion to respond to particular circumstances. The basic tools for changing a parcel's zoning designation are variances, amendments, and rezoning (these are often collectively referred to as zoning relief).[21] The first, variances, refers to granting exceptions administratively in cases of hardship affecting an individual property owner (e.g., when he or she has an irregularly shaped lot); these usually relate to bulk and shape rather than land use. Amendments involve legal change: modifying the text of the ordinance (e.g., expanding or restricting the list of permitted uses for all single-family districts). Rezonings are also changes in the law: they involve modifying the zoning map (e.g., changing the zoning designation of a particular lot without changing the textual regulations linked to any of the zoning districts). Unlike amendments, rezonings may be applied to individual parcels and can thus be regarded as unfairly privileging one property owner over

another. Thus, they have not been viewed favorably by courts and may be referred to as "spot zoning"—a term with negative undertones. Either way, zoning exceptions are typically given under a relatively narrow set of circumstances and heavy public scrutiny. The list of land uses permitted or prohibited in most zoning districts is meant to be explicit and exhaustive. Rules are strict and allow "as-of-right development": if a private party follows them, his or her ability to build on the private land is, in theory, guaranteed.

The Critique of Traditional Zoning

Traditional zoning as described above has been under fire since the 1950s. Calls for its demise date back at least to the 1960s (Jacobs 1961; Reps 1964). Since then, several broad streams of critique have emerged: libertarian, economic, social, environmental, and aesthetic. Some of the arguments are part of a broader critique of all government policies that contribute to sprawling U.S. landscapes, which I outlined in chapter 1. Other critical arguments pertain specifically to zoning.

To begin with, critics argue that zoning of any type works against the free market. The sway of this argument, embedded in the long-standing U.S. tradition of political individualism and liberty from heavy-handed government intervention, threatened to prevent the very adoption of zoning in the United States and has maintained a strong presence in libertarian circles (see Ellickson 1973). Fedako (2006) recently put this succinctly: "Zoning is theft!"—the theft of individual property rights and freedoms by poorly informed government bureaucrats with questionable social goals, who introduce inefficiencies into the land-market system. On both libertarian and social grounds, standard zoning has been blamed for favoring built forms that are lower-density and are more segregated than those the market would otherwise produce:

> Although the private market may well have sprawling tendencies of its own, it is capable of producing alternatives but is impeded by municipal regulations that lower development densities, separate land uses, specify wide roadways and mandate large parking areas. (Levine 2006, 3)
>
> The evidence is clear that most suburbs are zoned for minimum lot sizes greatly in excess of what the market would generate. . . . It is theoretically possible for communities to become stratified without zoning, but the conditions for doing so seem unlikely. . . . Even under "ideal" conditions for spontaneous income segregation, at least a weak form of

> zoning for minimum lot size was necessary to obtain such stratification. (Fischel 1999, 156–157)

According to this line of thought, the discrepancy between conventional zoning and markets grows perpetually because the low-density mandates, which are established when an area is first developed, persist even though the area may be becoming increasingly more attractive to a greater number and variety of residents and builders. (This is the typical process of urban growth, or what would occur if no low-density regulations existed.) This discrepancy is said to be especially pertinent today, when consumers and the building industry are progressively warming up to alternative, more compact, and mixed-use forms of development (Levine 2006; Nelson 2012). Furthermore, this argument goes, the lower-density patterns mandated by traditional zoning inflate housing prices (see Glaeser and Gyorko 2002) and require perpetual extensions of infrastructure, the massive costs of which are passed on to the taxpayers. The critics point out that the potential economic benefits of zoning (e.g., fuller community coffers due to the expected increases in property values) hardly outweigh the costs associated with infrastructure waste, longer commutes, and so forth.

The social arguments against zoning have likely been the most scathing. The classic point here is that by categorizing and separating housing types, by establishing large residential districts that permit only large homes on large lots, zoning segregates people by class and by race; it acts as a gatekeeper that favors insiders (those who already have property in a given place) over outsiders (those who wish to acquire property in this place but cannot). Zoning in this sense serves as a local "immigration law" that protects the rich from the poor (see Davidoff and Brooks 1976; Downs 1973; Haar and Kayden 1989; Choppin 1996; Frug 1996; and Silver 1997). Following decisions of their supreme courts, states such as New Jersey and Pennsylvania have addressed the problem by requiring their locales to zone for low- and moderate-income housing ("inclusionary zoning"; see Haar 1996 and Calavita 1998).But it is unclear to what extent this has eliminated the overarching exclusionary effect of the zoning system. While the traditional anti-exclusionary argument targets class- and race-based residential segregation, it can be extended to include issues of age and gender (e.g., Pollak 1994). For example, much like the poor, the very young and the elderly have limited access to automobiles. By contributing to sprawl and land-use separation, zoning restricts their access to services. Also, since women continue to prefer to travel shorter distances to work than men (Crane 2007) and continue to spend more time and effort in child-rearing and other household-related activities, separating them from the employment and service centers through traditional

zoning mechanisms affects them more negatively than it does men (Micklow 2008). In broader social terms, standard zoning has been blamed for limiting possibilities of social interaction—an argument dating back to Jacobs (1961) and Sennett (1970), which has been considerably expanded in recent years by prominent New Urbanists such as Peter Calthorpe (1993), Andre Duany and Elizabeth Plater-Zyberk (et al. 2000).

The main environmental argument has been that by promoting low-density patterns, zoning brings about excessive land consumption, thus harming natural habitats. Furthermore, by shielding housing from all else, it implicitly mandates car travel, thus contributing to pollution. In addition, it may have a negative impact on public health (e.g., by fostering a car-dependent lifestyle and contributing to obesity; see American Public Health Association 2010).

Finally, zoning has been strongly criticized on aesthetic grounds for encouraging cookie-cutter environments and for reducing the complexity of urbanism (Kunstler 1996). The complexity problem was perhaps most succinctly, if sarcastically, summed up by architect Leon Krier (1988): What if we all tried "zoning" our diet by eating vegetables on Monday, potatoes on Tuesday, fats on Wednesday, liquids on Thursday, etc.? Krier's answer, just like Jacobs's several decades ago (1961), is self-evident: reducing a complex organization (in this case, the city) to simple parts (in this case, by using simple physical attributes as a basis for taxonomy and division) suppresses the organization's core vitality, aesthetic and otherwise.

Not everyone agrees with these arguments. Cities would surely not end up better *without* some type of regulation (unregulated cities during the industrial revolution are an obvious example), and there are still legitimate reasons to separate some land uses (e.g., housing from polluting industries). Also, as long as U.S. consumers prefer lower-density and homogeneous environments they will surely get built, with or without government help (although without government help these environments would likely become denser and more varied over time).[22] Yet there is a nearly universal consensus among scholars that traditional U.S. zoning has severe shortcomings. Indeed, regulatory reform intended to promote compact and mixed-use cities and suburbs has become part of the urban planning mantra across North America (Grant 2002, 2005). Given this shift, what alternatives to standard zoning practice have emerged in the United States?

The Alternatives

Over several decades, the U.S. planning and legal professions have developed many modifications to the traditional zoning system. To begin with, the sheer scope of what municipalities can accomplish through zoning has expanded

dramatically. Today, it is customary to regulate signs, landscaping, parking, aesthetic characteristics (especially of buildings in historic and other special areas) and many other aspects of built form in ways that the founders of zoning in the United States would probably have failed to see as advancing the health, safety, morals, or general welfare of the community. In addition, the rigidity of the original approach has been partially overcome by significantly strengthening the powers of municipal governments to exercise discretionary judgment (see Weaver and Babcock 1979, 257–278; Kayden 2004).[23]

Among the key inventions is incentive zoning, which was pioneered in the New York City in the early 1960s. This method grants density and other bonuses to developers in exchange for community improvements such as publically accessible open space, thus shifting the focus of zoning from the issuing of prescriptions and prohibitions to the offering of incentives (see Kayden 1986, 2000; Morris 2000). Another crucial innovation is inclusionary zoning, which, as mentioned earlier, was prompted by the decisions of some state supreme courts. In addition, zoning today can transfer "development rights" from one district to another (e.g., in order to concentrate development in chosen locations while preserving intact others that have unique historic or environmental features) and enable builders to purchase them.[24] It can be also used as a growth-control tool that links the issuance of development permits to impact fees or exactions that are calculated on the basis of the expected impact of a proposed project on the existing community.[25]

From this brief initial list, it is clear that many of these zoning reforms have aimed to soften the exclusionary impacts of traditional zoning, curtail sprawl, and reduce the rigidity of the system (i.e., to promote creative design as opposed to cookie-cutter projects such as houses on rectangular one-acre lots).[26] Some local reforms have required state-level enabling legislation (see Salkin 2003). The reforms broadly align with the agendas of the fashionable contemporary planning and design paradigms of Smart Growth and New Urbanism (Grant 2005). But they can also be dated to early critics of zoning such as Jacobs (1961), who especially opposed the separation of urban functions and forcefully advocated zoning for mixed uses. Jacobs's call has been translated into practice: in addition to regular residential, commercial, industrial, and other standard land-use districts, zoning ordinances today often include mixed-use districts, which allow the coexistence of more than one of the standard land-use classes, either by right or at least conditionally.[27]

Another common way that U.S. planners and lawyers have attempted to overcome the rigidity of traditional zoning is via Planned Unit Development (PUD) districts. PUDs are one of the oldest zoning inventions in the United States; they back to the post–World War II years (Burchell 1972). Instead of regulating

development through lot- or district-specific standardized rules, the PUD process allows authorities to consider unified development plans for selected areas of town, where some rules are predetermined by the municipal law but others are negotiated by planners and developers.[28] A mixture of uses is commonly required in PUDs, even though it is possible for a PUD to allow just a single land-use class.

Whereas all of these methods are meant to modify traditional zoning, two inventions, performance zoning and form-based zoning, have the potential to serve as wholesale alternatives. Performance (or impact) zoning, an idea first championed in the United States by Lane Kendig (Kendig et al. 1980), entails abandoning regulations that employ the traditional land-use categories (residential, commercial, etc.) and replacing them with regulations based on the expected environmental impact of a proposed project (e.g., noise, vibrations, traffic counts, emissions, impervious surface). From the viewpoint of performance zoning, whether a future building will be multifamily housing, a hotel, or a combination of office and retail is immaterial if its expected impact on its environs is the same (Marwedel 1998). However, performance zoning has been slow to take root, likely because of the complexities of preparing an impact study for each project.

Form-based zoning was first proposed in the 1990s. It has been championed by the New Urbanists (Congress for the New Urbanism 2001; Duany and Talen 2002; Parolek, Parolek, and Crawford 2008) and has attracted the greatest attention in recent years. Like performance zoning, it attempts to do away with traditional land-use categories. But unlike performance zoning, its method of operation is to replace them with categories that pertain to architectural character: the size, style, and shape of buildings and building landscapes.[29]

The empirical question, then, is whether these innovations have become routine practice. Half a century after John Reps's well-known "Requiem for Zoning," has the traditional system entered its twilight years, as some suggest (Ohm and Sitkowski 2003), or is there a "surprising mildness" in zoning reform, as others argue (Levine 2006; Hall 2007)? This is a difficult question to answer, because unlike land-use regulation in European countries (where, as the next chapter explains, there are national, unified land-use codes), zoning in the United States remains a local matter. No database fully covers the variety of municipal zoning regulations. Thus, studies that attempt to answer the question have been often limited to individual metropolitan regions (e.g., Hirt 2007b) or states (e.g., Talen and Knaap 2003). The bulk of attention has focused on the new form-based codes under the banner of New Urbanism. The websites of the Congress of New Urbanism, the Form-Based Institute, and Smart Code Central cite around 300 form-based codes across the country but note that there are nearly 40,000 U.S. locales. And closer scrutiny of the form-based codes shows that a great majority

of them are optional and apply only in a piecemeal fashion either to greenfield sites or to small portions of town.[30] Perhaps the most comprehensive nationwide recent study that tried to assess the state of zoning reform was Pendall, Puendes, and Martin (2006). Its authors used a survey distributed among planners in more than 3,000 local jurisdictions that were selected to make a representative sample (about 1,800 jurisdictions responded). The study showed mixed results, pointing to some progress, especially in the area of inclusionary zoning in certain parts of the country. The study's reliance on the answers of local officials, however, presents some problems. Evaluating officials' responses may lead to different results from those reached by analyzing the actual zoning ordinances.[31] Also, the authors did not analyze the spatial distribution of districts. What if form-based or mixed-use districts exist but occupy only miniscule portions of town?

An Empirical Assessment of Zoning Reforms

In order to provide a partial answer to the question of whether traditional U.S. zoning has been reformed, I examine the texts and maps of the current zoning ordinances of twenty-five of the fifty largest cities in America in this section (table 2. 4 and figure 2.4 show these cities; see also Hirt 2013a).[32] My focus is on the extent to which the traditional method of separating land uses and shielding single-family housing from all else has been reformed. I searched specifically for signs of overhaul of the traditional system through the adoption of PUDs, mixed-use districts, and performance- and form-based zoning.

Table 2.5 summarizes the results. To begin with, it shows whether the zoning ordinances are hierarchical (that is, whether the commercial and industrial districts automatically permit a mixture of land uses since they permit residences; column 3). Additionally, it shows whether there is a hierarchy in the residential category (e.g., if single-family homes are allowed in the multifamily districts—a mechanism that permits at least the mixing of housing types; column 4). I also examined residential zones to determine whether they permit nonresidential uses such as retail establishments or offices (column 5). Column 6 notes the presence or absence of districts set up to permit mixture of uses, especially a residential-business mix. Column 7 shows whether there are PUDs permitting a residential-nonresidential mix. Columns 8 and 9 reveal whether the city has a performance or a form-based zoning code. The last few columns show the percentage of land designated under residential zoning (column 10), under low-density residential zoning (typically single-family and two-family detached) (column 11), and under zoning that permits a residential-business mix (column 12). However, only ten cities were able or willing to provide this spatial data.

TABLE 2.4 Largest 50 cities in the United States (25 selected cities shaded in gray)

CITIES	POPULATION	LAND AREA (MI.²)
New York, NY	8,175,133	303
Los Angeles, CA	3,792,621	469
Chicago, IL	2,695,598	228
Houston, TX	2,099,451	600
Philadelphia, PA	1,526,006	134
Phoenix, AZ	1,445,632	517
San Antonio, TX	1,327,407	461
San Diego, CA	1,307,402	325
Dallas, TX	1,197,816	341.
San Jose, CA	945,942	177
Jacksonville, FL	821,784	747
Indianapolis, IN	820,445	361
San Francisco, CA	805,235	47
Austin, TX	790,390	298
Columbus, OH	787,033	217
Fort Worth, TX	741,206	340
Charlotte, NC	731,424	298
Detroit, MI	713,777	139
El Paso, TX	649,121	255
Memphis, TN	646,889	315
Baltimore, MD	620,961	81
Boston, MA	617,594	48
Seattle, WA	608,660	84
Washington DC	601,723	61
Nashville-Davidson, TN	601,222	475
Denver, CO	600,158	153
Louisville-Jefferson County, KY	597,337	325
Milwaukee, WI	594,833	96
Portland, OR	583,776	133
Las Vegas, NV	583,756	136
Oklahoma City, OK	579,999	606
Albuquerque, NM	545,852	188
Tucson, AZ	520,116	227
Fresno, CA	494,665	112
Sacramento, CA	466,488	98
Long Beach, CA	462,257	50
Kansas City, KS	459,787	125
Mesa, AZ	439,041	136
Virginia Beach, VA	437,994	249
Atlanta, GA	420,003	133
Colorado Springs, CO	416,427	195
Omaha, NE	408,958	127
Raleigh, NC	403,892	143
Miami, FL	399,457	36
Cleveland, OH	396,815	78
Tulsa, OK	391,906	197
Oakland, CA	390,724	56
Minneapolis, MN	382,578	54
Wichita, KS	382,368	159
Arlington, TX	365,438	96.50

Sources: U.S. Census Bureau (2010a; b) and U.S. Census Bureau (2012b).

FIGURE 2.4 Select largest cities in the United States, for which zoning data was collected.

Source: Prepared by Cynthia Lintz.

TABLE 2.5 Summary of findings on zoning districts, 25 selected cities

CITY	HIERARCHICAL CODE?	RESIDENTIAL HIERARCHY?	RESIDENCE/ BUSINESS MIX IN RESIDENTIAL DISTRICTS?	RESIDENCE/ BUSINESS MIX IN MIXED-USE DISTRICTS?	MIXED USE IN PUDS?	PERFORMANCE CODE?	FORM-BASED CODE?	% TOTAL AREA RESIDENTIAL	% TOTAL AREA LOW-DENSITY RESIDENTIAL	% TOTAL AREA MIXED USE
Atlanta	yes	yes	no	yes	yes	no	no (under consideration)	53.2	38.7	0.30
Baltimore	no	yes	limited; conditional use	yes	yes	no	no (under consideration)	45.1	21.4	0.49
Chicago	no	yes	no	yes (with restrictions)	yes	no	no			
Cleveland	yes	yes	no	yes	yes (with restrictions)	no	no	36.8	33.1	2.00
Colorado Springs	partially	yes	no	yes	yes	no	yes (optional)			
Dallas	no	partially	no	yes	yes	no	yes (partial, optional)	45.16	39.16	2.57
Denver	not applicable	partially	no	yes	yes	no	yes			
Detroit	partially	yes	no	yes	yes	no	no			
El Paso	partially	partially	no	yes	yes	no	yes (partial, optional)	31.25	31.23	
Fort Worth	no	yes	no	yes (with restrictions)	yes	no	no	52.64	45.7	2.22
Jacksonville	partially	partially	no	yes	yes	no	no	38.63	33.63	0.05
Las Vegas	no	yes	no	yes	yes	no	no	38.3		

Long Beach	no	yes	limited; conditional use	yes	yes	no	no			
Mesa	no	yes	limited; special use	yes	yes	no	no (under consideration)			
Milwaukee	partially	yes	limited; special use	yes	yes	no	no			
Nashville-Davidson	yes	yes	no	yes	yes (with restrictions)	no	no			
New York	yes	yes	some	yes	yes	no	no	39.5	27.3	3.00
Oklahoma	partially	yes	no	yes	yes	no	no			
Omaha	yes	yes	limited; conditional use	yes	yes	no	yes (partial)	57.36	55.41	1.26
Phoenix	partially	partially	no	yes (with restrictions)	yes	no	no (under consideration)			
San Antonio	partially	yes	limited	yes	yes	no	yes (optional)			
San Diego	partially	yes	limited	yes	yes	no	no			
San Jose	no	yes	no	yes	yes	no	no			
Tulsa	partially	yes	very limited; accessory use	yes	yes (with restrictions)	no	yes (partial)			
Wichita	yes	yes	very limited; conditional use	yes	yes	no	no			

Source: Zoning ordinances of the 25 cities listed in the table (see the reference list) and e-mail correspondence with individual city planning departments.

The table shows that about a quarter of the reviewed ordinances are hierarchical: specifically, their commercial zones generally permit residential uses.[33] Ten ordinances are partially hierarchical (e.g., only certain residential types are allowed in only some commercial zones). In eight cases, the ordinances are "flat": each zone is dedicated to a single land-use class. The ordinances are consistently more welcoming of mixed housing: all of them allow some single- and/or two-family homes by right or at least conditionally in the multifamily districts. On the other hand, the residential zones are generally closed to nonresidential functions. As a rule, cities do not allow retail establishments, offices, or industries (even light industries) in areas labeled residential, unless the areas are intended specifically for a mix of residential and nonresidential activities.[34] In ten cases, a limited number of nonresidential uses—those considered either halfway residential (e.g., bed and breakfasts) or least intrusive to the residential function (e.g., day-care centers)—are allowed. These are usually listed as conditional uses. However, conditional nonresidential uses generally do not exist in single-family districts.[35]

Districts dedicated to mixed use are very popular; every city in the database has more than one such district. Examples include Neighborhood Mixed Use in Chicago, Traditional Neighborhood Development in Colorado Springs, Residential-Professional-Institutional in Jacksonville, Town Center in Las Vegas, Community Commercial in Long Beach, Downtown Districts in Mesa, and Neighborhood Shopping in Milwaukee. A significant part of New York's 3,400-page ordinance is devoted to Special Purpose Districts, most of which allow a residential-nonresidential mix.

PUDs are an equally popular tool. Although some cities have monofunctional PUDs (e.g., all-residential or all-commercial PUDs), in all cities a PUD that allows or even requires mixed use exists. However, both mixed-use zoning and PUD zoning typically apply to parts (often relatively small parts) of a city, and the rest remains under standard, land-use-based zoning. The only city that uses PUDs broadly is Las Vegas, Nevada.[36] Dallas, Texas, offers an example of a city with mixed-use districts. There, a mixture of uses is permitted by zoning in just 3 percent of the city area, whereas about 45 percent is zoned solely for residential uses, as Table 2.6 shows.

As mentioned above, unlike PUDs or mixed-use districts, performance or form-based zoning can replace the land-use-based principle in its entirety. But there are no such cases in the database. In a nominal sense, all cities have some performance standards related to permissible noise or emissions levels, and so forth, especially for industrial facilities.[37] But none of the codes in the database allow performance criteria to replace land-use-based rules and classifications, even for a part of town. The performance standards only provide requirements in addition to those associated with land use.

TABLE 2.6 Base zoning districts in Dallas, Texas

BASE_ZONING	BASE_ZONING	AREA IN MI.^{2}	PERCENT TOTAL AREA
Agricultural	A(A)	63.07	16.53
Central area	CA-1(A)	1.12	0.29
Central area	CA-2(A)	0.046	0.01
Conservation	CD	2.98	0.78
Clustered retail	CH	0.37	0.10
Commercial retail	CR	7.81	2.05
Commercial service	CS	6.95	1.82
Duplex residential	D(A)	1.97	0.52
General office	GO(A)	0.43	0.11
General retail	GR	0.002	0.00
Industrial manufacturing	IM	11.55	3.03
Industrial research	IR	35.58	9.33
Light industry	LI	4.74	1.24
Limited office	LO-1	0.44	0.12
Limited office	LO-2	0.04	0.01
Limited office	LO-3	0.20	0.05
Multiple commercial	MC-1	0.43	0.11
Multiple commercial	MC-2	0.007	0.00
Multiple commercial	MC-3	0.16	0.04
Multiple commercial	MC-4	0.09	0.03
Multi residential	MF-1(A)	6.65	1.74
Multi residential	MF-1(A)(SAH)	0.13	0.03
Multi residential	MF-2	0.002	0.00
Multi residential	MF-2(A)	9.17	2.40
Multi residential	MF-2(A)(SAH)	0.09	0.02
Multi residential	MF-3(A)	0.28	0.07
Multi residential	MF-4(A)	0.06	0.02
Manufactured residential	MH(A)	0.93	0.25
Midrange office	MO-1	0.01	0.00
Midrange office	MO-2	0.008	0.00
Mixed use	MU-1	1.12	0.30
Mixed use	MU-1(SAH)	0.01	0.00
Mixed use	MU-2	1.43	0.38
Mixed use	MU-2(SAH)	0.07	0.02
Mixed use	MU-3	5.78	1.52
Mixed use	MU-3(SAH)	0.19	0.05
Neighborhood office	NO(A)	0.82	0.21
Neighborhood service	NS(A)	0.47	0.12
Office	O-2	0.001	0.00
Parking	P(A)	0.09	0.02
PUD	PD	57.8	15.14
Single-family residential	R-1/2ac(A)	2.99	0.78
Single-family residential	R-10(A)	17.27	4.53
Single-family residential	R-13(A)	0.55	0.14

(*Continued*)

TABLE 2.6 (Continued)

BASE_ZONING	BASE_ZONING	AREA IN MI.²	PERCENT TOTAL AREA
Single-family residential	R-16(A)	8.60	2.26
Single-family residential	R-1ac(A)	7.66	2.01
Single-family residential	R-5(A)	11.1	2.91
Single-family residential	R-7.5(A)	99.2	26.01
Regional retail	RR	5.66	1.49
Townhouse residential	TH-1(A)	0.92	0.24
Townhouse residential	TH-2(A)	1.99	0.52
Townhouse residential	TH-3(A)	2.32	0.61
Walkable mixed use	WMU-5	0.01	0.00
Walkable urban residential	WR-5	0.002	0.00
Total		381.47	99.96

Source: Correspondence with city of Dallas (2011).

Note: The districts zoned for residential and nonresidential mixed use, which are shaded in light gray, occupy less than 3% of the city area. The districts designated solely for residential development, which are shaded in dark gray, occupy over 45% of the city area.

Form-based zoning, on the other hand, has attained greater popularity. In several cities (Atlanta, Baltimore, Mesa, and Phoenix), a form-based code is in some stage of preparation. In a few others (Colorado Springs, El Paso, and San Antonio), a form-based code exists on the books: it *may* be used instead of traditional use zoning.[38] All other cities have some regulations that address the shape and style of buildings and building landscapes, most commonly in historic or other special areas. However, just as with performance criteria, these form-based rules or guidelines are not intended to reduce the significance of rules and classifications based on land use; rather, they impose an additional layer of regulation.

The only zoning ordinance in the database that calls itself fully form-based is Denver's. But Denver's ordinance (City of Denver 2010) is in essence a hybrid. It explicitly follows the principles advocated by the New Urbanists and establishes several "neighborhood contexts" that are distinguishable from one another based not on functions alone but on neighborhoods' "overall physical and functional characteristics including but not limited to: street, alley, and block patterns; building placement and height; diversity, distribution and intensity of land uses; and diversity of mobility options." These contexts are Suburban (S), Urban Edge (E), Urban (U), General Urban (G), and Urban Center (C). Within each context, the code states that it uses a form-based method to distinguish between additional categories based on "dominant building form and character." These include Single Unit (SU), Two Unit (TU), Town House (TH), Row House (RH), Multi Unit (MU), Residential Office (RO), Residential Mixed Use (RX), Commercial Corridor (CC), Mixed Use (MX), and Main Street (MS). Zone Districts are then created based on the combination of "context" and "dominant building

TABLE 2.7 Land-use zoning districts in some of Denver's neighborhood contexts," which feature single-family units.

SUBURBAN NEIGHBORHOOD CONTEXT		URBAN EDGE NEIGHBORHOOD CONTEXT		URBAN NEIGHBORHOOD CONTEXT	
S-SU-A	Single Unit A	E-SU-A	Single Unit A	U-SU-A	Single Unit A
S-SU-D	Single Unit D	E-SU-B	Single Unit B	U-SU-A1	Single Unit A1
S-SU-Fx	Single Unit Fx	E-SU-D	Single Unit D	U-SU-A2	Single Unit A2
S-SU-F	Single Unit F	E-SU-Dx	Single Unit Dx	U-SU-B	Single Unit B
S-SU-F1	Single Unit F1	E-SU-D1	Single Unit D1	U-SU-B1	Single Unit B1
S-SU-Ix	Single Unit Ix	E-SU-D1x	Single Unit D1x	U-SU-B2	Single Unit B2
S-SU-I	Single Unit I	E-SU-G	Single Unit G	U-SU-C	Single Unit C
S-TH-2.5	Town House 2.5	E-SU-G1	Single Unit G1	U-SU-C1	Single Unit C1
S-MU-3	Multi Unit 3	E-TU-B	Two Unit B	U-SU-C2	Single Unit C2
S-MU-5	Multi Unit 5	E-TU-C	Two Unit C	U-SU-E	Single Unit E
S-MU-8	Multi Unit 8	E-TH-2.5	Town House 2.5	U-SU-E1	Single Unit E1
S-MU-12	Multi Unit 12	E-MU-2.5	Multi Unit 2.5	U-SU-H	Single Unit H
S-MU-20	Multi Unit 20	E-RX-5	Residential Mixed Use 5	U-SU-H1	Single Unit H1

Source: City of Denver (2010).

form and character" (e.g., S-SU for Suburban Single Unit and G-MU for General Urban Mixed Use; Table 2.7 lists some of these districts).[39]

Closer scrutiny, however, reveals that Denver's approach softens but does not seek to eliminate dependence on functional categories, nor does it allow residential-business mix in a particularly liberal manner. In the Suburban Neighborhood Context, for instance, there are twenty-five districts, twelve of which only for housing. True, the code promotes relatively dense patterns (there are minimum lot requirements, as opposed to the traditional maximum ones), but mixed-use districts are generally confined to major intersections, and the Single Unit category allows only single-family homes in all three contexts in which it exists.

Finally, Table 2.5 illustrates the prevalence of the residential function in U.S. cities. In the ten cities that provided spatial data, between 31 percent and 57 percent of land is locked in a residential category and between 21 percent and 55 percent is locked in low-density (single- and two-family) housing.[40] The percentage of land marked for high-density (multifamily) housing is limited to the single digits. These numbers are quite similar to the numbers from the 1920s and 1930s mentioned earlier (Bartholomew 1928, 1932).[41]

In all cities I studied, the residential category generally prohibits nonresidential uses. This means that significant percentages of land are destined for a single human activity. And in all cities for which data could be collected, much like in Dallas, the percentage of land allowing a residential-commercial mix is in the low single digits. A single-family category is omnipresent. In all cities, this category

targets a particular family type and tends to exclude everything but basic accessories (e.g., garages and swimming pools) and some civic (religious, cultural, and educational) buildings. Current definitions for the single-family category emphasize the same benefits of the serene "family-friendly" lifestyle that have accompanied the history of U.S. zoning. Textbox 2.1 includes examples from the current zoning ordinances of some cities included in the sample of twenty-five. The definitions are highly uniform: the single-family districts permit only what is in their titles (i.e., single-family homes and their accessories).

TEXTBOX 2.1 The Single-Family Zoning District as Defined in Select Cities

Detroit

61-8-11 R-1 Single-family residential district. This district is designed to protect and preserve quiet, low-density residential areas now primarily developed and those areas which will be developed with single-family dwellings and characterized by a high ratio of homeownership. The regulations for the district are designed to stabilize and protect the essential characteristics of the district and to promote and encourage a suitable environment for activities associated with family life. . . . Uses permitted by right are limited to single-family detached dwellings which provide homes to the residents of the area.

Chicago

17-2-0102 RS, Residential Single-Unit (Detached House) Districts. The primary purpose of the RS districts is to accommodate the development of detached houses on individual lots. It is intended that RS zoning be applied in areas where the land-use pattern is characterized predominately by detached houses on individual lots or where such a land use pattern is desired in the future. The Zoning Ordinance includes three RS districts—RS1, RS2 and RS3—which are differentiated primarily on the basis of minimum lot area requirements and floor area ratios.

Cleveland

337.01 Limited One-Family Districts

(a) Permitted Buildings and Uses. In a Limited One-Family District the following buildings and uses are permitted:

(1) One-family dwelling houses and their accessory buildings and uses. Except as otherwise provided in this Zoning Code, no main building or premises in a Limited One-Family District shall hereafter be erected, altered, used, arranged or designed to be used, in whole or in part for other than a dwelling house occupied by not more than one family.

Milwaukee

1. SINGLE-FAMILY RESIDENTIAL DISTRICTS. a. RS1-RS5 Districts. The purpose of the RS1-RS5 districts is to promote, preserve and protect neighborhoods intended for single-family dwellings. . . .

Oklahoma City

RA2 Single-Family Two-Acre Rural Residential District.

The RA District provides single-family residential housing with rural amenities in the rural development areas of the City at densities from 0.35 to 0.45 dwelling units per acre. Special attention should be given to overall design and location of lots within this district to assure adequate provision of light, air and open space, and to protect the area from being subject to intensified zoning once the district has been established and developed.

Source: City of Detroit 2011; City of Chicago 2011; City of Cleveland 2011; City of Milwaukee 2008; City of Oklahoma City 2007.

It seems then, based on a review of the zoning ordinances from twenty-five of the largest cities in the United States, that the obituaries for the traditional approach are premature. Although changes have certainly occurred over time and we see a proliferation of innovative tools such as mixed-use, form-based, and PUD districts, land-use classification and separation remain core premises. Single-family residential-only zoning districts continue to be widespread. How unusual U.S. exclusively residential zoning is becomes clearer in the next chapter, in which I contrast the American system with the land-use regulation systems of select other industrialized countries.