

## Land Use Regulations

Zoning and other land use regulations are key tools local governments can use to implement comprehensive plans and target area plans. Land use regulations are not confined to zoning provisions, which separate the community into zoning districts and specify the land uses and building dimensions that are permitted in each zone. They also may include regulations that govern the subdivision of land and development of individual sites, as well as provisions that protect trees, slopes, historic districts, and viewsheds.

### Why Create Land Use Regulations?

A municipality must adopt land use regulations that conform to its comprehensive plan or target area plan in order to implement these plans and enforce related development standards. Land use regulations also communicate development expectations to developers, so they can determine if anticipated development is market realistic.

### How to Create a Land Use Regulation?

After formally adopting a comprehensive plan or target area plan, a municipality may implement the plan by adopting an appropriate land use regulation that meets local needs. To develop the regulation, municipalities should consider the following steps:

- Collect relevant information about infrastructure.*** The municipality should consult with transportation agencies regarding ridership, parking, and connectivity to transit stations, and confer with public works departments regarding water, sewer, and other infrastructure.
- Ensure the regulation conforms to comprehensive plan and target plan goals, objectives, and strategies.*** New York State law requires land use regulations to be in accordance with a comprehensive plan or well considered plan. Land use regulations should implement an existing comprehensive plan or target area plan's long-term goals, related objectives, and concrete planning strategies or actions. For example, regulations could implement a comprehensive plan's smart growth goals by properly managing stormwater through green infrastructure techniques that are central to public health and livability; coordinating smart growth provisions with the preservation and enhancement of the historic character of the affected area; and adhering to the community's equity goals, focusing on the need for affordable housing and the retention of existing lower-income residences.
- Ensure the regulation is market realistic for developers and economically feasible for the municipality.*** Consult the comprehensive plan or target area plan's market analysis and economic development component and meet with development advisers, as well as affected property owners and developers, to assess market needs and financial realities in affected neighborhoods. Marketable development often requires pedestrian friendly amenities and available services. Additionally, consult the relevant plan's analysis of the anticipated development's potential fiscal impacts on the municipality, including impacts on utilities, transportation, fire safety, and schools, as well as property tax revenues. Consider all of these economic realities when selecting development uses and densities for a particular area.

- ***Involve stakeholders in process.*** Although a comprehensive plan or target area plan is developed with input from relevant stakeholders, a process for involving stakeholders in regulation development and implementation is also crucial. Plans are advisory; regulations are mandatory and effect real change. Community support buy-in is essential for creating successful land use regulations. As in the planning process, a municipality should identify key stakeholders and facilitate their involvement in regulation development.
  
- ***Choose the right regulatory tool.*** Local governments are given broad authority to adopt flexible zoning techniques that encourage the most appropriate use of land. Below, this section describes these regulatory techniques in detail. Using these techniques, municipalities can exercise their zoning authority creatively to develop a regulation that fits a community's unique land-use needs and goals. A municipality could choose to implement only one of the regulatory tools, take a hybrid approach that incorporates several regulatory techniques, or create an entirely new approach, such as the 'regulatory plan' technique described in the Yonkers best practice featured in the Target Area Plan section above. The regulatory tools described below offer different mechanisms and incentives to facilitate smart growth development. Municipalities should review these options and select those that are most appropriate given local goals and circumstances. Possible regulatory tools include:

*Conventional zoning.* The century-old NYS planning and zoning enabling acts authorize municipalities to adopt zoning laws that divide land within a municipality into districts and prescribe the land uses allowed within each district. For each zone, a local zoning law also establishes building restrictions limiting the height, lot area coverage, and other dimensions of structures that are permitted in the district. The accompanying zoning map shows zoning district lines overlaid on a street map of the community. Users can refer to this map to identify the district within which any parcel of land is located and then consult the zoning law to discover both the permitted uses within that district and the dimensional restrictions that apply to development on that land. Historically, municipalities adopted conventional zoning with districts that separate land uses and require uniform dimensional and density standards for each class or kind of building throughout each district. Town Law § 262, Village Law § 7-702, and General City Law § 20(24)-(25). This often resulted in homogenous, "cookie cutter" development that was unresponsive to market conditions and changes in the community. Municipalities that desired more flexibility in their zoning districts relied on the enabling act's provision that state that zoning regulations should be designed to "encourage the most appropriate use of the land throughout the municipality." Town Law § 263, Village Law § 7-704, and General City Law § 20(24)-(25).

*Planned Unit Development (PUD) zoning provisions.* Any doubt about municipalities' power to incorporate flexible provisions in their zoning were removed when the enabling acts were amended to allow PUD zoning. Town Law § 261-C, Village Law § 7-703-a, and General City Law § 81-f. PUD zoning provisions permit development of land in a more flexible manner than is typically achieved by conventional zoning. These zoning provisions permit development projects that adhere to a comprehensive development plan that includes a variety of uses, densities, development types, and building design. In addition, PUD provisions often require development plans to

compensate for project impacts by preserving significant and usable open space, providing infrastructure necessary to service the development, or supplying other community facilities and services. PUD provisions could apply to large tracts of land, as well as areas with predominately small- and medium-sized lots where owners cannot assemble parcels at a scale of operation sufficient to develop feasibly. After an applicant submits a PUD proposal, the planning board conducts a comprehensive review and approves the entire proposal, which includes the development plan, project map, and regulations under which the project will be built. In negotiations with private developers interested in developing in a PUD zone, public-private partnerships can emerge through municipal infrastructure, state funding, and developer investments that combine to make projects economically feasible.

Overlay zoning. Without changing underlying zoning, a municipality can superimpose an overlay district with separate development standards onto its zoning map, designating the precise area in which they apply in addition to the existing zoning. Overlay provisions may provide zoning incentives and waivers to encourage certain types and styles of development. Municipalities can use overlay zoning to apply smart growth standards to development proposals that must also conform to important standards in existing zoning. By leaving development options under the existing zoning in place, overlay zones can avoid resistance from property owners who have invested in reliance on the current zoning standards.

Floating zones. A local government may add a new zoning district in its zoning code but wait to amend the zoning map until a project or area is identified for application of this zone. This is called “floating zoning” because, until the map is amended to affix the new district to an area, it essentially floats in the zoning code. A locality can apply the zone to a particular area upon the petition of a developer, at the local legislature’s initiative, or upon the recommendation of the planning board or commission. When a property owner applies for the floating zone to be affixed to her property by a zoning map amendment, she must show compliance with the floating zone’s conditions and performance objectives to develop under its standards, which typically allow greater density. This provides flexibility to the community and developer in determining how to apply the standards to each site and what benefits the developer must provide to the community to develop under the floating zone.

Form-based codes. Instead of conventional zoning requirements, form-based codes (FBCs) regulate building form, site design, and circulation. FBCs typically specify a few generally defined land uses that are permitted in a defined neighborhood but primarily focus on building scale and character and its relationship to and effect on streets, vehicles, pedestrians, and public spaces. Because these codes are very prescriptive, development outcomes under FBCs are more predictable for both the community and developers. In order to develop the prescriptive designs required, however, the costs of developing FBCs can be high.

Bonus density incentives. Bonus density incentives allow developers to build at greater development densities than permitted under existing zoning in exchange for providing one or more community benefits, such as off-site infrastructure, public spaces and facilities, public art, open space or parks, affordable housing, or some other physical, social, or cultural amenity. Authorized by Town Law § 261-b, Village Law § 7-703, and

General City Law § 81-d, density incentives may allow upward adjustments to zoning requirements for the number of dwelling units allowed in a building, maximum floor-area ratio (FAR), or maximum building height, among other requirements. This increased development density helps developers finance provided community benefits. If it is not feasible to provide a benefit directly, the incentive system may allow developers to make cash payments to a municipal trust fund to provide specified benefits elsewhere.

- ***Add smart growth zoning provisions.*** After selecting the regulatory tool that best meets the community's objectives, consider adding other zoning provisions to help facilitate smart growth. Other zoning provisions may include affordable housing set asides, renewal energy siting, and resilience. Municipalities can also consider the following provisions:

*Design standards.* Incorporating design standards for buildings, sites, and street fronts into existing zoning helps create a pedestrian friendly, human-scale and livable sense of place. [Reinventing Development Regulations](#) describes design standards communities can adopt to control the relationship between private properties and public spaces, shape public spaces to enhance buildings, regulate street design, and enhance architectural character. Additionally, municipalities can use the U.S. Green Building Council's [Technical Guidance Manual for Sustainable Neighborhoods](#) to create design standards using relevant criteria from the [2009 LEED for Neighborhood Development \(LEED-ND\) Rating System](#), which offers a full menu of standards for implementing sustainable neighborhood development.

*Parking provisions.* With the arrival of autonomous vehicles, ride hailing services, and changing demographics, existing parking standards, especially in compact, higher density districts, may be excessive, adding significant expense to development. Municipalities should consider decreasing onsite parking requirements when shared parking arrangements and other strategies that reduce parking demand are incorporated into a land use regulation.

*Green infrastructure standards.* Increasingly, communities require developments to incorporate green design elements into land use regulations to help manage stormwater runoff and retain it onsite. Federal and state stormwater management regulations may require green design standards, or a municipality may adopt these provisions to create and connect urban and neighborhood green infrastructure.

*Use regulations that allow increased building diversity.* Some communities are considering micro-unit apartment buildings, quadraplexes, in-fill buildings, accessory dwelling units, automated parking facilities, and other building types for which there are emerging market demands. For these to be consistent with zoning, the area and bulk requirements applicable in the newly adopted regulations must permit them.

*Historic preservation provisions.* If a regulation will affect an area with historic buildings, design standards could incorporate design elements from those buildings, and the regulation could include provisions to preserve historic buildings, whether or not the area is designated an historic district.

- ***Complete a Generic Environmental Impact Statement on the land use regulation.*** As with comprehensive plans and target area plans, land use regulations also must undergo SEQRA review and often require the preparation of an environmental impact statement (EIS), as do any subsequent large-scale development projects approved under those regulations. To reduce the need for in-depth SEQRA reviews for future projects, the municipality can prepare a Generic Environmental Impact Statement (GEIS) for the land use regulation. To learn more about GEISs and their benefits, review the Comprehensive Plan section above.

## **Best Practice Examples**

### ***Sleepy Hollow Riverfront Development District & General Motors Site***

In 2016, the joint venture of SunCal and Diversified Realty Advisors broke ground on a \$1 billion mixed use-development, called Edge-on-Hudson, at the former General Motors assembly plant site in Sleepy Hollow. The former industrial site is ripe for redevelopment due to its location on the Hudson River and proximity to the Village's Philipse Manor Metro-North Train Station and to the Tarrytown Metro-North Station.

Defined as mixed-use planned developments with a hamlet center pattern and architectural style of pre-1900 Hudson River communities, "riverfront development projects" like Edge-on-Hudson are allowed in the RF district by special use permit. The zone requires two review and approval phases: (1) a special permit and riverfront development concept plan approval by the Village Board of Trustees, followed by (2) a site plan approval by the Village Planning Board. An applicant's riverfront development concept plan must show proposed land uses and their spatial arrangement to ensure proposed development conforms with an overall comprehensive plan, and the applicant's subsequent site plan application must adhere to the approved concept plan, as well as the RF district's riverfront development design standards, which require proposed developments to encourage economic stimulus and revitalization and adhere to architectural, energy conservation, landscaping, and other requirements. Further, the RF district authorizes an award of increased building bulk beyond the zone's minimum floor area ratio and building height restrictions in exchange for certain public benefits, including improved public waterfront access for non-occupant users, shoreline erosion protection not associated with proposed development, and public-park and other improvements.

The developers obtained a special use permit for Edge-on-Hudson, which features residential units, restaurants, retail, office space, a hotel, and approximately 16 acres of riverfront and public-use property. Additionally, the 28-acre, former GM parking lot was transferred to the Sleepy Hollow Local Development Corporation (LDC), as part of the special permit approval, for redevelopment into various public uses, including the new Department of Public Works facility, open green space, pedestrian walkways, an amphitheater, and outdoor recreational facilities. After obtaining a site plan and subdivision approval from the planning board, the developers sold Phase 1 of the Edge-on-Hudson project to Toll Brothers for residential development, which should be completed in 2019, while subsequent phases will be completed in following years. The Village hopes that Edge-on-Hudson will spur economic development.

To access the Village's Riverfront Development District zoning at Village Code Ch. 450, Art. IV, visit <https://www.ecode360.com/15974362>. For more information about Edge-on-Hudson, visit <http://www.edgeonhudson.com/former-gm-property-on-hudson-river-gets-new-life/>.

### ***Village of Port Chester Planned Mixed Use District Zoning***

Port Chester's 2012 comprehensive plan recommended redeveloping the Village's former United Hospital site, a Village gateway situated near Port Chester's western border and in proximity to two major roads. In partnership with Starwood Capital, the site's owner at that time, the Village rezoned this area as a Planned Mixed Use (PMU) District to facilitate replacing the former hospital with high-quality, mixed-use development that encourages active pedestrian uses through appropriately designed, furnished, lighted and planted streetscapes, and open spaces. The PMU District is defined by a complete topographical survey and allows reductions in its off-street parking requirements for applicants who submit shared parking analyses. PMU design criteria include smart growth, green building, and pedestrian friendly design requirements, and the district's green building and site planning provisions require the applicant to submit a checklist based on one of several third-party rating systems, including the US Green Building Council's LEED for Neighborhood Development (LEED-ND) Rating System. Additionally, the PMU District provides a 100 percent density bonus in exchange for a \$3,000,000 contribution to a Village community benefit fund, doubling the District's as-of-right density of 0.80 FAR to 1.6 FAR. The contribution is used to fund neighborhood revitalization, affordable housing, community planning, and housing rehabilitation. To learn more about Port Chester's Planned Mixed Use District, visit section 345-62 of the Village Code, available at <https://www.ecode360.com/10912436>.

### ***Mount Vernon West Transit Oriented Development Form Based Zoning Ordinance***

Originally developed as an industrial area centered around the Mount Vernon West Train Station, the City of Mount Vernon's Mount Vernon West (MVW) area experienced decline in recent decades as industry dwindled. A public visioning exercise commenced in 2008 with the Regional Plan Association's Mayor's Institute. Following this process, Mount Vernon embarked on a rezoning effort to spur economic development in and transform MVW into a transit oriented community. With funding from a private developer and MVW property owners, the City prepared a generic environmental impact statement (GEIS) for the rezoning effort. The GEIS identified the theoretical build out potential for MVW properties and indicated that the area could support higher density, mixed-use development around the train station. The GEIS recommended that the City adopt a form-based code to organize MVW development according to building façade, form, and mass, as well as street and block type and scale, instead of through traditional use and dimensional regulations. With additional funding from a private developer, the City created the Mount Vernon West Transit Oriented Development Form Based Zoning Ordinance, which facilitates higher density residential development around the train station, physical integration and coordination of diverse land uses, pedestrian friendly streets, improved public spaces, and high-quality design. For more information about this effort, visit the City's Mount Vernon West Rezoning Initiative page at <http://cmvny.com/comprehensive-plan/mount-vernon-west-rezoning-initiative/>.

### ***New Rochelle Downtown Overlay Zone***

In fall of 2014 the City of New Rochelle selected RDRXR as the Master Developer for the City's Redevelopment Cluster Sites, 37 sites comprised of City and privately-owned properties in Downtown New Rochelle that are identified for priority investment and redevelopment. Through redevelopment of these and other downtown sites, the City aims to revitalize its Downtown into an active, mixed-use district with convenient access to the New Rochelle Transportation Center and a well-designed, pedestrian friendly streetscape with open, green spaces. Together with RDRXR, the City created the August 2015 Recommended Action Plan (RAP) to guide this redevelopment. A proactive and inclusive public engagement process informed the RAP through NR Future, an online crowdsourcing placemaking site through which over 1,300 registered users were able to upload and "like" ideas, uses, retail and tenant types, and amenities they wanted the RAP to include. The public process also included 11 community meetups, 28 public meetings with City officials, and 12 group

events. Additionally, the RAP relied on market studies to identify realistic retail, office and residential market opportunities in Downtown New Rochelle. The RAP concluded by recommending the adoption of the Downtown Overlay Zone to replace the existing floating and overlay districts in Downtown. In November 2015, New Rochelle adopted the Downtown Overlay Zone (DOZ), an optional overlay zone that uses form-based code provisions to prioritize form and placement of buildings and streetscape. The DOZ includes a series of zoning standards that regulate building form, uses, frontages, streets, civic spaces, terminating vistas, and significant corners. The DOZ also features Community Benefit Bonuses that offer additional building height in exchange for providing community benefits, such as an arts and cultural space, a community facility, a pedestrian passage, a public open space, historic structure preservation, or a contribution to the City's Community Benefits Fund. Prior to adopting the DOZ, the City and RDRXR completed a Final GEIS to reduce financial and procedural impediments to future investment. Through the Master Developer Agreement, RDRXR agreed to fund the RAP, DOZ, and GEIS in exchange for exclusive development rights to certain City-owned property and the ability to develop those parcels under the DOZ. For more information about the DOZ and RAP, visit <http://newrochelleny.com/1015/TOD-Downtown-Cluster>.

### ***Mt Vernon NY Senior Citizen Housing Floating Zone***

In December 2013, the City of Mount Vernon adopted its Senior Citizen Housing Floating (RMF-SC) zone to accommodate the City's growing senior population in areas of Mount Vernon that can support higher density development, while preserving the existing character of these areas. Parcels eligible for RMF-SC designation are located in residential and commercial zones that are close to mass transportation, shopping, and other senior services, as well as within the area delineated on the City's RMF-SC designation map. RMF-SC-designated sites in residential zones must limit ground-floor uses to certain accessory uses to preserve existing residential character. Similarly, RMF-SC-designated sites in certain commercial zones must preserve those zones' existing commercial and mixed-use character by occupying ground floors with principal permitted uses in underlying zoning. Additionally, the RMF-SC floating zone includes design standards for windows and doors, architectural massing, and ground-floor entryways to facilitate creative development and preserve Mount Vernon's unique character. The floating zone also offers a density bonus of up to ten additional dwelling units in exchange for public amenities, including plazas, arcades, and public art displays. In 2014 the Westchester Municipal Planning Federation awarded Mount Vernon a Planning Commendation for the floating zone. To learn more about Mount Vernon's RMF-SC floating zone, visit section 267-23 of the City Code, available at <https://ecode360.com/6606154>.