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Sara C. Bronin

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Comprehensive Rezoning

Sara C. Bronin*

Of all powers given to local governments, the power to zone is one of the most significant. Zoning dictates everything that gets built in a locality – and thus effectively dictates all of the key activities that take place within it. Nationwide, most zoning codes were adopted in the first half of the twentieth century. Many, including the zoning codes of New York City and Chicago, were significantly revised in the 1960s. While these codes have been revised piecemeal, just a few American cities have undergone a comprehensive revision: replacing the old code with a completely new one.

A comprehensive rezoning can allow a city to remake itself by casting off outdated requirements and codifying community priorities such as equity, sustainability, and vibrancy. Comprehensive revisions have the most promise in cities where growth is stagnant or where the economy is depressed. In those places, a zoning overhaul can signal a fresh start to attract new development and provide opportunities for creative place-making.

Given the struggling state of many American cities, it is surprising that so few have thrown off the shackles of their outdated zoning codes. And given the promise of comprehensive rezonings, it is surprising that not a single law review article deals squarely with the topic. This Article provides the first law review treatment of this critically important issue.

Delving deeply into recent zoning reforms of Hartford, Connecticut, this Article seeks to illustrate the power of zoning as a critical legal tool

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for urban revitalization. Part II provides the context for comprehensive rezonings, identifying why they may be desirable, which communities have adopted them, and what procedural and substantive issues may arise. Part III then covers four central goals that many cities share: economic growth, environmental sustainability, access and mobility, and food security. Part III also describes how Hartford used its zoning code to directly advance these goals. (In the process of rezoning, Hartford has been recognized with awards and national attention for several key decisions – including virtually eliminating parking minimums citywide.) Finally, Part IV describes some lessons learned during the rezoning process. This Article aims to encourage academics to delve further into this area of law – and to encourage policymakers to usher in new rules that promote equity, sustainability, and vibrancy.

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I. INTRODUCTION

The M. Swift & Sons Factory sits in the heart of the North End neighborhood, until very recently a sadly deteriorated reminder of the industrial heritage of Hartford, Connecticut. The humming machines that once manufactured gold leaf are gone. So are the skilled factory workers, once paid good wages, who lived in the surrounding houses. Like many buildings in post-industrial American cities, the Swift Factory—listed on the National Register of Historic Places¹—deserves new life. And, thanks in part to a pioneering, sustainability-focused new zoning code recently adopted by Hartford, it will soon get one.

Of all powers given to local governments, the power to zone is one of the most significant. Zoning dictates everything that gets built in a locality—and thus effectively dictates all of the key activities that take place within it. Nationwide, most zoning codes were adopted in the first half of the twentieth century. Many, including the zoning codes of New York City and Chicago, were significantly revised in the 1960s. While these codes have been revised piecemeal, just a few American cities have undergone a comprehensive revision: replacing the old code with a completely new one.

A comprehensive rezoning can allow a city to remake itself by casting off outdated requirements and codifying community priorities such as equity, sustainability, and vibrancy. Comprehensive revisions have the most promise in cities where growth is stagnant or where the economy is depressed. In those places, a zoning overhaul can signal a fresh start to attract new development and provide opportunities for creative place-making. Given the struggling state of many American cities, it is surprising that so few have thrown off the shackles of their outdated zoning codes. And given the promise of comprehensive rezonings, it is surprising that not a single law review article deals squarely with the topic.²

1. See M. Swift & Sons Factory Historic District Application to the National Register of Historic Places, Signed by Connecticut Deputy State Historic Preservation Officer Stacey Vairo (June 3, 2013), <https://www.nps.gov/nr/feature/places/pdfs/13000527.pdf>.

2. See *infra* Part II.

Delving deeply into recent zoning reforms of Hartford, this Article illustrates the power of comprehensive rezonings for urban revitalization. Part II provides the context for comprehensive rezonings, identifying why they may be desirable, which communities have adopted them, and the associated procedural and substantive issues. Part III covers four central goals that many cities share—economic growth, environmental sustainability, access and mobility, and food security—and describes how Hartford used its zoning code to directly advance these goals. Finally, Part IV describes some lessons learned during the process.

Why use Hartford as a model? Hartford, once the richest city in the country, is a worthy place to study comprehensive rezoning and its story may hold lessons for similarly situated cities. Hartford's current state exemplifies the struggling, post-industrial American city. The vast majority of its eighty-one historic industrial complexes that were built in the early twentieth century, including the Swift Factory, have been shuttered. As the region shifted from an industrial to a service economy in the 1950s, the flight of the middle class to the suburbs accelerated. Today, over half of the property within Hartford city limits is nontaxable (owned by government or nonprofits), thus limiting revenue generation and restricting the ability of city government to allocate resources for its needy population. Commercial property owners pay the highest mill rates in the state, discouraging private investment. Confined to eighteen square miles within a metropolitan region where the tradition of municipal home rule runs deep, Hartford cannot use annexation—a strategy utilized by many newer, western cities (such as Houston and Phoenix)—to grow its tax base.

Nowhere are the effects of this disinvestment more obvious than on Love Lane, where the long-closed Swift Factory sits. Today, unemployment rates in the immediate neighborhood—which is largely African-American—exceed rates during the Great Depression, and per capita income was recently measured at \$12,099 (as opposed to \$37,726 for the rest of Connecticut). In 2015,

the neighborhood became part of a federally designated Promise Zone, an area of high poverty but high opportunity.³

Despite these issues, Hartford has retained fifteen charming historic residential neighborhoods, which together reportedly represent the highest number of historic buildings per capita of any city in the country. It has an increasingly vibrant downtown, driven by an influx of new housing units (nearly a thousand in the last few years), which were constructed with the financial support of a state agency devoted to stimulating economic development. The city has a stunning array of natural assets, including the nation's oldest public park, the largest municipal forest in New England, and the first National Blueway, the Connecticut River.

The story of the Swift Factory – indeed, the story of Hartford – is echoed in post-industrial cities across America. This Article puts the latest dimension of this story in a legal context. Comprehensive rezonings are one legal tool that can help reposition cities similar to Hartford. At least for Hartford, the replacement of the old zoning code allowed the city to re-emerge at the forefront of twenty-first century planning trends and offers hope for future development. The purpose of this Article is to revive the questions of rezonings in legal scholarship and to help other cities learn from Hartford's efforts.

II. CONTEXT

Despite the fascinating issues raised by comprehensive rezonings, legal scholars have not delved deeply into the issue in the last two decades. Of the approximately 500 articles with “zoning” in the title that have been published since January 1, 2000, in law reviews and journals (as defined by Westlaw), none focus on comprehensive zoning reform.⁴ Even the twenty-one articles with

3. See U.S. HOUS. & URBAN DEV., NORTH HARTFORD PROMISE ZONE (2015), <https://portal.hud.gov/hudportal/documents/huddoc?id=PromiseZoneHartford.pdf>. *North Hartford Promise Zone*, HARTFORD, <https://web.archive.org/web/20170317014053/http://www.hartford.gov/mayors-office/north-hartford-promise-zone> (last visited Dec. 27, 2019).

4. The author searched on September 26, 2018, for all articles with the word “zoning” in the title in the Westlaw “Law Reviews & Journals” database, between that date and January 1, 2000. The vast majority of the articles that appeared dealt either with summaries of recent cases or summaries of jurisdiction-specific developments in planning and zoning

the word “rezoning” in their titles did not tackle the issue of comprehensive zoning reform, focusing instead on legal disputes involving rezonings of one or a small number of parcels. The one exception to this trend is a short piece I wrote.⁵ A search for the phrase “comprehensive rezoning” revealed forty-five articles since January 1, 2000 containing that phrase.⁶ About a dozen of the articles were published in practitioner-oriented trade journals and focused on recent legal developments in particular jurisdictions. Each of the articles mentioned comprehensive rezonings—sometimes in relation to spot zoning challenges, sometimes in relation to the plan consistency requirement (described below)—but none focused squarely on the phenomenon of comprehensive rezonings. In other searches, the phrase “comprehensive zoning reform” appeared in just two articles during that time period,⁷ and the phrase “comprehensive zoning revision” appeared in just one.⁸

While this Article cannot make up for decades of scholarly neglect, it will in this Part outline the context within which a comprehensive rezoning may occur. First, it explains *Why?*: namely, the possible rationales for a comprehensive rezoning. Then, it identifies *Who?*: the handful of communities that have embraced some or all of these rationales and adopted comprehensive rezonings in the last decade. Finally, this Part reviews the *How?*: the procedural issues that may be involved in a comprehensive rezoning.

law. (Note also that the vast majority of the journals included in that database and surfacing in the search were also trade journals, not affiliated with a law school.)

5. The author searched on September 26, 2018, for all articles with the word “rezoning” in the title in the Westlaw “Law Reviews & Journals” database, between that date and January 1, 2000.

6. The author searched on September 26, 2018, for all articles with the words “comprehensive rezoning” in them in the Westlaw “Law Reviews & Journals” database, between that date and January 1, 2000.

7. See Paul Boudreaux, *An Individual Preference Approach to Suburban Racial Desegregation*, 27 *FORDHAM URB. L.J.* 533 (1999) (noting that “comprehensive zoning reform” was an alternative to inclusionary zoning); Adam Lovelady, Note, *Broadened Notions of Historic Preservation and the Role of Neighborhood Conservation Districts*, 40 *URB. LAW.* 147, 170 (2008) (describing the role of rezoning in the creation of neighborhood conservation districts and suggesting that “comprehensive zoning reform” might be a part of phasing in legislation creating such districts).

8. See Michael Lewyn, *New Urbanist Zoning for Dummies*, 58 *ALA. L. REV.* 257, 268 n.115 (2006) (citing Milwaukee as having undertaken comprehensive zoning revisions to facilitate New Urbanism).

A. Why?

Comprehensive zoning reform has transformative potential. It can sweep away outdated and irrelevant zoning laws. A comprehensive rezoning can ensure development consistent with a comprehensive plan. It can catalyze new and desirable development by reordering growth patterns based on research or demand. This section unpacks several of the reasons cities have considered or should consider such comprehensive reforms.

One of the most obvious rationales for a comprehensive rezoning is to replace zoning laws that are outdated or no longer relevant. Most zoning codes have not been comprehensively updated in decades, and many have not been significantly updated since they were first adopted. In Hartford, our primary example, the prior zoning code had been in place for at least fifty years. It had a sixty-one-page use table that identified hundreds of distinctly regulated uses. Some of these uses named in the use table—including passenger marine terminals, penny arcades, trading stamp services, and sugar manufacturing—have not occurred in Hartford in recent memory (if ever).⁹ Orphanages were listed in Hartford’s zoning code until the comprehensive rezoning in 2016, but orphanages have not existed anywhere in Connecticut for years.¹⁰ In addition to outmoded uses, Hartford’s old code was rife with outmoded (and even offensive) language. For example, the old code referred to “servants,” instead of domestic workers.¹¹ It also used the phrase “mentally retarded” to refer to what we would today call developmentally disabled or cognitively impaired.¹² Comprehensive zoning reform allowed for revisions to this language.

9. See, e.g., HARTFORD, CONN., ZONING REGS. § 854 (2014). The inclusion of “marine terminals” may be especially surprising upon realization that marine refers to seagoing activities, and Hartford is an inland city.

10. See *id.*; Susan E. Kinsman, *When Orphanages Were The Solution*, HARTFORD COURANT, Dec. 11, 1994 (mentioning that just eighty-eight children were in a short-term residential home in 1962 and not mentioning any after, and that “[n]o privately or public-supported ‘orphanages’ remain in the state”).

11. See, e.g., HARTFORD, CONN., ZONING REGS. § 17 (referring to a unit occupied “by a servant, and such servant’s family”).

12. See, e.g., *id.* § 854 (specifying appropriate districts for “mentally retarded” schools in the use table).

A comprehensive rezoning also allows for corrections of internal inconsistencies, unclear language, and other errors. A comprehensive rezoning can achieve this goal in a way that a piecemeal rezoning cannot. In Hartford, our prime example, inconsistencies abounded in the old code. For example, Hartford's old code regulated "macaroni, spaghetti, vermicelli and noodles manufacturing" one way,¹³ while treating differently the manufacture of "grain mill products."¹⁴ Arguably, these two types of food manufacturing have similar land use impacts and should have been treated similarly. In fact, one might encompass the other, since pasta can be created from milled wheat. Yet the old zoning code regulated each differently, likely without a rational basis for doing so.¹⁵ More broadly, as a diagnostic report prepared at the beginning of Hartford's rezoning process stated, "The current zoning code uses regulations that do not specify clear outcomes," which undermines the ability of applicants to understand the intent and implications of the code.¹⁶

At least some errors and inconsistencies in zoning codes—perhaps even our vermicelli example—are likely caused by piecemeal rezonings, which are defined as formal changes to the zoning designation of one or a small number of parcels, the creation of a new zoning district, or the modification of the rules of a zoning district. Scholars have been highly critical of piecemeal rezonings. Some scholars have identified negative implications of such partial rezonings on other parcels in the immediate vicinity of the rezoned parcel. Other scholars have identified system-wide concerns with piecemeal rezonings. Roderick Hills and David Schleicher, for example, have recently argued that piecemeal downzonings that limit the amount of new housing can diminish the supply of

13. *See id.* §§ 854, 911 (allowing such uses in the I-2 and B4 districts, subject to these conditions: "(1) The manufacturing of macaroni, spaghetti, vermicelli and noodles shall be conducted in conjunction with the wholesale and retail sales of such products; (2) The area devoted to manufacturing shall not exceed four thousand (4,000) square feet of gross floor area").

14. *See id.* § 854 (allowing the manufacture of grain products in the I-2 district, without any conditions).

15. The new code simply classifies these uses as either "craftsman-industrial" or "light industrial," depending on their size and whether they have an associated retail shop. *See* HARTFORD, CONN., ZONING REGS. §§ 3.3.7.B., 3.3.9.B. (2019).

16. *See* HARTFORD, CONN., ZONE HARTFORD: DIAGNOSIS REPORT AND CONTEXT AREA ANALYSIS 6 (2014).

affordable housing in high-cost cities like New York City.¹⁷ Their critique calls for a “zoning budget”: a plan for the provision of housing that allows for give and take among various neighborhoods within specified goals. These commentators are, in essence, calling for zoning to be better tied to planning.

Strengthening consistency with a comprehensive plan may indeed be a rationale for some comprehensive rezonings. A comprehensive plan is a document, typically adopted by a legislative body upon the recommendation of a planning commission, which sets forth a shared vision for a community’s future growth.¹⁸ A comprehensive plan may cover transportation, land uses, economic development, sustainability, housing, and similar issues. In many jurisdictions, a comprehensive plan is modified more frequently than the zoning code, which means that if a zoning code is not reviewed and updated on the same schedule, inconsistencies may occur.¹⁹ In Connecticut, state law requires cities to revise their comprehensive plans once a decade²⁰ but does not require revisions to zoning codes. Hartford’s old zoning code was inconsistent with the city’s comprehensive plan. The new code expressly aims to be consistent with the city’s comprehensive plan.²¹ The relationship between planning and zoning is revisited below.

17. Roderick M. Hills, Jr. & David N. Schleicher, *Balancing the “Zoning Budget,”* 62 CASE W. RES. L. REV. 81 (2011) (calling for cities to adopt “zoning budgets” that would identify a specific number of housing units); Roderick M. Hills, Jr. & David N. Schleicher, *Planning an Affordable City*, 101 IOWA L. REV. 91 (2015); David Schleicher, *City Unplanning*, 122 YALE L.J. 1670, 1678 (2013) (decriing “the tendency of zoning maps to get stricter over time unless there is a comprehensive rezoning” and urging reforms that link downzonings in one neighborhood with upzonings in another).

18. See STANDARD STATE ZONING ENABLING ACT § 3 (U.S. DEP’T OF COMMERCE 1926) (offering to states a basic model for planning decisions to occur).

19. Cf. *Lafayette v. City of Lafayette*, 229 Cal. Rptr. 3d 238, 245 (Ct. App. 2018) (holding that rejection of changed zoning ordinance by voter referendum would simply return zoning ordinance “to the status quo” and is a permissible exercise of power despite resulting in inconsistency with general plan because “[t]he referendum does not create the inconsistency,” the city did in failing to amend its general plan and any conflicting zoning ordinance at the same time).

20. See CONN. GEN. STAT. § 8-23(a)(1) (2010) (“At least once every ten years, the commission shall prepare or amend and shall adopt a plan of conservation and development for the municipality.”).

21. See HARTFORD, CONN., ZONING REGS. § 1.1.4 (2019) (“These regulations are adopted for the purposes of: . . . (B) Implementing the policies and goals of the plan of conservation and development and other relevant, officially adopted plans of the city.”).

On the substantive side, rezonings can address more broadly the question of how the city should order its growth. Often, cities' code overhauls aim to loosen traditional, strict separation of uses,²² in the face of growing evidence that strict separation may thwart growth or have other negative effects.²³ The most coordinated critique of use-based zoning codes comes from New Urbanists, who instead advocate for form-based codes, which regulate the form of a building more rigorously than its use.²⁴ The New Urbanists laud dense, walkable, mixed-use developments, which are connected to the public realm by porches, stoops, sidewalks, and similar features. As localities began to incorporate form-based provisions into existing codes, questions about their legality arose. But scholars have concluded that cities have the power to adopt form-based codes within existing zoning authority.²⁵ In the lead-up

22. See, e.g., Lewyn, *supra* note 8 (citing Milwaukee as having undertaken comprehensive zoning revisions to facilitate New Urbanism).

23. For example, an empirical study done of Los Angeles showed that "that blocks that include both residential and commercial zoning exhibit less crime than blocks that are zoned exclusively for commercial use." James M. Anderson et al., *Reducing Crime by Shaping the Built Environment with Zoning: An Empirical Study of Los Angeles*, 161 U. PA. L. REV. 699, 705 (2013). The authors explain their methodology as follows:

First, we examine the association between crime and the primary zoning of parcels of land on street blocks within the same geographic areas of the city. Second, we examine the associations between the primary zoning of parcels of land on street blocks and physical order maintenance, territoriality, natural surveillance, and "walkability." Finally, we examine whether the observed association between land use zoning of parcels and crime is mediated by differences in the built environment. This will help ascertain whether land use law affects crime through the built environment or whether some other causal mechanism is at work.

Id. at 727-28.

24. *The Charter of the New Urbanism*, CONGRESS FOR NEW URBANISM, <https://www.cnu.org/who-we-are/charter-new-urbanism> (last visited Dec. 27, 2019); see also ANDRES DUANY ET AL., *SUBURBAN NATION: THE RISE OF SPRAWL AND THE DECLINE OF THE AMERICAN DREAM* (2000); PETER KATZ, *THE NEW URBANISM: TOWARD AN ARCHITECTURE OF COMMUNITY* (1994); DANIEL G. PAROLEK ET AL., *FORM-BASED CODES: A GUIDE FOR PLANNERS, URBAN DESIGNERS, MUNICIPALITIES, AND DEVELOPERS* (2008); Alexander Christoforidis, *New Alternatives to the Suburb: Neo-traditional Developments*, 8 J. PLAN. LITERATURE 429 (1994); Andres Duany & Emily Talen, *Making the Good Easy: The Smart Code Alternative*, 29 FORDHAM URB. L.J. 1445 (2002); Andres Duany & Emily Talen, *Transect Planning*, 68 J. AM. PLAN. ASS'N 245 (2002); Ray Gindroz, *City Life and New Urbanism*, 29 FORDHAM URB. L.J. 1419, 1421-25 (2002); Brian W. Ohm & Robert J. Sitkowski, *The Influence of New Urbanism on Local Ordinances: The Twilight of Zoning?*, 35 URB. LAW. 783 (2003); Robert J. Sitkowski & Brian W. Ohm, *Enabling the New Urbanism*, 34 URB. LAW. 935 (2002).

25. See, e.g., Richard S. Geller, *The Legality of Form-Based Zoning Codes*, 26 J. LAND USE & ENVIL. L. 35, 91 (2010) ("Well-established police powers authorize, and provide ample justification for a local government to adopt form-based zoning to improve aesthetics, reduce

to its comprehensive rezoning, Hartford reviewed its ability to regulate the form of buildings, finding that the old code allowed many inappropriately scaled and sited buildings. A diagnostic report prepared in 2014 opined that the then-existing regulations

permit development that does not match the historic context of surrounding properties. Limits to people per acre, families per acre, and floor area ratio (FAR) in the current code do not set expectations for the massing, orientation, building detailing, or site design of new development, and have often resulted in new development out of scale with the neighborhood.²⁶

As a result of this analysis, the city went on to devote a full chapter of its code to mandatory form-based provisions that ensured development more compatible with the existing neighborhood fabric.²⁷ Hartford is not an outlier in this rationale for its comprehensive rezoning: all of the large cities that have comprehensively rezoned in the last decade have developed either a form-based code or a hybrid form- and use-based code.²⁸

To address the issues deeply embedded in older, traditional codes, piecemeal rezoning is not the most practical or efficient approach. A comprehensive rezoning offers a city the opportunity to re-think its regulation of land use. It can be especially useful for

pollutants, more efficiently use government resources, and improve health and safety.”); Robert J. Sitkowski & Brian W. Ohm, *Form-Based Land Development Regulations*, 38 URB. LAW. 163, 165–69 (2006) (providing an introduction to form-based codes and identifying bases for authority in statutes adopted by various states). *But see* Nicole Stelle Garnett, *Redeeming Transect Zoning?*, 78 BROOK. L. REV. 571 (2013) (not opining as to the legality of the codes but expressing doubt about whether the public sector should be so strictly regulating aesthetics). Professor Garnett says,

The first suggestion is to consider an option that I have previously defined as “[m]ixed-[u]se [z]oning without the [s]trings” – that is, simply amending zoning laws to permit a greater degree of land use diversity while eschewing the regulatory details that pervade most transect-zoning schemes. This would achieve a core goal of transect zoning – more mixing of land uses – without raising the concerns raised above. The second suggestion is to embrace the basic concept of the transect (as amended in extant communities to fit the preexisting development patterns) while resisting the temptation to mandate the architectural details of buildings permitted within transect zones. In other words, transect zoning might offer guidelines about building size and density rather than building form and style.

Id. at 587 (alteration in original) (footnote omitted).

26. See HARTFORD, CONN., *supra* note 16.

27. See HARTFORD, CONN., ZONING REGS. ch. 4 (2019).

28. See *infra* Part II.B. (identifying the twenty-six communities over 100,000 in population that have comprehensively rezoned).

communities where growth is stagnant, although growing cities can use comprehensive rezonings to shape development patterns, too. Yet, as discussed in the next section, very few communities have undertaken the comprehensive rezoning process. Rezoning can be complicated, involving years-long processes that may upend settled expectations about development rights, permissible uses, and building forms.²⁹ A comprehensive rezoning is also costly. It requires staff time for drafting, engaging the community, and resolving disputes during the process, or it requires the services of a code consultant, which may run into the tens or hundreds of thousands of dollars. We turn now to those communities that have taken the plunge into the zoning unknown.

B. Who?

Any city can be a good candidate for a comprehensive review of its zoning code, regardless of size or location. But this Article focuses on cities most likely to have a critical mass of people and activities, namely cities of 100,000 or more. The largest city in the country, New York City, might be said to have innovated when it enacted the first citywide zoning code in the United States, back in 1916. Yet, like many cities around the country, New York City has not updated its code in a comprehensive manner since 1961, despite significant changes in the city's growth and population in the last fifty-eight years.

New York City is not an outlier. In a diligent search for cities with populations over 100,000 that have comprehensively rezoned in the last ten years, only twenty-six cities were found. As noted above, no legal scholarship has focused on any of these rezonings, much less reviewed them as a group. This chart identifies all twenty-six cities, organized by the year of the adoption of the rezoning:

29. As one court explained, "Comprehensive rezoning is as difficult to actuate as is comprehensive zoning. There is a lethargy connected with rezoning that has an additional political significance." *In re McDonald's Appeal*, 196 N.E.2d 333, 334 (Ohio Ct. App. 1963) (involving a variance).

City	State	Population	Area (m²)	Year
Denver	CO	683,000	155	2009
Miami	FL	454,000	55	2009
Henderson	NV	293,000	108	2010
Kansas City	MO	481,000	319	2010
Memphis	TN	653,000	324	2010
Santa Ana	CA	334,000	28	2010
Madison	WI	253,000	94	2012
Mesa	AZ	485,000	133	2012
Philadelphia	PA	1,568,000	142	2012
Cincinnati	OH	299,000	80	2013
Santa Clarita	CA	182,000	62	2013
Fresno	CA	522,000	115	2015
New Orleans	LA	391,000	350	2015
Newark	NJ	282,000	26	2015
Phoenix	AZ	1,615,000	517	2015
Tulsa	OK	403,000	187	2015
Baltimore	MD	622,000	92	2016
Boulder	CO	108,000	26	2016
Buffalo	NY	257,000	53	2016
Chattanooga	TN	178,000	143	2016
Hartford	CT	123,000	18	2016
Indianapolis	IN	865,000	368	2016
Richmond	CA	110,000	53	2016
Grand Rapids	MI	196,000	45	2017
Norfolk	VA	246,000	96	2018

Upon review of these cities as a group, there are no clear trends. Take the years of adoption. The column listing the years of adoption shows the greatest activity occurring in 2015 and 2016, when five and seven cities, respectively, overhauled their zoning

codes. But no new codes were adopted in 2014, and only one (Grand Rapids, Michigan) in 2017. The lack of consistent growth in the years before and after 2015 and 2016 prevent the characterization of this temporary increase in activity as a real trend. Cities appear to engage in a comprehensive rezoning at random and unpredictable times.

Geographic trends, too, do not appear to be strong, perhaps because there are so few cities listed. It may be worth noting, however, that four of the cities are located in California, and two each are located in Arizona, Colorado, and Tennessee.³⁰ The Northeast is not well-represented, with just one city (Hartford) from New England, one from New York (Buffalo), and one from New Jersey (Newark). That said, all three Northeast cities that have comprehensively rezoned appear to have been motivated to catalyze new development during post-industrial slumps.

It is also not clear that only cities with a certain population tend to conduct rezonings. The identified cities range in population and are bookended by Boulder (population 108,000) and Phoenix (1,615,000). In theory, it may be more difficult for large cities or fast-growing cities to actually complete a comprehensive rezoning, because with rapidly increasing property values there is more at stake and less room for error. Yet fast-growing Phoenix and Philadelphia (1,568,000) have undertaken a rezoning. Indianapolis (865,000), part of another fast-growing region, also comprehensively rezoned. Meanwhile, six of the cities have populations below 200,000. The average population of a rezoned city is 468,000, and the median population is 363,000.

Finally, the average physical size of the cities does not appear to play a role in the decision to rezone. The cities range in size from Hartford, at just 18 square miles, to Phoenix, at 517 square miles. In addition to Phoenix, four more cities – Kansas City, Memphis, New Orleans, and Indianapolis – encompass more than three hundred square miles each. The average size of a rezoned city is 145 square miles, and the median size is 102 square miles.

There are six cities that are currently undertaking a rezoning, not listed in this chart: Atlanta, Austin, Charlotte, Knoxville, Los

30. According to Census data, Denver and Boulder are the first and twelfth largest cities in Colorado; Phoenix and Mesa are the first and third largest cities in Arizona; and Memphis and Chattanooga are the second and fourth largest cities in Tennessee.

Angeles, and Mobile. Just two of them, Knoxville and Los Angeles, are located in states where other comprehensive rezonings have recently occurred. With the exception of Los Angeles, with its population of nearly 4 million, these cities are not outliers in terms of their population or size characteristics.³¹

C. How?

Comprehensive rezonings must follow applicable procedures to withstand judicial scrutiny. Typically, these procedures conform to those set forth in the Standard State Zoning Enabling Act (SZA), drafted by the U.S. Department of Commerce in 1926 for potential adoption by state legislatures.³² All fifty states have adopted the SZA, with some modifications, and in so doing have expressly enabled local governments to exercise the zoning authority. This zoning authority includes the ability to adopt, amend, and administer zoning codes.

With the exception of the state of Connecticut,³³ state legislatures have vested the ability to draft and amend zoning codes—which encompass both the text of the zoning code and the associated map—exclusively in the local legislative body. Usually, there is an initial review of proposed amendments by a separate, appointed planning commission, which makes a nonbinding recommendation to the legislative body. In some large cities, such as New York City, neighborhood associations or other groups have input during the process.³⁴ Such secondary processes have been urged and supported by some legal scholars.³⁵ Certain procedural steps, such as publication in the local newspaper or holding a

31. In physical size, Los Angeles is smaller than Phoenix, at 503 square miles.

32. STANDARD STATE ZONING ENABLING ACT (U.S. DEP'T OF COMMERCE 1926).

33. See CONN. GEN. STAT. §§ 8-1, 8-4a (2010) (allowing a local government to create zoning or planning and zoning commissions that have the authority to zone).

34. See Matthew J. Parlow, *Civic Republicanism, Public Choice Theory, and Neighborhood Councils: A New Model for Civic Engagement*, 79 U. COLO. L. REV. 137 (2008); Peter W. Salsich, Jr., *Grassroots Consensus Building and Collaborative Planning*, 3 WASH. U. J.L. & POL'Y 709 (2000).

35. See, e.g., Nicole Stelle Garnett, *Ordering (and Order in) the City*, 57 STAN. L. REV. 1 (2004) (urging local governments to engage neighborhood groups in discussions about incremental reforms on a neighborhood-by-neighborhood basis); Robert H. Nelson, *Privatizing the Neighborhood: A Proposal to Replace Zoning with Private Collective Property Rights to Existing Neighborhoods*, 7 GEO. MASON L. REV. 827 (1999) (proposing local laws that allow neighborhood associations to control neighborhood environment, thus devolving zoning to hyper-local control).

public hearing, must also be completed to ensure due process has been satisfied.³⁶

Even if a legislative body adopts a comprehensive rezoning in accordance with these procedures, the rezoning may still be challenged in court. Such challenges are unlikely to be successful, because a comprehensive rezoning will be characterized as a legislative decision and afforded a presumption of validity.³⁷ Decision-makers must merely offer a rational basis for the rezoning and ensure that the rezoning was not arbitrary, capricious, or an abuse of discretion.³⁸ Beyond an attack on the substance of the rezoning, challengers may seek to claim vested rights in the prior zoning code. Such challenges will not be successful unless the court can find specific circumstances, such as the receipt of a building permit under the old zoning code, which give rise to vested rights in the activity permitted pursuant to the old code.³⁹ In such

36. See *Tillery v. Meadows Constr. Co.*, 681 S.W.2d 330, 332 (Ark. 1984) (“A reasonable interpretation of the ordinance does not require a city-wide mailing when a comprehensive rezoning plan is contemplated.”); *Anthony v. Town of Brookhaven*, 596 N.Y.S.2d 459 (App. Div. 1993) (upholding rezoning of a property where notice was provided by publication and to address of last known property owner; town alleged but did not prove this particular rezoning was part of a broader comprehensive rezoning).

37. See, e.g., *Bd. of Cty. Comm’rs v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993) (“[I]t is evident that comprehensive rezonings affecting a large portion of the public are legislative in nature.”); *Stratakis v. Beauchamp*, 304 A.2d 244, 249 (Md. 1973) (“While, in recent years, we have had occasion to enunciate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning.”); *Schubach v. Silver*, 336 A.2d 328 (Pa. 1975); *Wilhelm v. Morgan*, 157 S.E.2d 920 (Va. 1967). Note that courts also look to legislative intent for rezonings, even when a small number of parcels is being rezoned. Courts have held that where the legislative purpose is to further the overall welfare of the city, a rezoning is not illegal “spot zoning.”

38. See, e.g., *Battaglia Props., Ltd. v. Fla. Land & Water Adjudicatory Comm’n*, 629 So. 2d 161, 168 (Fla. Dist. Ct. App. 1993) (rejecting a challenge to a comprehensive rezoning that was “rationally related to maintaining a residential feel and atmosphere for the project” and “not unreasonable and arbitrary”); *Idlewild Dev. Corp. v. City of Mahtomedi*, No. C3-90-1161, 1990 WL 181199, at *1 (Minn. Ct. App. Nov. 27, 1990) (noting that “[t]he standard of review in all zoning matters is whether the local authority’s action was reasonable,” and upholding the comprehensive rezoning against estoppel, nonconforming use, and vested rights arguments); *Costello v. Bd. of Supervisors*, Chancery No. 6021, 1983 WL 210293 (Va. Cir. Ct. June 22, 1983) (upholding a comprehensive rezoning against a challenge where the zoning authority provided a rational basis for its decision and was not arbitrary or capricious).

39. See, e.g., *City of Miami Beach v. 8701 Collins Ave.*, 77 So. 2d 428 (Fla. 1954) (holding that mere purchase of land does not create vested right to rely on existing zoning); *Sycamore Realty Co. v. People’s Counsel*, 684 A.2d 1331 (Md. 1996) (declining to recognize

circumstances, the new zoning code is not wholly invalidated, but merely not applied to the aggrieved property owner. A challenger may also pursue constitutional challenges, the most likely of which is a Takings Clause challenge. Attacks pursuant to the Takings Clause largely have been unsuccessful.⁴⁰ There may also be standing issues for prospective challengers.⁴¹

Despite a diligent search, I could only find a handful of successful challenges to a comprehensive rezoning: two involving failure to provide adequate notice to particular property owners, and one in which one zone was singled out for special, and less favorable, treatment during a comprehensive rezoning.⁴² To avoid

a zoning estoppel test for plaintiffs seeking to build townhomes after a comprehensive rezoning); *Prince George's Cty. v. Sunrise Dev. Ltd. P'ship*, 623 A.2d 1296, 1304 (Md. 1993) (recognizing a vested right "when a property owner obtains a lawful building permit, commences to build in good faith, and completes substantial construction on the property" (quoting *Prince George's Cty. v. Equitable Trust Co.*, 408 A.2d 737, 741 (1979))); *Mayor of Baltimore v. Crane*, 352 A.2d 786, 790 (Md. 1976) (holding that Baltimore was "estopped from attempting to enforce" a recent comprehensive rezoning because the property owners had changed position substantially enough that they obtained vested rights in the prior code). Local governments may not defer the issuance of permits under the existing code when a comprehensive rezoning is pending or possible. *See City of Decatur v. Fountain*, 104 S.E.2d 117 (Ga. 1958) (requiring the city to issue a building permit to a property owner, despite board recommendation that action be deferred until a comprehensive rezoning plan could be adopted); *Alexander v. City of Minneapolis*, 125 N.W.2d 583 (Minn. 1963).

See also an ongoing lawsuit filed against Hartford's Planning and Zoning Commission by a disgruntled property owner who desired to build a fast-food restaurant on a parcel that had been rezoned in 2014 (before the 2016 comprehensive rezoning) to prohibit drive-through establishments. *Farmington-Girard, LLC v. Planning & Zoning Comm'n*, 212 A.3d 776 (Conn. App. Ct. 2019) (dismissing the lawsuit as against the Commission and granting the City's motion to dismiss the plaintiff's substantive and procedural due process claims, but allowing claims for inverse condemnation and municipal estoppel to proceed).

40. *See, e.g., Friedman v. City of Fairfax*, 146 Cal. Rptr. 687 (Ct. App. 1978) (rejecting an inverse condemnation claim by property owner seeking to invalidate comprehensive rezoning, where property owner lacked evidence of inequitable pre-condemnation activities or denial of any reasonably beneficial use, and only issue was diminution of market value); *Noghrey v. Town of Brookhaven*, 938 N.Y.S.2d 613 (App. Div. 2012) (rejecting a regulatory taking claim by property owner, despite loss of nearly half of property value after a comprehensive rezoning).

41. Recent Maryland cases have confirmed that only property owners specially aggrieved by the ordinance or taxpayers who are likely to suffer a pecuniary loss have standing to challenge a comprehensive rezoning. *See Anne Arundel Cty. v. Harwood Civic Ass'n*, 113 A.3d 672 (Md. 2015) (finding that the respondents did not satisfy the requirements of taxpayer standing doctrine); *Anne Arundel Cty. v. Bell*, 113 A.3d 639 (Md. 2015).

42. I searched *Rathkopf's The Law of Zoning and Planning*, of which I am co-author, and Westlaw "All State" and "All Federal" databases for "comprehensive rezoning." *See Passalino v. City of Zion*, 928 N.E.2d 814 (Ill. 2009) (invalidating, over vigorous dissent, a comprehensive rezoning for which the process followed applicable statutory procedures

similar challenges, local governments might work hard to ensure that notice is provided to affected property owners and that sufficient evidence on the record demonstrates the rationale behind new zoning classifications.

Another possible ground for a judicial challenge is the requirement, in some jurisdictions, that rezonings be consistent with a comprehensive plan. The requirement stems from the SZEA requirement that zoning regulations be adopted “in accordance with a comprehensive plan.”⁴³ While states, such as California,⁴⁴ and many courts have embraced the consistency doctrine, commentators’ critiques of it are mixed. Carol Rose has argued that “plan jurisprudence” is undermined by the fact that “‘plan consistency’ is a shifting concept” given that plans are so routinely revised, and that plans “fail precisely because public attention may not come into focus until the plan’s implications become concrete.”⁴⁵ Various economists and law-and-economics scholars

but did not reach affected property owners); *Atherton v. Bldg. Inspector*, 178 N.E.2d 285 (Mass. 1961) (invalidating a comprehensive rezoning because a residential district was wrongly reclassified to a general use district without rational basis); *Glen Paul Court Neighborhood Ass’n v. Paster*, 437 N.W.2d 52 (Minn. 1989) (invalidating comprehensive rezoning where property owner’s request for rezoning after public hearing on proposed adoption of new code triggered statutory mailed notice requirement). *See also* *Goux v. St. Tammany Par. Gov’t*, 2013-1387 (La. App. 1 Cir. 10/24/14); 156 So. 3d 714 (issuing a writ of mandamus to correct what the court characterized as a ministerial zoning error in a recent comprehensive rezoning).

43. STANDARD STATE ZONING ENABLING ACT § 3 (U.S. DEP’T OF COMMERCE 1926). *See also* Joseph F. DiMento, *Improving Development Control Through Planning: The Consistency Doctrine*, 5 COLUM. J. ENVTL. L. 1 (1978).

44. *See* CAL. GOV’T CODE § 65300 (2010); *id.* § 65860 (2009).

45. Carol M. Rose, *Planning and Dealing: Piecemeal Land Controls as a Problem of Local Legitimacy*, 71 CALIF. L. REV. 837, 877, 875 (1983). She recounts the evolution of the consistency doctrine as follows:

The idea of a plan as an independent control on local regulation only began to take hold in the 1950’s, when federal urban aid programs began to require (and fund) local planning as a condition to grants-in-aid. Even then, the courts were reluctant to require a plan as a prerequisite to actual regulation; well into the 1950’s they routinely upheld zoning ordinances and amendments which disclosed some “plan” in themselves.

Experience also quickly confounded any expectation that stable regulations would flow automatically from well-considered long-term plans. Controls soon became ad hoc responses to individual development proposals. Local officials encouraged this pattern by zoning areas for uses less intense than those expected, then altering regulations on a parcel-by-parcel basis—sometimes after striking a bargain with the individual developer. The real estate industry

have argued for the rejection of comprehensive plans because they make the zoning process inefficient.⁴⁶ The practical effect of the consistency requirement on comprehensive rezonings is probably minimal. I have been unable to locate a successful challenge to a comprehensive rezoning that is based on an allegation of inconsistency with a comprehensive plan. No doubt decision-makers are counseled to put statements declaring consistency on the record about a comprehensive plan when changes as sweeping as a zoning overhaul are made. That said, the consistency requirement has been repeatedly applied to reverse attempted piecemeal rezonings.⁴⁷

A note on the framework of the rezoning process in Hartford may illuminate some of these concepts in practice. The city's Planning and Zoning Commission (Commission) has been given zoning authority pursuant to state statutes and the city charter.⁴⁸ This authority includes the powers to establish, articulate the requirements for, or change zoning boundaries.⁴⁹ The text or map of the proposed rezoning must be filed with the Town Clerk at least ten days before any public hearing.⁵⁰ Rezonings must be made in accordance with the official comprehensive plan and reasonably

understood this process well, and frequently conditioned land purchases on changes in existing zoning.

As this pattern of land regulation through piecemeal changes became uncomfortably obvious, the idea of a plan to guide actual land decisions took on renewed force. Within the last decade, a number of states have begun to sharpen the older SZEAs requirements by adopting mandatory planning statutes, and by requiring that local land use controls be "consistent" with local plans. These new planning statutes generally require local governments to plan, and may even prescribe "elements" or subjects about which the local governments must have plans, but they set no substantive criteria against which to test the local plan.

Id. at 849-50 (footnotes omitted).

46. See, e.g., WILLIAM A. FISCHER, *THE ECONOMICS OF ZONING LAWS: A PROPERTY RIGHTS APPROACH TO AMERICAN LAND USE CONTROLS* (1985); ROBERT HENRY NELSON, *ZONING AND PROPERTY RIGHTS: AN ANALYSIS OF THE AMERICAN SYSTEM OF LAND-USE REGULATION* (1977); Robert C. Ellickson, *Alternatives to Zoning: Covenants, Nuisance Rules, and Fines as Land Use Controls*, 40 U. CHI. L. REV. 681 (1973). See also John Mixon & Kathleen McGlynn, *A New Zoning and Planning Metaphor: Chaos and Complexity Theory*, 42 HOUS. L. REV. 1221, 1222 (2006) (arguing that the consistency requirement "has spawned seventy-five years of confusion that shows no sign of fading").

47. See SARA C. BRONIN & DWIGHT H. MERRIAM, 1 RATHKOPF'S *THE LAW OF ZONING AND PLANNING*, Ch. 14 (4th ed. 2019) (providing context for and identifying cases involving the consistency requirement).

48. See CONN. GEN. STAT. § 8-3 (2010); HARTFORD, CONN., MUN. CODE ch. VII (2019).

49. CONN. GEN. STAT. § 8-3.

50. *Id.* § 8-3a.

relate to protecting certain public health, safety, convenience and property values identified in state law.⁵¹ The Commission must further state on the record its findings that the proposed rezoning is consistent with the plan.⁵² Rezoning typically require a majority vote of the Commission.⁵³ Connecticut courts will uphold a rezoning where the reasons stated on the record are valid and reasonably supported by the record.⁵⁴

With its comprehensive rezoning in January 2016, the Commission satisfied these requirements by including statements about the plan within the new code and during the public meeting at which the code was adopted. Furthermore, the Commission's statements referred back to written evidence, oral testimony, and past issues with the old code. Lastly, the Commission's vote on the comprehensive rezoning was unanimous. The Commission also followed procedural requirements, including the state statutory requirement to hold a public hearing and publish notice in a paper with citywide circulation.⁵⁵

The powers and duties of the Commission are similar to those of other zoning authorities, with one exception: outside of Connecticut, the zoning authority is typically the legislative body, not an appointed commission. The full and exclusive authority to adopt a comprehensive rezoning without direct political

51. *Id.* § 8-2 ("Such regulations shall be made in accordance with a comprehensive plan and in adopting such regulations the commission shall consider the plan of conservation and development prepared under section 8-23."). *See, e.g.*, *Heithaus v. Planning & Zoning Comm'n*, 779 A.2d 750, 759-60 (Conn. 2001).

52. CONN. GEN. STAT. § 8-3 to 8-3a.

53. *Id.* § 8-3b. Owners of twenty percent of the area of lots included in the change or within 500 feet in all directions of the property included in the change may file a protest before the public hearing, which triggers a requirement of a two-thirds vote of all members of the Commission.

54. *See, e.g.*, *First Hartford Realty Corp. v. Plan & Zoning Comm'n*, 338 A.2d 490, 495-96 (Conn. 1973) ("Where a zoning authority has stated its reasons for a zone change . . . the reviewing court ought only to determine whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations."); *Spada v. Planning & Zoning Comm'n*, 268 A.2d 376, 379 (Conn. 1970) ("The defendant commission has the legislative power to rezone or amend the regulations with respect to the use of such a parcel of land as long as the action taken by it is not arbitrary or unreasonable or in abuse of its broad discretion.").

55. CONN. GEN. STAT. § 8-3.

interference is unique. Beyond this process required by law was a robust process for public participation, further discussed below.⁵⁶

* * *

Given this context, what are the key lessons about comprehensive rezonings? First, there are many good reasons to undertake a comprehensive rezoning. Second, despite these good reasons, few communities—only about two dozen cities over 100,000 people in the last decade—have done so. Other cities may be constrained by inertia, financial costs, administrative burdens, or a general fear of upending settled expectations. Third, as long as decision-makers act rationally, ensure consistency with a comprehensive plan, and abide by procedural requirements, comprehensive rezonings are unlikely to be invalidated by courts. We take these lessons with us to Hartford, to which we turn next.

III. ZONING WITH PURPOSE

The comprehensive zoning reforms undertaken by Hartford in 2016 aimed to totally reconceive development in the city. Decision-makers chose a comprehensive overhaul for several reasons.⁵⁷ As noted above, the prior code contained outmoded concepts and offensive terminology, treated uses inconsistently, failed to account for building forms, and generally failed to accommodate modern preferences. Such an unwieldy code stifled real estate development, and thus stifled economic growth. The old code also failed to promote environmental sustainability—which every level of government must tackle in the era of manmade climate change. It failed to provide the necessary infrastructure to allow all people to access transportation options and move through the city. Finally, it did not adequately provide for food security for the community's most vulnerable populations.

Recognizing these deficiencies, the Hartford Planning and Zoning Commission chose to focus on four overarching priorities

56. See *infra* Part IV.B.

57. As noted above, in drafting the code, the Commission had significant leeway because the city's charter granted it full and exclusive authority to adopt the code without political interference. As likewise noted above, Connecticut is the only state to allow cities to exclude mayors and city councils from the zoning process.

during its revision: economic growth, environmental sustainability, access and mobility, and food security. These priorities were specific to Hartford, and other communities will have different priorities. For example, high-growth cities like today's New York City or San Francisco may benefit from a zoning overhaul that focuses on providing affordable housing instead of accelerating growth. Describing strategies for realizing Hartford's priorities may encourage other communities to comprehensively reform outdated zoning codes to better meet modern needs, as defined by the community.⁵⁸

A. *Economic Growth*

Like many post-industrial cities, Hartford has suffered from decades of slow growth and population decline. It must reverse these trends and become the economic engine of its region. The zoning code therefore includes several strategies to foster growth.

First, and most fundamentally, the new code reduces the cost of real estate development. The old code was confusing and unclear, and it required too many public hearings for simple projects. The new code provides clear written and graphic direction, removes uncertainty by clearly permitting (without public hearings) most uses and building types, and is more flexible (particularly in terms of uses) than the prior code. It also created a campus overlay district, which allows for a developer to come to the Commission with a master plan for the entire development instead of seeking approvals piecemeal—something that was not allowed in the prior code.⁵⁹ In addition to wiping away contradictory and cumbersome regulations, the new code eliminates costly parking requirements

58. At the time of inception, the drafters of SZEAs foresaw issues that have come to fruition in Hartford and other post-industrial cities caused by a failure to update zoning codes as communities evolve. See STANDARD STATE ZONING ENABLING ACT § 5 n.30 (U.S. DEP'T OF COMMERCE 1926) ("It is obvious that provision must be made for changing the regulations as conditions change or new conditions arise, otherwise zoning would be a 'strait-jacket' and a detriment to a community instead of an asset.").

59. Gregory Seay, *City's New Zoning Regs Create a "High Opportunity" for Development*, HARTFORD BUS. J., Sept. 5, 2016 at 1 ("The city applied its new 'campus overlay format' in its review of Bowles' new street and infrastructure layout, number and placement of buildings, parking and landscaping. Doing it this way vs. the old, authorities say, saves the city and developer the time, money and headache of reviewing and approving each element separately.").

(becoming one of the very first cities in the country to do so).⁶⁰ It promotes vibrant small business districts by limiting the size of retail stores on the commercial “main streets” within neighborhoods to eight thousand square feet⁶¹ and allowing outdoor seating.⁶² It may also boost underrepresented businesses, which, as the black entrepreneurs Stephen Clowney argues, endure a disproportionate impact of the costs of land use regulation.⁶³ The Commission hoped that these cost-reducing measures, taken together, would inspire confidence among those considering investing in Hartford.

Second, the zoning code embraces new models of entrepreneurship and innovation. For example, the code creates a new use category called “Craftsman-Industrial,” which allows “maker” spaces in every non-residential zone in Hartford, including on sites like the Swift Factory.⁶⁴ Through the creation of this new use category, Hartford has successfully welcomed woodworkers, textile makers, cobblers, aquaculture practitioners,

60. See *infra* Part III.C.

61. HARTFORD, CONN., ZONING REGS. § 3.3.4.A. (2019). See also Dina Botwinick et al., *Saving Mom and Pop: Zoning and Legislating for Small and Local Business Retention*, 18 J.L. & POL’Y 607, 609 (2010) (identifying “store size caps, community impact reviews [for large stores], neighborhood serving zones, and formula business restrictions” to promote small businesses over large, “big-box” retailers or chains). The authors explain that neighborhood serving zones limit “the size and type of retail stores in certain districts [to] . . . serve the everyday consumer needs of local residents and are not aimed at attracting tourists,” *id.* at 617, and explain that formula business restrictions prohibit or deter “formula businesses, such as retail stores, restaurants, hotels, and other establishments that adopt standardized services, decor, uniforms, architecture, or other features virtually identical to businesses located elsewhere,” *id.* at 619.

62. HARTFORD, CONN., ZONING REGS. § 3.5.2.C.

63. See Stephen Clowney, *Invisible Businessman: Undermining Black Enterprise with Land Use Rules*, 2009 U. ILL. L. REV. 1061, 1064. Clowney says:

Relying on extensive analytic and ethnographic evidence, I make three core claims. First, I argue that the cost of complying with land use regulations has a disparate impact on African-American business. Black-owned companies, which are notoriously undercapitalized, have the same land use costs as multinational corporations, but possess significantly fewer resources to pay fees and apply for permits. Second, I empirically show that the types of ventures typically pursued by black entrepreneurs – small-scale service enterprises – face the most stubborn resistance from local zoning boards. Finally, I assert that zoning, which insists on separating commercial uses from residential neighborhoods, creates particular problems for black entrepreneurs.

Id.

64. See HARTFORD, CONN., ZONING REGS. Fig. 3.2-A (identifying the use category).

and craft beverage makers.⁶⁵ As another example, the zoning code embraces the reuse of historic industrial buildings – the kinds of buildings that have become more appealing to start-up entrepreneurs – to be used for offices, residences, or mixed-use spaces.⁶⁶ This change reflects a looser approach to uses than the prior code and will provide benefits to the owners of the city’s eighty-one historic mill complexes and similar buildings in need of rehabilitation.

Third, the Commission adopted innovative, form-based provisions that envision appealing, dense developments that are compatible with existing architectural fabric.⁶⁷ The form-based provisions were developed during a year-long “diagnostic assessment” by a code consultant, Codametrics, which analyzed all of the existing building types in Hartford.⁶⁸ Through a review process and public engagement, the existing building types were narrowed to “preferred” building types embedded in the new code. Hartford also designated a large number of parcels for transit-oriented development, around four fixed bus rapid transit stations, and created a special, mixed-use zone called the Connecticut River Overlay, along the wide river that forms the city’s eastern boundary.⁶⁹ Researchers have indicated that these types of dense, mixed-use developments have been beneficial to public health.⁷⁰

65. Seay, *supra* note 59 (citing the “recent opening of a tap room inside Hog River Brewing Co.’s brewery in the city’s Parkville neighborhood . . . [due to a] reversal of the city’s previous ban on making and serving alcoholic beverages under the same roof”).

66. See HARTFORD, CONN., ZONING REGS. Fig. 3.2-A.

67. *Id.* at ch. 4.

68. HARTFORD, CONN., *supra* note 16.

69. HARTFORD, CONN., ZONING REGS. § 5.4.

70. See, e.g., Robert García et al., *Healthy Children, Healthy Communities: Schools, Parks, Recreation, and Sustainable Regional Planning*, 31 *FORDHAM URB. L.J.* 1267, 1270 (2004); Susan L. Handy et al., *How the Built Environment Affects Physical Activity*, 23 *AM. J. PREVENTIVE MED.* 64, 65–67 (2002); Russ Lopez, *Urban Sprawl and Risk for Being Overweight or Obese*, 94 *AM. J. PUB. HEALTH* 1574 (2004); Vanessa Russell-Evans & Carl S. Hacker, *Expanding Waistlines and Expanding Cities: Urban Sprawl and Its Impact on Obesity, How the Adoption of Smart Growth Statutes Can Build Healthier and More Active Communities*, 29 *VA. ENVTL. L.J.* 63, 67 (2011) (analyzing “the link between sprawl, decreased levels of physical activity, and increased levels of obesity” and identifying provisions for incorporating smart growth principles into zoning); Shobha Srinivasan et al., *Creating Healthy Communities, Healthy Homes, Healthy People: Initiating a Research Agenda on the Built Environment and Public Health*, 93 *AM. J. PUB. HEALTH* 1446 (2003); Edward H. Ziegler, *Urban Sprawl, Growth Management and Sustainable Development in the United States: Thoughts on the Sentimental Question for a New Middle Landscape*, 11 *VA. J. SOC. POL’Y & L.* 26, 51–53 (2003).

Finally, the code attempts to stimulate economic growth by envisioning residential options that are attractive to young professionals, as well as others interested in urban living. The code allows apartment-style living nearly anywhere in the city, including micro-efficiency units as small as 300 square feet in the downtown and transit-oriented development districts.⁷¹ While nearly forty percent of Hartford's housing stock is affordable,⁷² the zoning code still encourages the development of affordable housing in high-cost neighborhoods, such as downtown and the transit-oriented development zones, by providing a two-story density bonus if a developer designates fifteen percent of the residential units to be affordable.⁷³ Opportunities to share housing are embedded in the code, though these are conditioned on certain provisions that attempt to minimize negative impacts other scholars have described.⁷⁴ Short-term rentals, such as Airbnb, are allowed as accessory uses to housing citywide, but property owners must seek a zoning permit, and the number of rental days is limited depending on the type of permit.⁷⁵ Similarly, the code permits long-term residential rentals in neighborhoods where the practice of taking on roomers and boarders is common.⁷⁶ Finally, accessory dwelling units are, for the first time, expressly allowed in the residential zoning districts, subject to design considerations that minimize their obviousness.⁷⁷ These kinds of developments help attract people to live in an urban environment.

B. Environmental Sustainability

Cities can address environmental sustainability through a variety of means.⁷⁸ Few cities do so through zoning, because the

71. HARTFORD, CONN., ZONING REGS. Fig. 3.2-A.

72. 2017 *Affordable Housing Appeals List – Exempt Municipalities*, CONN. DEP'T OF HOUSING, http://www.ct.gov/doh/lib/doh/amended_final_appeals_summary_2017.pdf (last visited Dec. 27, 2019).

73. HARTFORD, CONN., ZONING REGS. §§ 4.3.2.E, 4.4.2.E.

74. See generally Nestor M. Davidson & John J. Infranca, *The Sharing Economy as an Urban Phenomenon*, 34 YALE L. & POL'Y REV. 215 (2016).

75. HARTFORD, CONN., ZONING REGS. Fig. 3.4-A & § 3.5.1.E.

76. *Id.* at Fig. 3.4-A & § 3.5.1.D.

77. *Id.* at Fig. 3.4-A & § 3.5.1.A.

78. See Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115 (1996) (identifying local governments as the unit of government most

traditional zoning code framework is not set up to incorporate best practices on climate. Hartford's comprehensive rezoning provided the opportunity to re-imagine how a zoning code could advance environmental sustainability. As an environmental justice community that has not always had access to a clean environment, this reimagining is especially relevant for Hartford.⁷⁹

The code's greatest environmental impact may well be that it uses a "form-based" approach that requires more compact, human-scale development, than the prior code. Scholars have noted that regulating for smart growth can advance environmental goals.⁸⁰ Beyond the form-based code, Hartford's code uses an innovative mix of "carrots" and "sticks" to encourage property owners to

responsive to local preferences); William W. Buzbee, *Urban Sprawl, Federalism, and the Problem of Institutional Complexity*, 68 *FORDHAM L. REV.* 57, 94 (1999) (observing that local governments zoning control "has largely arisen as a result of the relative institutional competence of each level of government in addressing particular social needs" but also arguing that regional and even federal control might be exerted to help address the complex issue of sprawl); Hari M. Osofsky, *Climate Change Legislation in Context*, 102 *NW. L. REV. COLLOQUY* 245 (2008); Richard B. Stewart, *States and Cities as Actors in Global Climate Regulation: Unitary vs. Plural Architectures*, 50 *ARIZ. L. REV.* 681, 681 (2008) (using a political economy analysis to argue that "U.S. states, cities, and other sub-national actors (SNAs) in the U.S., as well as abroad, can and should play important long-term roles in climate regulation at both the domestic and global levels"); Robert R.M. Verchick, *Why the Global Environment Needs Local Government: Lessons from the Johannesburg Summit*, 35 *URB. LAW.* 471 (2003).

79. See, e.g., Michael P. Vandenbergh & Brooke A. Ackerly, *Climate Change: The Equity Problem*, 26 *VA. ENVTL. L.J.* 55 (2008) (finding that climate policies, and benefits related to them, are often inaccessible to low-income persons). There are debates about whether zoning can or does advance progressive goals. Compare, e.g., Charles M. Haar & Michael Allan Wolf, *Euclid Lives: The Survival of Progressive Jurisprudence*, 115 *HARV. L. REV.* 2158 (2002), with Eric R. Claeys, *Euclid Lives? The Uneasy Legacy of Progressivism in Zoning*, 73 *FORDHAM L. REV.* 731 (2004). In this area, zoning has that potential.

80. See, e.g., Patricia E. Salkin, *From Euclid to Growing Smart: The Transformation of the American Local Land Use Ethic into Local Land Use and Environmental Controls*, 20 *PACE ENVTL. L. REV.* 109 (2002) (describing the shift in zoning toward regulating for environmental goals); Florence Wagman Roisman, *Sustainable Development in Suburbs and Their Cities: The Environmental and Financial Imperatives of Racial, Ethnic, and Economic Inclusion*, 3 *WIDENER L. SYMP. J.* 87 (1998) ("[I]mproving environmental quality and sustainability in the suburbs of the United States requires advancing racial, ethnic, and economic integration in the suburbs and the cities."). Roisman observes:

Suburban expansion is inherently unsustainable. As suburbs charge farther and farther from the central city, they degrade more environmentally significant land, destroy more natural life, pollute more air and water, require more money for infrastructure (highways, water and waste treatment systems), and devour more energy. They also leave behind an increasingly isolated, unserved population that lacks access to the "opportunity structure." The environmental, economic, and social costs of this "suburban sprawl" are immense.

Id. at 107 (footnote omitted).

prioritize sustainability, carbon footprint reduction, and resilience.⁸¹ It specifically targets the areas of energy, air, and water.

1. Energy

Local regulations that provide incentives for clean and renewable energy can reduce a community's carbon footprint.⁸² While federal and state programs promoting green energy are vital to the spread of such technologies, outdated zoning codes and aesthetic regulations, like historic districts, can impede installation of new energy resources.⁸³ One scholar warns that if local governments do not carefully balance the interests of the public and property owners with federal and state policies aimed to encourage the spread of clean energy, they risk facing "preemptive statutory measures" with respect to the siting of distributed renewable energy sources.⁸⁴ Renewable energy enjoys strong support from the American public, but distributed energy projects often face opposition from neighboring landowners.⁸⁵

Hartford's new code aims to resolve some of these potential issues. It allows building-mounted solar and wind installations in all zones to ensure such installations are legally permitted

81. See generally Sarah B. Schindler, *Following Industry's LEED®: Municipal Adoption of Private Green Building Standards*, 62 FLA. L. REV. 285, 348 (2010) ("[A] local (not national) and public (not private) solution [regarding green building standards] is needed to ensure the greatest benefits to the environment at the least cost to cities and developers.").

82. Alice Kaswan, *Climate Change, Consumption, and Cities*, 36 FORDHAM URB. L.J. 253, 266-79 (2009) (describing among other things the imperative to make buildings more energy efficient and the need to promote changing supply to renewables); Edna Sussman, *Reshaping Municipal and County Laws to Foster Green Building, Energy Efficiency, and Renewable Energy*, 16 N.Y.U. ENVTL. L.J. 1, 23-35 (2008) (focusing on the law's authorization of renewable energy, and the issues of local authorization through zoning and the related need to have ongoing solar access rights).

83. See Patricia Salkin, *The Key to Unlocking the Power of Small Scale Renewable Energy: Local Land Use Regulation*, 27 J. LAND USE & ENVTL. L. 339 (2012) (discussing the role of local land use regulation in siting small-scale renewable energy projects); Troy A. Rule, *Renewable Energy and the Neighbors*, 2010 UTAH L. REV. 1223, 1248 (2010) (discussing problems with state preemption of local regulations). See generally Steven Ferrey, *Gone with the Wind: State Preemptive Power*, 79 ALB. L. REV. 1479 (2016) (analyzing tensions between local control over land and constitutional preemption through lens of wind energy development).

84. Salkin, *supra* note 83, at 340 (discussing the role of local land use regulation in siting small-scale renewable energy projects). See generally Hannah J. Wiseman, *Disaggregating Preemption in Energy Law*, 40 HARV. ENVTL. L. REV. 293, 326-30 (2016) (discussing limited disaggregation with respect to land use regulations and energy law).

85. See Rule, *supra* note 83 (discussing tensions between lawmakers and landowners over siting of small-scale renewables).

everywhere they are desirable and feasible.⁸⁶ The code also allows freestanding, large-scale wind turbines along the highway corridor and solar parking canopies in most parking lots.⁸⁷ Siting renewables near the highway and in parking lots offers two benefits: less opposition to aesthetic impact and preservation of open space. Additionally, covering open parking lots with solar canopies can help mitigate the urban heat island effect.⁸⁸ To protect these uses, new trees are prohibited from shading solar collectors.⁸⁹

Another way local governments can promote clean energy is offering incentives to developers to reduce greenhouse gas emissions, a growing trend in recent years.⁹⁰ Hartford provides height bonuses for buildings downtown or in the transit-oriented development zone if renewable energy meets 25% of building need or if cogeneration is used.⁹¹

2. Air

Hartford has some of the highest asthma rates in the country,⁹² partly caused by emissions from vehicles traveling on two interstate highways running through the city's dense historic neighborhoods.⁹³ Reducing local transportation-related emissions will benefit locals while also helping to mitigate climate change. Experts have pointed out that the transportation sector is ripe for

86. HARTFORD, CONN., ZONING REGS. § 4.20.6 & Fig. 4.20-A (2019). See Richard M. Hluchan, *Here Comes the Sun: Land Use Laws Affecting the Development of Solar Energy Facilities in New Jersey*, N.J. LAW., June 2011, at 31, 31-32 (noting that the primary issue with siting solar panels is aesthetic as solar panels present fewer issues than most other kinds of development—e.g., pollution, traffic, etc.).

87. HARTFORD, CONN., ZONING REGS. § 4.20.6 & Fig. 4.20-A.

88. Melissa Powers, *Small Is (Still) Beautiful: Designing U.S. Energy Policies to Increase Localized Renewable Energy Generation*, 30 WIS. INT'L L.J. 595, 625 (2012).

89. HARTFORD, CONN., ZONING REGS. § 6.4.1.E.

90. See Patricia E. Salkin, *Cooperative Federalism and Climate Change: New Meaning to "Think Globally-Act Locally,"* 40 ENVTL. L. REP. 10562, 10569-70 (2010) (discussing, in part, local incentives for emissions reductions).

91. HARTFORD, CONN., ZONING REGS. §§ 4.3.2 n.5, 4.4.2 n.7.

92. According to one research group in 2015, Hartford was ranked #33 out of 100 for worst U.S. metropolitan areas for asthma. ASTHMA & ALLERGY FOUND. OF AM., ASTHMA CAPITALS 2015 (2015), <http://www.aafa.org/media/Asthma-Capitals-Report-2015-Rankings.pdf>.

93. See Laura Perez et al., *Near-Roadway Pollution and Childhood Asthma: Implications for Developing "Win-Win" Compact Urban Development and Clean Vehicle Strategies*, 120 ENVTL. HEALTH PERSPECTIVES, 1619 (2012) ("Our findings suggest that there are large and previously unappreciated public health consequences of air pollution in [Los Angeles County] and probably in other metropolitan areas with dense traffic corridors.").

reductions as “transportation sector emissions have seen significantly smaller reductions” than power sector emissions in recent years.⁹⁴ At the local level, municipalities should transform land use and transportation policy to target such emissions and promote public transit while automakers and fuel producers work to promote cleaner vehicles and fuels.⁹⁵

Hartford’s zoning code aims to shrink transportation-related emissions through a handful of measures that de-emphasize the use of personal vehicles.⁹⁶ The code adjusted parking requirements in several ways, including instituting parking maximums, eliminating parking minimums, and requiring electric vehicle charging stations for lots of thirty-five or more cars to create citywide infrastructure for electric vehicles.⁹⁷ To promote development with better access to transit, Hartford also established a transit-oriented development district along the bus rapid transit line.⁹⁸ Increasing access to transit through transit-oriented development enables residents to reduce their vehicle miles traveled and, in turn, their greenhouse gas emissions and local air pollution.⁹⁹

Another policy aimed at reducing tailpipe emissions is the new code’s requirement of short- and long-term bicycle parking for nearly every building.¹⁰⁰ Every vehicle mile avoided prevents, on average, the emission of 404 grams of carbon dioxide along with smaller quantities of methane and nitrous oxide, so promoting transit, bicycle, and pedestrian options is an effective route to

94. See Vicki Arroyo, Kathryn Zyla, & Gabriel Pacyniak, *New Strategies for Reducing Transportation Emissions and Preparing for Climate Impacts*, 44 FORDHAM URB. L.J. 919, 942 (2017) (discussing importance of transportation sector for meeting GHG targets).

95. See *id.* at 946.

96. See generally *infra* Section III.C (discussing access and mobility).

97. HARTFORD, CONN., ZONING REGS. § 7.2 (2019). See generally Michael Lewyn & Judd Schechtman, *No Parking Anytime: The Legality and Wisdom of Maximum Parking and Minimum Density Requirements*, 54 WASHBURN L.J. 285 (2015) (examining the positive and negative effects of pedestrian-oriented, smart growth regulations).

98. HARTFORD, CONN., ZONING REGS. § 5.3.

99. See Zachary D. Liscow, *The Efficiency of Equity in Local Government Finance*, 92 N.Y.U. L. REV. 1828, 1883–84 (2017) (“Living in central cities reduces a person’s GHG emissions first by reducing vehicle miles travelled in cars because of the availability of transit and proximity to jobs.”).

100. HARTFORD, CONN., ZONING REGS. § 7.2.2.D & Fig. 7.2-B.

improving air quality.¹⁰¹ As more bikers and walkers take to the streets, holistic roadway planning and design becomes more critical for adequate cyclist and pedestrian safety. Cyclists find themselves in precarious positions “in a road world built for motorists,” so they often must make a choice between riding legally and riding safely.¹⁰² The code’s requirement that new and substantially rehabilitated streets be redesigned with Complete Streets principles, which encourage walking and biking, will minimize dependence on cars within city limits.¹⁰³

The city’s zoning code also seeks to enhance the urban canopy, which purifies air and reduces energy costs.¹⁰⁴ Specifically, trees purify the air by filtering out fine particulate matter generated from

101. U.S. ENVTL. PROT. AGENCY, EPA-420-F-18-008, GREENHOUSE GAS EMISSIONS FROM A TYPICAL PASSENGER VEHICLE 2 (2018), <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100U8YT.pdf>.

102. Asmara M. Tekle, *Roll on, Cyclist: The Idaho Rule, Traffic Law, and the Quest to Incentivize Urban Cycling*, 92 CHI.-KENT L. REV. 549, 557 (2017) (discussing urban transportation planning and aligning bike law with bike practice in light of Idaho’s “Stop rule,” that allows cyclists to treat stop signs as yield signs).

103. See HARTFORD, CONN., ZONING REGS. ch. 9. As defined by national nonprofit Smart Growth America:

Complete Streets are streets for everyone. They are designed and operated to enable safe access for all users, including pedestrians, bicyclists, motorists and transit riders of all ages and abilities. Complete Streets make it easy to cross the street, walk to shops, and bicycle to work. They allow buses to run on time and make it safe for people to walk to and from train stations.

Creating Complete Streets means transportation agencies must change their approach to community roads. By adopting a Complete Streets policy, communities direct their transportation planners and engineers to routinely design and operate the entire right of way to enable safe access for all users, regardless of age, ability, or mode of transportation. This means that every transportation project will make the street network better and safer for drivers, transit users, pedestrians, and bicyclists—making your town a better place to live. *What Are Complete Streets?*, SMART GROWTH AM., <https://smartgrowthamerica.org/program/national-complete-streets-coalition/publications/what-are-complete-streets/> (last visited Dec. 27, 2019).

See also Ernesto Hernandez-Lopez, *Bike Lanes, Not Cars: Mobility and the Legal Fight for Future Los Angeles*, 42 WM. & MARY ENVTL. L. & POL’Y REV. 553, 564 (2018) (discussing Complete Streets in Los Angeles and the tension in planning for cyclists, pedestrians, and motorists); Franklyn P. Salimbene, *Seeking Peaceful Coexistence: Streetcars and Bicycles in the New Urban Environment*, 7 WAKE FOREST J.L. & POL’Y 365, 374–81 (2017) (discussing history of bicycles as transportation and the Complete Streets movement).

104. See generally ROB McDONALD ET AL., THE NATURE CONSERVANCY, PLANTING HEALTHY AIR (2016), https://www.nature.org/content/dam/tnc/nature/en/documents/20160825_PHA_Report_Final.pdf (examining the effects of trees on air temperature and quality in urban areas and how much investment would be required to achieve meaningful benefits).

burning fossil fuels and reduce cooling costs by providing shade and releasing water vapor.¹⁰⁵ The rezoning will enhance the urban canopy in two ways: specifying canopy coverage requirements—the minimum amount of lot covered by trees—for all uses and articulating tree installation, maintenance, construction, and removal standards (including biodiversity).¹⁰⁶ Working towards the same goal, Hartford now offers incentives for developers to create green roofs by providing density bonuses for green roofs in buildings in the downtown and transit-oriented development districts.¹⁰⁷ Green roofs provide largely the same benefits as the urban canopy: they reduce the urban heat island effect by preventing the reradiation of solar heat, and they absorb carbon dioxide and other greenhouse gases.¹⁰⁸

Other positive changes to Hartford's code relate to vegetation management include requiring native plants and eliminating invasive species,¹⁰⁹ allowing community gardens and parks everywhere, and allowing urban farms nearly everywhere.¹¹⁰ Controlling and eliminating invasive species helps keep local ecosystems balanced and helps protect human health.¹¹¹

3. Water

Because Hartford faces threats to water quality from contaminated stormwater runoff and incompatible land uses along waterways, Hartford's zoning code seeks ways to protect the city's

105. *How Urban Trees Can Save Lives*, THE NATURE CONSERVANCY (Oct. 31, 2016), <https://global.nature.org/content/healthyair> (“Trees cool the air by casting shade and releasing water vapor, and their leaves can filter out fine particulate matter (PM)—one of the most dangerous forms of air pollution, generated from burning biomass and fossil fuels.”).

106. HARTFORD, CONN., ZONING REGS. ch. 6.

107. *Id.* §§ 4.3.2.E., 4.4.2.E.

108. See Sussman, *supra* note 82, at 15 (discussing, in part, the benefits of a vegetation requirement in local planning).

109. HARTFORD, CONN., ZONING REGS. § 6.2.3.E.

110. *Id.* at Fig. 3.2-A.

111. Improved air quality is not the only health benefit of vegetation management. For example, researchers found that areas with unmanipulated dense Japanese barberry infestations had three times the number of deer ticks with Lyme disease per acre than areas with controlled barberry and ten times the number of deer ticks than areas with no barberry (126 v. 41 v. 10 deer ticks per acre). See Scott C. Williams et al., *Managing Japanese Barberry (Ranunculales: Berberidaceae) Infestations Reduces Blacklegged Tick (Acari: Ixodidae) Abundance and Infection Prevalence with Borrelia burgdorferi (Spirochaetales: Spirochaetaceae)*, 38 ENVTL. ENTOMOLOGY 977 (2009).

valuable water assets. Steering new development and the attendant pollution away from water resources is the first line of protection. The code institutes twenty-five to fifty foot “development-free” buffers near waterways¹¹² and creates a Connecticut River Overlay zoning district that moves industrial uses away from the precious waterbody and instead incentivizes less intensive, mixed-use development there.¹¹³ Shifting uses and industrial activity away from water resources will improve water quality with fewer pollutants and sediment flowing into the water, and it will provide economic benefits in avoided/reduced flooding and reduced soil erosion.¹¹⁴

In addition to buffers and the overlay zone, the new code makes several citywide changes to protect water quality. The code limits impervious coverage—and thus stormwater runoff¹¹⁵—on every lot, prioritizes low-impact development and green infrastructure,¹¹⁶ and requires tree canopy coverage on all lots, with special requirements for plantings in surface parking lots.¹¹⁷ These measures ensure that all landowners and developers will minimize a project’s effect on local water quality by minimizing stormwater runoff. Stormwater runoff can cause major environmental damage that must be accounted for. The runoff flows through the urban environment picking up whatever has been left behind—sediment/dirt, toxic chemicals, garbage, etc.—and deposits such pollutants into nearby waterways.¹¹⁸ Hartford now requires each new non-exempt development to submit and implement a stormwater management plan.¹¹⁹ The plan must show how

112. HARTFORD, CONN., ZONING REGS. § 6.11.

113. *Id.* § 5.4.

114. See NAOMI YOUNG, AMERICAN RIVERS, THE ECONOMIC VALUE OF RIPARIAN BUFFERS (2016), http://americanrivers.org/wp-content/uploads/2016/05/AmericanRivers_EconomicValueRiparianBuffers-2016.pdf.

115. HARTFORD, CONN., ZONING REGS. § 6.14. For a discussion of impacts of impervious surfaces on the local watershed, see Marc A. Yaggi, *Impervious Surfaces in the New York City Watershed*, 12 FORDHAM ENVTL. L.J. 489, 496–506 (2001).

116. For more on the benefits of green infrastructure generally, see John R. Nolon, *Enhancing the Urban Environment Through Green Infrastructure*, 46 ENVTL. L. REP. 10071 (2016), discussing the use of green infrastructure as a strategy for adapting to climate change that enhances the urban environment while providing economic benefits.

117. HARTFORD, CONN., ZONING REGS. § 6.4.

118. See *NPDES Stormwater Program*, U.S. ENVTL. PROT. AGENCY, <https://www.epa.gov/npdes/npdes-stormwater-program> (last visited Dec. 27, 2019).

119. HARTFORD, CONN., ZONING REGS. § 6.14.2.E.

applicants will manage one inch of precipitation, on site or at another location, without discharging any stormwater runoff into the public drainage systems.¹²⁰

Leading the way in zoning trends, Hartford's code is one of the first zoning codes to ban artificial turf made of synthetic infill.¹²¹ The U.S. Environmental Protection Agency and the Centers for Disease Control and Prevention are currently studying the key environmental and human health questions surrounding the health risks from playing on fields with tire crumb infill. The first part of this research was published in 2019. It revealed that tire crumb infill has more lead and more dangerous volatile organic compounds than previously thought.¹²² The report also acknowledged that the EPA lacked a toxicity reference for one in five constituents of artificial turf—meaning that no one knows what is in it.¹²³ By banning synthetic artificial turf, Hartford hopes to prevent future exposure. Hartford also declines to impose requirements that property owners maintain environmentally costly, green grass lawns.¹²⁴

* * *

Zoning is not the only solution for achieving environmental sustainability. Individual choices, too, can lead to more optimal outcomes for the environment.¹²⁵ So can other city initiatives. After

120. If such management is not feasible, the applicant can pay into the city green infrastructure fund supporting the implementation of stormwater best management practices around the city. Fees have been set at \$3 per gallon citywide and \$1.50 per gallon in the federally-designated Promise Zone. See HARTFORD, CONN., ZONING REGS. § 6.14.2.E.

121. HARTFORD, CONN., ZONING REGS. § 6.33. See also Jan Ellen Spiegel, *A Shifting Ground for Artificial Turf in Connecticut*, CT MIRROR (Feb. 12, 2016), <https://ctmirror.org/2016/02/12/a-shifting-ground-for-artificial-turf-in-connecticut/>.

122. See *July 2019 Report: Tire Crumb Rubber Characterization*, U.S. ENVTL. PROT. AGENCY, <https://www.epa.gov/chemical-research/july-2019-report-tire-crumb-rubber-characterization-0> (last updated Aug. 8, 2019).

123. *Id.*

124. Sarah B. Schindler, *Banning Lawns*, 82 GEO. WASH. L. REV. 394 (2014); Asmara M. Tekle, *Lawns and the New Watershed Law*, 95 MARQ. L. REV. 213 (2011).

125. See John C. Dernbach, *Harnessing Individual Behavior to Address Climate Change: Options for Congress*, 26 VA. ENVTL. L.J. 107 (2008); Michael P. Vandenberg & Anne C. Steinemann, *The Carbon-Neutral Individual*, 82 N.Y.U. L. REV. 1673 (2007) (noting that individuals, if properly motivated, can have a significant impact on reducing the negative human effects of climate change). Bob Ellickson is among those who believe that adherence

adopting the new code, the Planning and Zoning Commission created a Climate Stewardship Council, a working group that is dealing specifically with expanding the sustainability components of the code into other areas.¹²⁶ The Climate Stewardship Council established goals of improving economic development, public health, and environmental justice. It developed a Climate Action Plan, formally adopted by the City Council in 2018 and slated to be embedded in the city's next comprehensive plan in 2020. As part of the implementation of the Climate Action Plan, the city government currently has teams developing sites for microgrids, attracting hydrogen fueling facilities (including permitting the first one in the Northeast), developing resiliency strategies, and implementing green infrastructure. The new zoning code anticipates and encourages all of these complementary efforts.

C. Access & Mobility

The push in Hartford's zoning code to advance access and mobility is related to the city's sustainability and equity aims. Transportation has environmental implications: a city's efforts to de-emphasize cars, embrace walking and biking, and support transit that serves densely developed neighborhoods can significantly reduce that city's carbon footprint.¹²⁷ Access and mobility can also increase equity for persons of all abilities and ages, using all modes of transportation.¹²⁸

to social norms is superior to formal zoning regimes developed outside of social context. ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991).

126. See generally HARTFORD CLIMATE STEWARDSHIP INITIATIVE, www.hartford.gov/climate (Last visited Dec. 27, 2019), for more information on this initiative.

127. See Kaswan, *supra* note 82, at 259 (noting that the figure for vehicle miles traveled "is heavily influenced by underlying land use patterns and transportation infrastructure," which across the United States is low-density sprawl); James A. Kushner, *Car-Free Housing Developments: Towards Sustainable Smart Growth and Urban Regeneration through Car-Free Zoning, Car-Free Redevelopment, Pedestrian Improvement Districts, and New Urbanism*, 23 *UCLA J. ENVTL. L. & POL'Y* 1, 25 (2005) (reviewing the car-free projects and programs of various European cities and concluding that "[t]he replication of high-density urban and suburban transit-oriented development should be the centerpiece of urban development").

128. Lack of investment in and planning for transit, bicycle, and pedestrian travel raises equity issues in a city like Hartford where many residents are nondrivers. See Michael Lewyn, *How Overregulation Creates Sprawl (Even in a City Without Zoning)*, 50 *WAYNE L. REV.* 1171, 1186 (2004) ("It follows that minimum parking requirements constitute a government-mandated transfer of wealth from nondrivers to drivers, and thus encourage driving and

Embracing a Complete Streets approach, Hartford's new zoning code devotes an entire chapter to street design. That chapter requires street profiles that address all modes of travel, including walking, biking, taking public transit, and driving. The code addresses all features of the right-of-way, including sidewalks, buffer areas, parking lanes, traffic lanes, bicycle lanes, and medians. It explicitly aims to achieve, to the extent possible by planning and zoning requirements, "Vision Zero" principles intended to eliminate traffic-related fatalities.¹²⁹ Relatedly, the use table and the map, when read together, significantly reduce auto-oriented zoning—that is, the zoning that allows for gas stations, car washes, auto repair shops, and drive-through establishments.¹³⁰ Reducing the areas of auto-oriented zoning in turn reduces the wide curb cuts, idling of cars, and large stretches of asphalt that often degrade and render unsafe the experience of people who walk and bike.

One particular decision by Hartford deserves in-depth discussion: its virtual elimination of minimum requirements for vehicular parking citywide.¹³¹ Parking minimums have destroyed cities. They create a patchwork of surface parking lots that detract from the pedestrian realm and are an aesthetic nuisance. They create parking lots that correlate with significant increases in automobile use, as researchers found when they studied the impact of providing excessive parking in Hartford.¹³² They result in the demolition of buildings, including great ones like Frank Lloyd Wright's Larkin Administration Building in Buffalo, which was demolished in 1950 for a parking lot. They increase the amount of impervious surfaces, exacerbating both flooding and the heat island effect. They increase the cost of development, resulting in disinvestment in other improvements that cities need. And they

discourage other forms of commuting."); see also Michael Lewyn, *What Would Coase Do? (About Parking Regulation)*, 22 *FORDHAM ENVTL. L. REV.* 89, 118 (2010) ("[M]inimum parking requirements may be one of the situations foreseen by Coase, in which government regulation creates more congestion and environmental damage than it prevents.").

129. HARTFORD, CONN., ZONING REGS. ch. 9 (2019).

130. *Id.* at Fig. 3.2-A.

131. *Id.* at Fig. 7.2. See also Sara Bronin, *Rethinking Parking Minimums*, *PLANNING MAG.* Feb. 2018, at 9.

132. See generally Christopher T. McCahill & Norman W. Garrick, *Influence of Parking Policy on Built Environment and Travel Behavior in Two New England Cities, 1960 to 2007*, 2187 *TRANSP. RES. REC.* 123 (2010).

force cities to forgo property taxes; in Hartford, parking uses cost the city \$50 million in tax revenues annually.¹³³

Buffalo – which, like Hartford, is a high-poverty post-industrial city – is considered the first large city to experiment with reducing minimum parking requirements. In 2017, Buffalo eliminated parking minimums for buildings under 5,000 square feet.¹³⁴ However, Hartford’s code goes a step further by eliminating parking requirements for all buildings—except for those being used for automobile sales—regardless of their size. While in Buffalo larger buildings may still be required to provide parking, this is not the case for Hartford, where only buildings used for automobile sales are required to provide vehicular parking spaces. The Hartford code further imposes caps on vehicular parking for nearly every type of use. In lieu of requiring or encouraging parking for vehicles, the new code requires short- and long-term bicycle parking for nearly every building.¹³⁵

After Hartford adopted its new zoning code, the Mayor and City Council passed citywide legislation that requires Complete Streets principles be incorporated into City decisions, mandates a Complete Streets Plan, and identifies a permanent bicycle-pedestrian coordinator. According to the National Complete Streets Coalition, Hartford joins Stamford and just thirty other American cities—locations with 100,000 or more people, including Austin, Seattle, San Francisco, and Philadelphia—in adopting a citywide Complete Streets ordinance.

D. Food Security

Several scholars have examined the link between zoning and agriculture, food security, economic development, and resident health.¹³⁶ Approximately a quarter of Hartford’s residents live in a

133. Bryan P. Blanc et al., *Effects of Urban Fabric Changes on Real Estate Property Tax Revenue*, 2453 *TRANSP. RES. REC.* 145 (2014).

134. See *BUFFALO, N.Y., CITY CODE* chap. 496 (2016).

135. *HARTFORD, CONN., ZONING REGS.* § 7.2.2.D & Fig. 7.2-B (requiring bicycle parking for all uses except for one-, two-, and three-unit dwellings).

136. See, e.g., John E. Mogk et al., *Promoting Urban Agriculture as an Alternative Land Use for Vacant Properties in the City of Detroit: Benefits, Problems and Proposals for a Regulatory Framework for Successful Land Use Integration*, 56 *WAYNE L. REV.* 1521 (2010) (noting that, with some caveats, the conversion of vacant lots to urban agriculture parcels is an important

neighborhood designated a “food desert,” defined by the U.S. Department of Agriculture as a place lacking affordable access to fresh fruits, vegetables, and other healthy whole foods. Residents residing in food deserts face great insecurity in attaining healthy foods. The zoning code addresses food security in two ways: explicitly authorizing urban agriculture and requiring that “real food” be sold at convenience stores.

In Hartford, urban agriculture encompasses community gardens, urban farms (including hens and bees), and farmers’ markets. These uses were not allowed in the prior zoning code, putting participants in danger of receiving fines and zoning violations.¹³⁷ All such uses are now explicitly allowed, with reasonable conditions to ensure public health, safety, and welfare.¹³⁸ Hartford has about twenty community gardens serving local residents in nearly every neighborhood. The new code allows them to be sited anywhere in the city, legalizing a valuable public asset.

The new zoning code also addresses urban farming for the first time. At least four urban farms have been operating in Hartford for years, but before, they were not expressly authorized by the zoning code. Under the new code, urban farms are allowed everywhere except in downtown and in the high-density commercial corridors. Urban farms are defined as “[a] ground or roof-level agricultural

public policy goal); Sarah B. Schindler, *Of Backyard Chickens and Front Yard Gardens: The Conflict Between Local Governments and Locavores*, 87 TUL. L. REV. 231 (2012) (explaining that encouraging urban agriculture can provide social, economic, and health value to persons who practice it); Lisa Tomlinson, *Indoor Aquaponics in Abandoned Buildings: A Potential Solution to Food Deserts*, 16 SUSTAINABLE DEV. L. & POL’Y 16, 16 (2015) (“One way to solve the problem of food deserts is to encourage the creation of aquaponics farms, an agricultural system that combines the practices of aquaculture and hydroponics within abandoned factory buildings.”); Stephanie A. Maloney, Note, *Putting Paradise in the Parking Lot: Using Zoning to Promote Urban Agriculture*, 88 NOTRE DAME L. REV. 2551, 2553 (2013) (identifying underlying policy rationales and common practices on zoning provisions dealing with agriculture and “offering recommendations for the municipal integration of agriculture into the urban fabric, with particular attentiveness to participatory policymaking in the form of food policy councils”); Mia Shirley, Note, *Food Ordinances: Encouraging Eating Local*, 37 WM. & MARY ENVTL. L. & POL’Y REV. 511, 518 (2013).

137. See EDUARDO MOISÉS PEÑALVER & SONIA K. KATYAL, PROPERTY OUTLAWS: HOW SQUATTERS, PIRATES, AND PROTESTORS IMPROVE THE LAW OF OWNERSHIP (2010); Sarah Schindler, *Unpermitted Urban Agriculture: Transgressive Actions, Changing Norms, and the Local Food Movement*, 2014 WIS. L. REV. 369 (describing various transgressive activities deserving of sanction by local law and citing Peñalver and Katyal).

138. HARTFORD, CONN., ZONING REGS. §§ 3.3.3.A., 3.3.3.E., 3.7.2. & Fig. 3.2-A.

operation of any size, excluding agricultural growing (such as aquaculture) occurring in a permanent indoor facility other than a farm structure, which is used for urban agriculture for commercial purposes, whether for profit or non-profit, with a single entity serving as the primary operator.”¹³⁹ As for indoor growing facilities, the code allows aquaponics growing facilities less than twenty thousand square feet in the “Craftsman Industrial” category, mentioned above. These uses are allowed downtown, on “main streets,” in commercial-industrial districts and industrial districts, and in one of the two mixed-use zones.¹⁴⁰

In addition, the code now allows beekeeping anywhere in the city; up to ten colonies can be sited on large lots.¹⁴¹ Henhouses have also been legalized, with up to six hens allowed under conditions that make them compatible with neighbors.¹⁴² Accessory farm structures, including greenhouses, hoopouses, sheds, trellises, and similar structures are also allowed,¹⁴³ as are composting bins.

There are seven farmers’ markets in Hartford, and they too are addressed in the new code. Recognizing the value that access to fresh, local food provides to residents, the code allows farmers’ markets in every zone in the city.¹⁴⁴

Finally, there is a section in the zoning code that requires that convenience stores sell “real” food. Too many Hartford residents must rely on convenience stores for basic food needs. With input from members of Hartford’s Food Policy Advisory Commission, the Planning and Zoning Commission adopted regulations that require that twenty percent of the net floor area of any convenience store sell fresh fruits, vegetables, whole grains, whole grain cereal, dairy products (excluding ice cream), and canned or dried goods without unhealthy additives.¹⁴⁵

139. *Id.* § 3.3.3.F.

140. *Id.* § 3.3.7.B. These indoor growing facilities are required to devote some square footage to a “showroom or small retail outlet.” If they do not have or want a showroom/retail area or are over 20,000 square feet, they are regulated as “light industry” and allowed in the commercial-industrial districts and industrial districts. *See id.* § 3.3.9.B.

141. *Id.* § 4.20.5.C.

142. *Id.* § 3.3.3.B.

143. *Id.* § 4.20.5.A.

144. *Id.* § 3.7.2.

145. *Id.* § 3.3.4.E.

IV. LESSONS LEARNED

As Part III described, the Planning and Zoning Commission chose to replace Hartford's old code with a streamlined, form-based code that has environmental sustainability and equity at its core. The innovative provisions are easy to find in the new code. But perhaps not as easy to distill are four of the lessons learned during the process of comprehensive rezonings: engaging the community, letting data rule, persuading real estate investors to align financial and environmental goals, and collaborating with institutions of higher learning. Other cities interested in engaging in comprehensive zoning reform might consider how some of these strategies might help to lay their own groundwork for change.

A. Engage the Community

Some communities may be wary of adopting such a radical change to the zoning code. In Hartford, we found that robust community engagement surrounding specific issues faced by individuals and neighborhoods resulted in a surprising amount of support. Over the two-year period, Commission members and staff held over one hundred community and stakeholder meetings, including public hearings, interviews, and focus groups. Meetings were held with each of the fourteen "neighborhood revitalization zones." These zones are sub-local associations covering all residential areas of the city, which pursuant to state statute draft strategic plans and often influence local policy.¹⁴⁶ The Metro Hartford Alliance, which is the regional business chamber of conference, was consulted, along with smaller organizations, such as the Albany Avenue Merchants' Association. State agencies, including the Office of Policy and Management and the Department of Energy and Environmental Protection, played an advisory role, as did the regional council of governments. Nonprofit organizations with special interests in environmental issues, renewable energy, affordable housing, transportation policy, and land use generally also contributed insights. A dedicated website for program updates and feedback was created, and a fourteen-member Zoning Advisory Group weighed

146. See CONN. GEN. STAT. §§ 7-600 to 7-608 (2008).

in at key points. Three full-city workshops were held just on the components of the code that would introduce new architectural review requirements.

Given this engagement, the vast majority of the testimony on the night the code was adopted was effusively positive, and the code was passed unanimously by the Planning and Zoning Commission in just one night. Other communities looking to conduct sweeping zoning reform could use our engagement process as a playbook.

B. Let Data Rule

Many communities are constrained by zoning codes developed in the twentieth century, which no longer reflect the way we want to live today. Preferences – by aging baby boomers and first-career professionals alike – have moved away from suburbs and toward a more vibrant urban lifestyle.¹⁴⁷

Hartford's zoning code responded to these demographic shifts, as well as extensive market data. For example, the code picked up on the demand for mixed-use neighborhoods and expressly allows multi-family residential uses in every commercial area. The code also modestly expanded the number of unrelated persons who can live together as a household unit, recognizing greater flexibility desired in modern living arrangements.¹⁴⁸ Similarly, the code authorized accessory dwelling units, which not only better utilize large lots but also make the large historic buildings in some neighborhoods more attractive to buyers.

The code also recognized the demand for riverfront development: rezoning much of the land zoned industrial along the Connecticut River to either parkland or high-density mixed-use development. Finally, and perhaps most significantly, the code eliminated all minimum parking requirements, recognizing not only an increasing preference away from vehicles but also a sounder policy toward urban development. Each of these preferences has been identified in studies, which formed the basis for the research underlying the code.

147. For an extensive treatment of these demographic shifts, including dozens of scholarly citations, see Sara C. Bronin, *Zoning for Families*, 95 IND. L.J. 1 (2020).

148. See *id.* (describing controversy surrounding this change and making a case that zoning codes should go farther to allow flexible living arrangements).

C. Persuade Real Estate Investors

The environmental sustainability provisions of Hartford's code may also be seen as somewhat radical and perhaps difficult to adopt elsewhere. Yet it is important to note that several real estate developers and developers' representatives (including real estate agents and attorneys) were represented on the city Planning and Zoning Commission. As a result, the Commission paid careful attention to the potential impact of sustainability provisions on the real estate market. Consulting regularly with the development community through a series of forums, including some forums run through the regional chamber of commerce, helped assuage concerns and obtain feedback. Through those discussions, the Commission learned that the development community enthusiastically supported being freed of parking requirements and welcomed the various density bonuses that were provided for sustainability features (such as green roofs, combined heat and power, and renewable energy).

Surprisingly, engaging two of the area's largest project finance investors actually led to the more robust incorporation of sustainability principles throughout the code.

The Capitol Region Development Authority (CRDA)—which has invested nearly \$60 million to develop downtown housing—supported carbon footprint reduction strategies such as authorizing micro-units of just 300 square feet, radically changing parking rules, and creating Complete Streets that emphasize walking and biking. At the public hearing at which the comprehensive zoning was adopted, CRDA praised the code as “prescient” and facilitating “long-term economic health and growth.”¹⁴⁹ What was gratifying about CRDA's support was that CRDA was not predestined to support the code. It is a quasi-government agency who cares as much about the bottom line as any traditional real estate developer.

Similarly, the CT Green Bank—a global trendsetter in renewable energy investment with \$1 billion invested statewide—advised drafters on requirements (such as electric vehicle charging stations in car lots with thirty-five or more cars), regulations (such

149. Letter from Michael Freimuth, CEO, Capitol Region Dev. Auth., to City of Hartford Planning & Zoning Commission (Jan. 12, 2016) (on file with author).

as allowing solar and wind energy everywhere), and incentives (such as density bonuses for green roofs) that the Green Bank predicted will steer significant renewables-related investment to Hartford, which has some of the highest energy cost burdens in the state. The Green Bank testified that the code would “remove barriers to and encourage deployment of solar and other clean energy.”¹⁵⁰

Hartford’s success suggests that consulting with the development and business community early and often is key to the adoption of a new code. Also helpful is identifying champions that sit on the zoning decision-making body who can help promote sustainability initiatives and establish open lines of communications with interested parties. There is no substitute for a trusted resource who can provide information about potential impacts, including cost savings from reducing regulations and incentives for desirable development features, that can also improve real estate developers’ profitability. These strategies can work for cities of any scale.

D. Collaborate with Institutions of Higher Learning

Many cities and towns have or are near to institutions of higher learning, ranging from technical schools to community colleges to universities. In Hartford, we found that professors and students were more than willing to lend expertise to our effort. Throughout the multi-year drafting process of the code, at least a dozen UConn Law School students researched countless legal issues, ranging from low-impact stormwater development to artificial turf impacts. In addition, teams of Trinity College students photo-documented blighted and underutilized areas near new bus rapid transit stations, which helped identify transit-oriented development parcels for the updated zoning map.

For Hartford, this “lesson learned” continues to be useful to ongoing planning efforts. An outgrowth of the sustainability work on the zoning code has been the creation of a Climate Stewardship Council, a multi-stakeholder collaborative working under the umbrella of the Planning and Zoning Commission. This Council

150. Letter from CT Green Bank to City of Hartford Planning & Zoning Commission (Jan. 12, 2016) (on file with author).

has developed a Climate Action Plan, which has been formally adopted by the Court of Common Council (the local legislative body).¹⁵¹ The drafting of that Climate Action Plan was aided by interns from the University of Connecticut College, Trinity College, Eastern Connecticut State University, Central Connecticut State University, and the University of California at Berkeley, as well as a graduate student in the Environmental Defense Fund's Climate Corps Fellow program. Each of these interns contributed to the climate action process that grew out of Hartford's innovative zoning code.

Cities with especially complicated development patterns or large land sizes may find faculty and students useful if they are assigned to work on specific projects. Cities with large and well-funded zoning staffs or consultant teams may be less likely to need the help. But most cities, especially those with constraints on funding and staff, can benefit from collaborations with local educational institutions—particularly if they want to push the envelope of zoning innovation, as happened in Hartford.

V. CONCLUSION

Over the last few years, Community Solutions—a non-profit organization that now owns the Swift Factory—has convened residents and community organizations to envision the site's future. It has received approval for building plans that include a community kitchen, garden, health clinic, counseling space, sustainable sitework, and bike parking—all much needed by the neighborhood, and most of which would have been impossible under the old zoning code. The project broke ground in the summer of 2018. The factory's rebirth will help catalyze neighborhood progress while addressing concerns of equity and environmental sustainability.

Hartford's comprehensive rezoning aims to see this kind of development happen all over the city. Already, perceptions are changing: the city has received a statewide award for economic development from the Connecticut Economic Resource Center, a statewide award from the American Planning Association for

151. See *Our Plan*, HARTFORD CLIMATE STEWARDSHIP INITIATIVE, <https://hartfordclimate.org/our-plan/> (last visited Dec. 27, 2019).

“Transformative Zoning Code,” an award from the New England Chapter of the Congress for New Urbanism for the form-based code, a “Hero of the Year” award from a national Complete Streets-focused publication, and sustainability awards from our regional council of governments, food policy advisory commission, and statewide coalition of municipalities.

These awards may encourage people to consider Hartford, a long-struggling post-industrial city, to be an attractive place to work, live, and invest. While comprehensive zoning reform is by no means enough to accomplish the revitalization of a challenged city, it may well be necessary, and can be a powerful part of that process.