

APPROACHES TO ZONING

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American cities and counties use zoning to accomplish a number of purposes. Some of these purposes are well established—such as the maintenance of stable residential areas and the prevention of health and safety hazards. Others—such as promoting transit-oriented development, promoting aesthetic values, encouraging infill development, and creating walkable communities—are newer. All of the purposes and powers of zoning are rooted in the police powers that the State grants to local governments.

Zoning, subdivision controls, and other regulations also are intended to implement City plans, visions, and land use goals. A zoning code translates the policies of a comprehensive land use plan, known as a General Plan, into parcel-specific regulations. Zoning should be used to implement land use, urban design, and open space goals articulated in the General Plan.

Zoning regulations traditionally have been used to separate incompatible land uses, minimize nuisance impacts and environmental harm, and coordinate or time development intensity with supporting public infrastructure. Zoning is also effective for dealing with the geographic location of activities and for regulating the three-dimensional aspects of development with height, bulk, setback, and architectural design standards.

In sum, a zoning code has to deal with two basic concerns:

- How to minimize the adverse effects that buildings or the use of one's property can have on its neighbors; and
- How to encourage optimal development patterns and activities within a community, as expressed in planning policies.

TYPES OF ZONING

There are three primary approaches to zoning in use in the U.S. today: Euclidean (i.e. use-based), performance-based, and physical form codes. The pros and cons of these basic types of zoning are summarized in the following table. The table uses the term “prescriptive” to describe a rule-making process and the degree to which clear and objective standards for land use and development provide certainty to landowners, developers and the public at large.

Other types of zoning include:

- *Incentive zoning* essentially involves trade-offs between the municipality and the developer: the municipality relaxes certain zoning requirements in exchange for developer provision of an amenity, such as increased density, public open spaces, or a public benefit, such as better transit station access or affordable housing.
- *Hybrid zoning* seeks to integrate physical design (form-based) standards into otherwise conventional zoning ordinances, while sometimes downplaying use-based regulatory strategies.
- *Contextual or character-based zoning*, in which zoning rules are based on the way the surrounding environment looks and functions, combining elements of use, performance, and form-based schemes to maintain and promote neighborhood or community character. It may offer particular promise for communities grappling with one infill controversy after another.

WHAT TYPE OF ZONING DOES GOLETA HAVE?

Like many counties and cities, Goleta has a hybrid zoning ordinance that combines various elements of Euclidean, performance-based, and physical form-based approaches, inherited from the City. While base zone regulations are organized according to a standard Euclidean scheme, they are supplemented by differing degrees of design- and performance-based standards to regulate elements such as building heights and setbacks, buffers, and lot sizes.

Table 1: Comparisons of Types of Zoning Codes

<i>Type of Zoning Codes</i>	<i>Pro's and Con's</i>
<p>Euclidean: Most American zoning codes follow some variation of the Euclidean model, named after Euclid, Ohio's zoning code. Euclidean zoning schemes divide jurisdictions into zones, wherein certain types and intensities of uses are allowed. Historically, these zoning schemes have been relatively homogeneous, with separate zones for residential, commercial and industrial uses, and have worked to segregate dissimilar uses. More recently, Euclidean codes also have been used to create mixed use zones, although that was not the original intent. Euclidean zoning codes typically specify allowed uses, maximum residential density, and bulk and dimensional standards.</p>	<p>Euclidean codes tend to be largely prescriptive and therefore work best at preventing the most basic problems or nuisances. They are less effective in dealing with fine-grain neighborhood character issues that often arise in places where infill and redevelopment are most common, and they make up-zoning to higher densities in built-out areas more difficult. Within newly developing areas, Euclidean codes need to be linked to <i>land division or subdivision regulations</i>. These often play a very important role, supporting zoning, because they provide the statutory basis for decisions on street networks, pedestrian connections, and the location of parks, open spaces, and civic facilities.</p>
<p>Performance-based: Performance-based codes include objective, quantifiable standards that are applied to uses to reduce impacts, promote land use compatibility, and improve the quality of development. The regulations and review procedures in these codes generally focus on how uses operate. Basic performance standards may include standards that directly limit impacts (e.g., noise standards) as well as standards that control impacts indirectly by constraining intensity of operations (e.g., floor area, residential density).</p>	<p>Performance-based codes are somewhat less prescriptive than form-based codes, at least in terms of design details, and allow for more architectural creativity and context-based solutions. They may be more complicated to administer than conventional zoning or form-based codes, but they can provide more certainty as to use and density/intensity and so may be favored by the development community and neighborhood organizations over codes that prescribe architectural design or use public hearings and conditions of approval to ensure land use compatibility.</p>
<p>Physical form-based: Form-based codes prescribe the design or type of building, street, or neighborhood subarea, with limited or no restrictions on use. They typically include generic design prototypes for housing and other buildings and their relation to the street and to each other. This approach may differentiate neighborhoods, zones, and corridors; provide for a mixture of land uses and housing types within each; and provide specific measures for regulating relationships between buildings and between buildings and outdoor public areas, including streets.</p>	<p>Form-based codes tend to be highly proscriptive. They are a way to express what is desired rather than what is discouraged or prohibited. These codes address matters outside those traditionally thought of as zoning (e.g., street design, sidewalks, parks, and civic spaces), and so often portrayed as more "holistic" than conventional zoning. They provide a way to bring planning and design considerations into zoning. These codes are effective where strong design guidance is needed.</p>

As work on the new Zoning Ordinance proceeds, the City needs to consider a shift away from its reliance on Euclidean use-based and hierarchal regulations. Design- and performance-based regulations can better accomplish many of the City's identified goals, such as pedestrian-friendly mixed use, and the provision of a variety of housing types. It is also likely that the City will place a new emphasis on incentive zoning to encourage desired types of development, including affordable housing, infill, and the redevelopment of declining commercial areas. Throughout the process, the Planning Commission will be evaluating the ability of various zoning approaches to achieve its stated goals, while keeping in mind the differing levels of flexibility offered by each of these approaches, as discussed in the following section.

THE BASIC DILEMMA: FLEXIBILITY VS. CERTAINTY

As Goleta considers how best to improve its zoning regulations, one issue will be how to find the right balance between flexibility and certainty that will best implement the General Plan. The dichotomy between these concepts creates tension, not only for City officials and staff who use the ordinance on a day-to-day basis, but also for homeowners, business owners, and others who may only come into contact with zoning a few times over the years they may live or work in the City. Everyone wants to know the rules and standards by which new development will be judged – how are decisions made to approve, conditionally approve, or reject applications? And, for many, knowing the timeframe as well as the criteria for approval also is important – who has appeal rights, and when is a decision final so a project can proceed.

For others, flexibility is important: a site or existing building may be unique, the design innovative and responsive, or the public benefits so compelling that some relief from underlying requirements may be appropriate. The perspectives of code users may help inform the discussion about this issue.

Users' Perspectives

Expectations about what zoning should or should not do, and how far it should go, are different, depending on individual perspectives. Applicants view zoning differently than design professionals, and City staff perspectives are not always the same as those of residents or City officials. At the risk of over-simplification, we offer the following set of expectations for different code users as a starting point for thinking about regulatory options.

Applicants

Individuals applying to the City for a zoning approval through a permit or land use review generally want to know:

- **First and foremost, what can I do with my land?** I have a specific use in mind – is it allowed? Or, I don't have a specific use in mind, but am interested in knowing what uses are permitted on the property.
- **What are the rules that the City follows for development review?** These include use regulations, development standards, review procedures, and criteria for decision-making.
- **What relief is available if a regulation or standard constrains a design solution or otherwise limits what they would like to do with their property or their building?** In thinking about relief, it often is useful to distinguish concerns about what the allowable uses are (recognizing that use variances are illegal and the only way to accommodate different uses would be through a zoning ordinance or map amendment) from concerns about how to accommodate a design or improvement on a lot. Relief may be needed from physical development standards (e.g. setbacks or fence limitations) or from performance requirements that relate primarily to the impact of a use or building design on an adjacent lot.

Design Professionals

Architects and other design professionals typically want to know the answers to the same questions applicants pose, but because of their specific role in a project, they often want to know more specifically how much flexibility they can have for site planning and architectural design.

The flexibility that a design professional typically seeks includes:

- Relief from overly prescriptive standards, including setbacks, building height, bulk and articulation, landscaping, location of parking, and design standards (e.g. colors, finishes, roof pitches, etc.); and
- Relief for uses or activities with unique needs (e.g. theater scenery lofts, Internet server farms, drive-through windows, etc.).

APPROACHES TO USE CLASSIFICATIONS

The focus of this section is on how the zoning update should deal with the classification of uses. The recommendations in the main body of this paper respond to key issues identified by the consultant team with input from City staff, code users, and the community.

OVERVIEW OF EXISTING USE REGULATIONS

Key issues of concern based on analysis of the existing ordinance relate to use classification, use definitions and terminology, and poor formatting. Because of these problems, the use regulations are lengthy, unclear, and overly complicated, making the ordinance difficult to administer and enforce on a day-to-day basis. In turn, this can result in delayed permit applications, the appearance of ever-changing requirements throughout the review process, inconsistent zoning decisions, problematic integration of new uses into the existing framework, and inadequate tools to address development and design impacts. These concerns can largely be addressed by reorganizing the existing use regulations into a more logical and systematic framework. A strong framework will make the regulations more thorough, straight forward, and less complicated, resulting in an ordinance that is easier to understand and apply.

Other specific concerns regarding use regulation have been highlighted by City officials, City staff, and residents. These concerns include: treatment of nonconforming uses; lack of regulations promoting mixed-use development; and problem uses such as drive-through restaurants,

animal boarding facilities, mobile food vendors, unscreened commercial and industrial storage, telecommunications, group homes, and wind generation facilities. The proposed framework for use regulations will enable these issues to be addressed officially with appropriate standards set.

Through these revisions, the City must ensure that it continues to comply with State and federal protections on specific uses, including the following:

- The use of property for the care of up to six mentally disabled persons including support staff necessary to assist residents must be regulated as a single-family residential use;
- Family care homes, group homes, and foster homes for up to six persons cannot be subject to regulations that are more restrictive than those imposed on similar dwellings in the same zone;
- In-patient and out-patient facilities licensed to treat persons with mental disabilities or substance abuse problems must be regulated in the same manner as properties used for treatment of general medical patients.

Use Classifications

Goleta's existing ordinance reflects its age, particularly with respect to use regulation. Most problematic is the fact that the ordinance does not include a unified use classification scheme that is defined by regulation. As such, the ordinance simply provides long lists of permitted and conditional uses on a zone-by-zone basis. Within each zone, uses are not always presented in a logical sequence—for instance, by use types to simplify the process of comparing how the same use is regulated in different zones. The regulation of uses through use lists—a common characteristic of old-style zoning ordinances—can lead to a variety of problems, including:

- **Bulky, Inconsistent Regulations.** The regulation of uses through use lists can lead to confusing, overlapping, and inconsistent regulation. A hierarchal or cumulative structure is particularly problematic when a code user must refer back to the permitted uses in a C-1 zone to determine permitted uses in the C-2 zone. This often means that a code user must flip through many pages just to determine what uses are permitted in a zone.
- **Excessive Number of Uses.** Because uses are tailored to the specific zones, many of the existing use lists include very long lists of

very specific uses. Many of these uses are either similar or identical, but a code may frequently use different terms within each of the separate zones. When slightly different wording is used, it is sometimes unclear whether the choice of terms is inadvertent or meant to convey nuanced differences in allowed uses.

- **Land Uses vs. Facilities, Development Standards, and Supplemental Regulations.** Some ordinances attempt to regulate on-site facilities, building types, and activities in its use regulations. For instance, incidental concessions sales, parcel delivery terminals, tent revival meetings, frozen food lockers, music composition, tire retreading, townhouses, and the synchronization of film with soundtracks may appear in a use list. The use lists also may include development processes and approaches, such as density bonuses and grading projects, that should be addressed in the development standards, limitations, and regulations for the particular zone, or in a separate chapter.
- **Industrial Classification by Product.** Some ordinances regulate industrial activities based primarily on the finished product, not the means of production, which is the characteristic that most significantly affects compatibility. For instance, an ordinance would list uses such as: lard manufacture, the manufacture and refining of potash, tallow manufacture, and brick manufacture. Commercial uses and shops also may be classified according to the specific product produced (e.g., bakery shops, book binderies, lapidaries, printers and publishers, reupholstering), rather than the nature of the industrial process. As a result, these ordinance include exhaustive lists of industrial and manufacturing products and then classify them as either permitted or conditionally permitted. In some zones, a code may use broader categories such as assembly plants and fabricating, which are somewhat more informative but still fail to distinguish uses based on operational characteristics such as noise, vibration, use of hazardous materials, etc. that should be a significant basis for determining how to regulate the activity.
- **Classifications by Prohibitions.** In the heavy industrial zones, allowed uses also may be defined negatively. An ordinance would state that land in these zones can be used for any purpose except those explicitly prohibited or controlled in the chapter. Prohibited uses are generally limited to dwelling units, schools, hotels, hospitals, and other care facilities. This framework is in some ways useful because it avoids the problems of over-specificity that exist in other zones and allows new or unlisted uses to be easily integrated. This level of vagueness, however, leaves a City with very few enforcement

options if a serious new or unconsidered incompatibility arises, so it should generally be avoided. Moreover, the fact that some uses are explicitly prohibited suggests that the code allows any use that is not identified as either permitted or prohibited.

- **Difficult Integration of New Uses.** Another common concern with the use lists approach is the integration of new uses. Without a unified classification scheme, it becomes difficult to assign new uses to the existing use lists, which may also affect the ability of the ordinance to maintain consistency across zones.

Use classifications describe one or more uses of land that have similar characteristics but do not list every use or activity that may be appropriately included within the classification. In contrast to definitions, which are generally organized alphabetically, use classifications are relatively broad categories of uses that have similar characteristics or functions. Classification descriptions specify the distinguishing characteristics of different uses in order to identify uses that should be regulated differently. Like definitions, use classifications must be sufficiently specific to avoid ambiguity. It should be noted that categorization of different uses within the same classification does not imply that they should be permitted in the same zone (e.g. detached single family, multiple family, and group living accommodations are all residential uses). When there is uncertainty about how to classify a use, the Planning Director would make a determination. The Director may determine that a specific use should be reclassified if its characteristics are substantially incompatible with those typical of uses named within a particular classification.

A single use table for each zone type or for residential and non-residential zone types can simplify things greatly. For instance, a use table that is organized by use classification indicating the permitted and conditional uses by zone type would replace the need for the “Permitted” and “Conditional” use subsections in each zone sections.

A unified use classification scheme would also easily reduce the number of listed uses in Goleta. The table below illustrates how an existing residential uses might be reclassified by a system of use classifications. Apartment houses and townhouses would be combined and classified as a multi-family residential type; dwellings for servants and guests would be classified as an accessory use. Accessory buildings constructed simultaneously with, or subsequent to, the main building on the same lot, and density-controlled development projects represent physical structures and should not be classified separately as uses. Separate development standards for accessory structures would regulate size and

location. The new ordinance would maintain the current standard of interpretation that any use not listed in a particular zone is prohibited.

Table 2-1: Simplified Classification of Residential Uses

<i>Existing Residential Uses</i>	<i>Simplified Use Classifications</i>
Accessory buildings and structures	Accessory Use
Adult Residential Facilities	Group Residential ¹
Apartment Houses	Multiple-Family Residential
Density-Controlled Developments	Not classified as a use
Detached Living Quarters for Guests or Servants	Accessory Use
Family Day Care Homes, Small	Family Day Care
Fraternity and Sorority Houses	Group Residential ¹
Mobile Home Parks	Mobile Home Parks
Residences, Single-Family	Single-Family Residential
Residences, Two-Family	Two-Family Residential
Rooming and Boarding Houses	Group Residential ¹
Second Units	Secondary Dwelling Unit
Townhouses	Multiple-Family Residential

1. Additional subclassifications can be developed to address specific issues and distinguish residential care, for example, from transitional housing and other forms of group housing.

Source: Dyett & Bhatia

In general, it is preferable to classify industrial and manufacturing activities by the means of production and the potential off-site impacts, and not the products themselves. By defining industrial uses as either custom (small-scale manufacture by hand), general (products manufactured from extracted or raw materials), or limited (products manufactured from prepared materials), the impacts of production activities can be better regulated, and it will be easier to distinguish uses that are appropriate in particular zones.

Use Definitions and Terminology

A unified classification scheme would not only address the concerns resulting from Goleta’s use lists approach, but would also resolve several issues related to use definitions and terminology, including a distinct lack of use definitions, outdated terminology, the inclusion of embedded policies in the use descriptions, and poor formatting.

PERMITTED VS. CONDITIONAL USES

City staff and stakeholders expressed interest in reducing the number of conditional uses which require notice and hearings, and giving staff more

administrative approval authority. There are several ways to reduce the number of conditional uses:

- Permit outright those uses currently permitted with conditions, where appropriate;
- Allow more uses to be approved administratively by the Planning Director; and
- Permit with limitations (e.g., specific use-based locational developmental, and operational standards) those uses currently permitted with conditions that can be approved by the Planning Director.

With respect to the first approach, many conditional uses in the existing ordinance are appropriate considering the circumstances, such as conditionally permitting theaters and auditoriums in the neighborhood business zone. This is because site-specific impacts can be considered based on neighborhood concerns expressed at public hearings, and appropriate conditions of approval then applied to minimize impacts.

Potential impacts can be addressed with many standards. A new “limited” designation concept would allow the imposition of standards and performance requirements that recognize the types of uses and project conditions that generate adverse effects. For example, specified retail establishments with up to 5,000 square feet of floor area and hours of operation between 7 a.m. and 9 p.m. could be permitted by right if located at the intersection of a local street (or higher classification) and an arterial. Another example would be to allow duplexes in single family zones on lots significantly larger than the minimum lot size required, so long as development standards are met—a policy that would implement a goal of providing a mix of housing types in all zones.

A limited review process would simplify the use regulations, avoid extensive reliance on conditional use permits, and streamline approvals by deeming such uses permitted subject to codified standards. Adoption of this approach will also allow a reduction in the number of zones as limitations and performance criteria would be tailored to the type of use. The incorporation of use-based standards and limitations will also help to promote mixed-use development by reducing the discretionary zoning review for projects that conform to specific requirements regarding size, siting, hours of operation, and similar objective standards. The ordinance would then have three designations, each with two sub-tiers:

Type I: Permitted Uses.

- *Ia: Ministerial Review* (e.g., *Zoning Clearance*). No discretionary review and no conditions of approval; subject to development standards.
- *Ib: Quasi-ministerial Review* (e.g., *Tree Permit*). Discretionary review for compliance with standards, possible site-specific investigation; conditions of approval may be required; subject to development standards.

Type II: Limited uses, which are permitted provided specific requirements are met.

- *Iia: Ministerial Review*. No conditions of approval or public hearing; approved by the Planning Director.
- *Iib: Quasi-ministerial Review* (e.g., *Waivers; Reasonable Accommodations Modifications*). Public hearing is required if requests are made from the public or adjacent owners; conditions of approval may be required.

Type III: Discretionary Review.

- *IIia: Conditional Uses*. Subject to public hearings and discretionary review at either the Hearing Officer, or Planning Commission, for which conditions of approval may be required.
- *IIib: Legislative Actions* (e.g., *Plan amendments, zone changes*). Public hearings at the Planning Commission and City Council, for which conditions of approval may be required.

This three-tier system is simple from an administrative standpoint, and would enhance certainty and predictability in the application review process.

BASE VS. OVERLAY ZONES

In most zoning ordinances, the zones that fall under a handful of district classifications, known as “base zones.” These base zones, such as Residential, Commercial, Mixed Use, Public, and Industrial, set the basic regulations that apply within the zone. A community may want to vary some of the regulations within the base zone to respond to particular conditions within defined areas. These are known as “Overlay Zones,” which modify the regulations applicable to the underlying base zone. Such zones impose additional regulations or allow modification of base zone standards in areas that display special physical characteristics or conditions. For instance, an overlay zone in a commercial district may have higher density limits or require greater building setbacks. Overlay zones are most often used in the regulation of floodplains, historic

preservation areas, airport environs, and hillsides. Overlay zones have also been used for neighborhood preservation, for transit station areas and transit corridors, scenic highways, riparian corridors, and coastal zones.

DEFINITIONS AND OTHER REFERENCE TOOLS

Many zoning ordinances place definitions near the beginning, between introductory provisions and zones. While this placement may seem logical, as it establishes the rules for meaning to be applied to the rest of the ordinance that follows, it also can lead to usability problems. The section is qualitatively different than the other parts of the zoning code; instead of establishing policy, the definitions act as an auxiliary reference tool for the rest of the ordinance. As such, they should ideally be in a place that can be easily and quickly turned to in the case of textual ambiguity. Sandwiched between two code sections, the present positioning of the section does not allow this type of quick access. A better location for the definitions is at the end of the ordinance, where users do not have to keep a bookmark in order to find it. Other reference provisions, such as rules of measurement and standards for the interpretation of language, should also be moved to this auxiliary division in order to facilitate reference when needed. The City can also incorporate the definitions as a pop-up window in its online ordinance, as the City of Chicago has done. With a pop-up, users can navigate the text with the definitions open at the side for easy reference when needed.

