

REFORMING THE BOSTON ZONING CODE

by Sara C. Bronin

JANUARY 2023

created for the Boston Redevelopment Authority
(D/B/A/ Boston Planning & Development Agency)

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Bronin founded and directs the National Zoning Atlas, zoningatlas.org, which aims to digitize, demystify, and democratize information about zoning in as many as 30,000 jurisdictions nationally. In 2020, she founded and led Desegregate Connecticut, a coalition of 80 nonprofit organizations that helped advocate for the first major statewide zoning reforms in three decades. Previously, she chaired the City of Hartford’s Planning and Zoning Commission, where she oversaw the nationally-recognized (including the Driehaus Award from Smart Growth America) overhaul of the city’s zoning code.

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***Postscript:** This report preceded the author’s tenure as the Chair of the U.S. Advisory Council on Historic Preservation, and it does not reflect her official position or the position of that federal agency.*

INTRODUCTION

The Boston Zoning Code governs nearly everything that gets built within city limits. It has significant, and not necessarily positive, impacts on social fabric, the economy, equity, the environment, resiliency, and public health. I have been tasked with taking a hard look at the Boston Zoning Code and charting a path to reform it to ensure it produces the city Bostonians say they want.

When first adopted in 1964, the Boston Zoning Code was fairly typical of codes nationally. It divided land into districts and distinctly regulated the uses, structures, and lots in each district. While the Zoning Code continues to perform these basic functions, it now deviates greatly from the typical American zoning code. Over the last six decades, officials have added thousands of pages and dozens of new “articles” (chapters), increasing the number, type, and scope of the original regulations. These changes have been made without a comprehensive vision for what they are intended to achieve. Paradoxically, the much-amended Zoning Code has not kept up with the changing times. Rather, it has become detached from modern realities – and ignored in practice.

Part I of this report assesses the Boston Zoning Code, finding it bloated, outdated, inconsistent, and inequitable. Part II posits that a significant contributor to the Zoning Code’s current state is the dominance of neighborhood-specific, rather than citywide, planning. Part III lays out a framework for reforming the code, including reversing neighborhood-specific zoning, establishing drafting benchmarks, adopting form-based zoning, and deliberately advancing the City’s planning goals. And Part IV offers two pathways to achieve reform: a complete overhaul – highly preferred for reasons articulated below – and an incremental approach.

I. ASSESSING THE BOSTON ZONING CODE

Like every other zoning code in the country, the Boston Zoning Code divides land into districts and distinctly regulates each district. The Zoning Code says which districts allow residential, commercial, industrial, and open space uses. It dictates the size of lots, as well as where buildings must be located on lots, and how those lots may be developed. And the Zoning Code governs building design, including height, bulk, and materials. In regulating uses, lots, and buildings through districts, the Boston Zoning Code performs the same functions as other zoning codes.

The manner in which the Zoning Code performs these functions, however, is both atypical and problematic. While individual provisions might well appear perfectly rational, even harmless, they must be assessed cumulatively, at a macro level, to understand the overall impact of the Code as a whole. In taking a broad view, and comparing the Boston Zoning Code to the codes of similar cities, a few things become clear. First, the Zoning Code is abnormally long and complex, far exceeding average metrics. Second, it is outdated, containing antiquated terms and creating regulatory hurdles that ignore current conditions. Third, it is inconsistent from one base district to the next, between overlay districts and base districts, and in its general regulatory posture. And finally, it is inequitable as written and in its application. This assessment considers each of these four characterizations in turn.

A. ABNORMALLY LONG AND COMPLEX

The first thing one notices about the Boston Zoning Code is its length: it runs 3,791 pages across 90 “articles” (chapters). To some extent, length is a proxy for complexity, because every page contains distinct regulatory text. The longer the code, the more rules with which property owners must comply. Too many rules usually mean more bureaucratic hurdles, more time, more confusion, and more expense for owners. Putting the length and complexity of the Zoning Code in context can help us understand whether it goes too far.

1. IDENTIFYING APPROPRIATE COMPARATOR DOCUMENTS

Determining whether the Boston Zoning Code is abnormally long and complex requires us to identify which legal documents and standards should be considered “normal.”

We can start by comparing the Zoning Code with the Boston Municipal Code, which governs all aspects of City administration, including schools, public works, public health, licensing and inspections, and environmental protection. The Municipal Code runs just 839 pages, 22% the length of the Zoning Code. But this comparison doesn’t assess apples and apples, given the differing regulatory scopes between the two bodies of law.

As a second attempt to identify appropriate comparators, we can compare Boston’s code to the zoning codes of all 351 Massachusetts municipalities. Doing so reveals the Boston Zoning Code runs 29 times longer than

the statewide average (131 pages).¹ But this comparison, too, seems questionable given significant differences between Boston’s population and real estate market and those of a typical Massachusetts town.

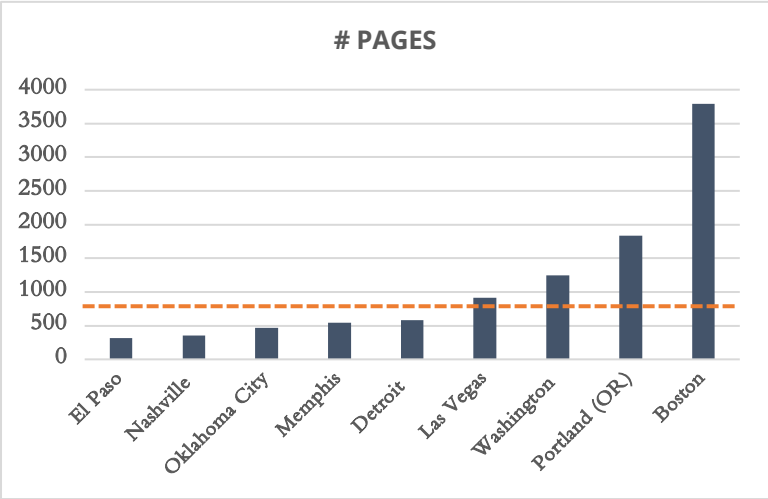
Instead, we should compare Boston’s code to the codes of American cities with similar populations, somewhere in the 600,000s range. Presumably these cities have similar land use conditions, such as high-rise downtowns, mid-rise mixed-use areas, a diversity of residential neighborhoods, an urban parks system, and comparable infrastructure demands. The eight cities that fit this bill include: Detroit; El Paso; Las Vegas; Memphis; Nashville; Oklahoma City; Portland, Oregon; and Washington, D.C.

Reviewing the codes of these cities reveals Boston’s position as an outlier. The following sections compare the number of pages in the zoning code texts, then the amount of regulatory text in relation to the land area, and finally the number of zoning districts in each city.

2. COMPARING ZONING CODE LENGTH IN SIMILAR CITIES

Now that we have identified the right set of legal documents for comparison, we turn to reviewing the length of the zoning codes in the eight cities and Boston. These charts show how far above average Boston sits:

CITY	# PAGES
El Paso	320
Nashville	349
Oklahoma City	466
Memphis	542
Detroit	579
Las Vegas	915
Washington	1,242
Portland (OR)	1,830
AVERAGE	780
BOSTON	3,791



On average, the eight comparison cities have zoning codes of 780 pages. Portland, Oregon, has the longest code, at 1,830 pages, which jives with the city’s reputation for having a robust local land use regulatory regime. The Boston Zoning Code is more than twice the length of Portland’s – and about five times the average length of all of the comparison cities’ codes.

Some might note that the eight comparison cities skew younger than Boston, and that Boston may need a longer code to manage its many layers of history and all of the quirks of its nearly four-centuries of existence. While it is important to protect Boston’s history, heritage, and charm, a 4,000–page code is not necessary to achieve that goal. Other cities with rich history and historical assets (such as Philadelphia, Chicago, San

¹ Zoning Atlas Massachusetts data collection, National Zoning Atlas (on file with author), January 2023. In neighboring Connecticut, the 180 codes assembled for the Connecticut Zoning Atlas. Connecticut Zoning Atlas, National Zoning Atlas, at www.zoningatlas.org/connecticut.

Francisco, and Seattle) have shorter codes, by far.² Even the Zoning Resolution of New York City – thirteen times Boston’s population, six times its land area, and with far greater density – covers “just” 2,751 pages.³ The fact that Boston’s zoning regime dates back a hundred years and has so many accreted provisions actually gives all the more reason to revisit it.

3. COMPARING ZONING CODE LENGTH RELATIVE TO LAND AREA IN SIMILAR CITIES

Length, standing alone, might paint a misleading picture. Cities with a larger land mass might require more voluminous regulations, simply because they have a greater volume of land to govern. So next, we should control for the area of land across our comparator cities. The table below illustrates the land mass in square miles, the number of pages of zoning code text, and the number of pages per square mile of all nine cities.

CITY	SIZE (SQ MI)	# PAGES	# PAGES/SQ MI
Nashville	526	349	0.7
Oklahoma City	621	466	0.8
El Paso	259	320	1.2
Memphis	303	542	1.8
Detroit	143	579	4.2
Las Vegas	136	915	6.4
Portland (OR)	145	1,830	13.7
Washington	68	1,242	20.4
AVERAGES	275	780	2.9
BOSTON	48	3,791	79.0

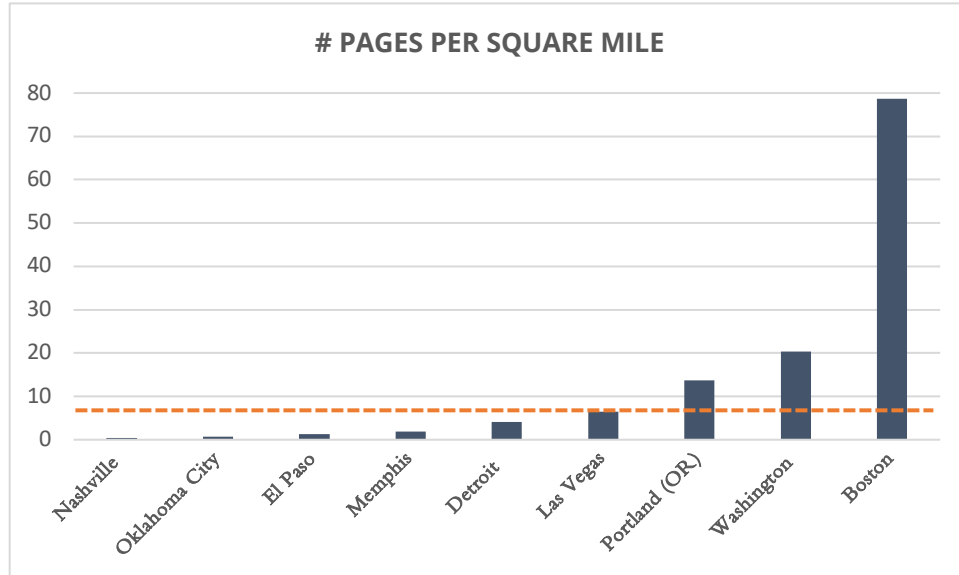
As it turns out, the cities with the most land – Nashville and Oklahoma City – have less than one page of zoning code for each square mile.⁴ On average, the eight comparison cities have three pages of code for each square mile of land area within their boundaries. The smallest city at just 48 square miles, Boston has 79 pages for each square mile of land – 27 times the average.

² For Bostonians who feel other cities better resemble Boston’s profile, note: Philadelphia’s code is 378 pages long, 1.6 million people and a land area nearly three times Boston’s; Chicago’s is 303, with 2.7 million people and an area five times Boston’s; San Francisco’s is 1,329, with 815,000 people and an area comparable to Boston; and Seattle is 1,292, with 735,000 people and an area nearly twice Boston’s. They’re all shorter than Boston’s code, with the longest (San Francisco’s) a third the length of Boston’s. And their length averages 826 pages, pretty close to the average of our eight comparable cities.

³ New York, New York, Zoning Resolution (exclusive of indices), at <https://zr.planning.nyc.gov/sites/default/files/article/Zoning%20Resolution%20Complete.pdf>.

⁴ Nashville is 11 times, Oklahoma City 13 times, Boston’s size.

Here's how that graphs out:



4. COMPARING NUMBER OF ZONING DISTRICTS IN SIMILAR CITIES

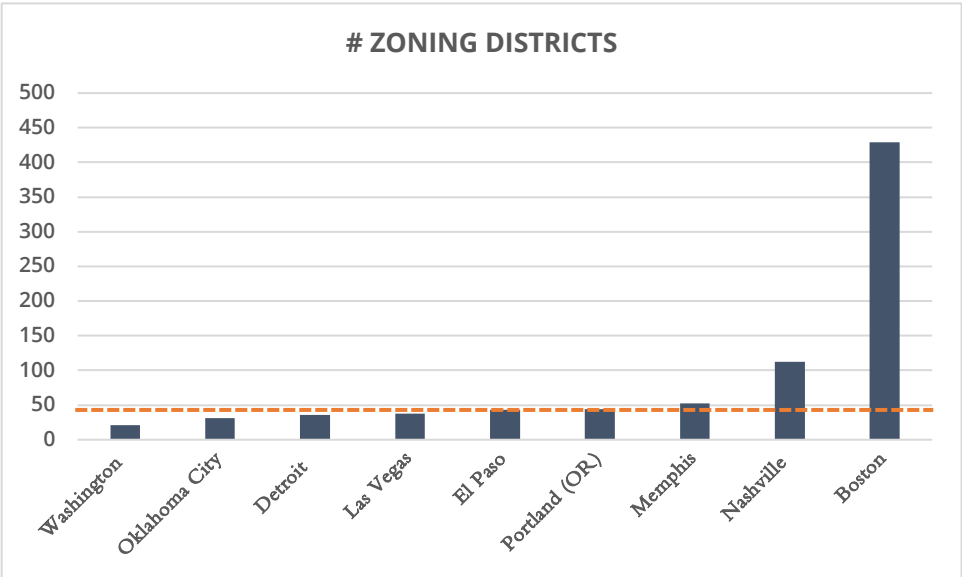
Yet another measure for complexity is a code's total number of zoning districts. A higher number of districts could mean more, and more different, rules with which property owners must contend. A browse⁵ of the zoning codes and maps in each of the eight comparison cities yields an average of 47 zoning districts, including base and overlay districts, and excluding individual parcel-specific districts (such as institutional plans or planned development districts) with tailor-made, negotiated rules.⁶ Among the eight cities, Nashville has the most zoning districts (112), followed by Memphis (52).

At 429 districts, Boston nearly quadruples the Nashville total. It exceeds the average of 47 districts more than nine times over. The Boston count includes 121 base and overlay districts, plus 308 distinctly regulated subdistricts whose distinct regulations the Zoning Code articulates. These subdistricts include protected areas, restricted growth areas, open spaces, transition zones, linkage developments, and sub-neighborhoods within neighborhood-specific districts.

⁵ "Browses" of zoning codes are likely imprecise, as I describe in great detail in the manual used to identify the number of zoning districts for the National Zoning Atlas. See Sara C. Bronin et al., *How to Make a Zoning Atlas 2.0*, at zoningatlas.org/how. Most likely these numbers exclude some special, or later-added districts, but the numbers in the chart should at least offer an order of magnitude for the number of zoning districts in the cities studied.

⁶ As another comparison, the team of the Massachusetts Zoning Atlas documented an average of 13 zoning districts across all 351 municipalities in the state.

The following chart depicts the comparative numbers of zoning districts:



The count of Boston’s districts excludes 129 planned development areas and 27 institutionalized master plans, each subject to negotiated rules not expressly stated in the Zoning Code. Adding these tailor-made plans to the total would yield a staggering 585 distinct sets of zoning rules within Boston boundaries.

At the margins, the length of the code and the number of districts may not always be perfect indicators of regulatory complexity. For example, Nashville’s code has 112 zoning districts (high, comparatively) but just 349 pages of code (low), so perhaps it is complex in some ways but not others. But the Boston Zoning Code has more pages (nearly 4,000), more pages per square mile (by a factor of 27), and more zoning districts (by a factor of 9) than eight comparison cities. It is not a marginal case; it is an extreme.

B. OUTDATED

With that comparative context behind us, we turn now to the second thing one notices about the Boston Zoning Code: its age. Enacted in 1964, the Zoning Code draws much of its structure and approach from the original zoning code, adopted in 1924. Over the last few decades, the Zoning Code has undergone hundreds of piecemeal revisions. Date-stamped amendments appear on average, every five pages.⁷ Some amendments reflect a “whack-a-mole” approach, added in reaction to an undesirable proposal or development. Structurally, the biggest change to the Zoning Code began in 1991, when the addition of the Roxbury Neighborhood District kicked off a series of neighborhood-specific articles and a flurry of new subdistricts.

Despite numerous amendments, the text of the Boston Zoning Code maintains obvious vestiges of the past, including antiquated words and concepts. More significantly, it greatly diverges from as-built Boston. That

⁷ 812 pages in the combined PDF of the Boston Zoning Code contain the words “as amended,” but this number does not correspond to the number of amendments, as often several amendments occur on the same page and many provisions have been amended multiple times.

is because over the years, amendments have rendered hundreds of thousands of parcels “nonconforming.” Owners of nonconforming properties must seek legal workarounds, including variances, to move forward with even routine proposals. These deficiencies signal a Zoning Code unmoored from today’s realities.

1. ANTIQUATED WORDS AND CONCEPTS

The pages of the Boston Zoning Code brim with outdated terms. It continues to refer to uses like “orphanages”⁸ and non-automated “telephone exchanges,”⁹ which have not existed in the Commonwealth for decades. It references “outdoor payphones”¹⁰ and “phonographs”¹¹ which are nearly extinct. It also incorporates terms most would find offensive, including “servants,”¹² “mentally retarded,”¹³ “drug addicts,”¹⁴ and “mentally deficient persons.”¹⁵ Though these terms may appear superficial and easily remedied, they reflect a legal document out of touch with modern times.

2. NONCONFORMITIES

The Zoning Code’s obsolescence goes beyond anomalous terms: there are serious, substantive discrepancies between its provisions and the city’s built environment. In zoning terms, these discrepancies are called “nonconformities,” meaning the conditions of a property that do not conform with, or satisfy, the Zoning Code’s provisions on uses, lots, and/or structures.¹⁶ A nonconformity is created when the Zoning Code changes and a parcel that satisfied a prior version of the code no longer complies with the amended version.

Property owners generally maintain the right to continue using their property in its nonconforming state, but they may not make the nonconformity worse. For example, if a legally-built duplex now sits in a single-family zoning district created after the duplex was built, the owners will not receive a permit to enclose an existing porch by right unless they convert the duplex to a single-family home. As another example, if a legally-built restaurant now sits on a lot smaller than an updated provision requires, the restaurant will not be able to add outdoor seating or indoor bar capacity by right unless the restaurant purchases enough property from a neighbor to make its lot conforming. A third example relates to the size of a building, often capped in the Zoning Code by a “floor-to-area ratio,” essentially the relationship between the square footage of the building and the lot area. A building that exceeds a subsequently-enacted floor-to-area ratio cannot expand; nor may it receive a permit for a change of use unless it complies with the newer floor-to-area ratio.

⁸ Boston, Mass., Zoning Code § 8-7, tbl. A.22A (hereinafter “Zoning Code”).

⁹ Zoning Code § 8-7, tbl. A.32.

¹⁰ Zoning Code § 8-7, tbl. A.31.

¹¹ Zoning Code § 8-7, tbl. A.37.

¹² Zoning Code § 10-2(a).

¹³ Zoning Code §§ 2(22A), 2(22B).

¹⁴ This term is used at least 17 times in the Code.

¹⁵ Zoning Code § 8-7, tbl. A.22 & A.23.

¹⁶ See Zoning Code § 2(34) (“Nonconforming use”, a use of a structure or lot that does not conform to a regulation prescribed by this code for the district in which it is located; provided that such use was lawfully in existence on the effective date of this code or, in the case of a use made nonconforming by an amendment of this code, on the effective date of such amendment.”). This definition is duplicated in § 2A, one of many examples of repetitiveness and redundancy in the Code.

A nonconformity has serious consequences. At a minimum, nonconformities generally prevent owners from improving their properties, or converting them to new uses.¹⁷ This often means the owners forgo renovations, losing the opportunity to improve their property’s value and dampening economic activity overall. Nonconformities that deter investment in historic buildings – which often thrive with adaptation – can lead to those buildings’ demolition by neglect. In the alternative, owners may complete work without acquiring a permit, creating a potential safety issue for themselves and their neighbors. Nonconformities also require the City to deny owners’ requests for certificates of zoning compliance, the lack of which may block pending sales or reduce the property’s resale value. These burdens and costs disproportionately affect lower-income residential owners and small businesses, which exacerbates inequality in the city.

It is difficult to measure the extent of nonconformities citywide, given the length and complexity of the Boston Zoning Code and the many different ways a single parcel may fail to conform. BPDA staff have begun that process, developing the following statistics calculating nonconformities across three regulatory dimensions (corresponding to the three examples above): the number of residential units, the size of the lot, and the floor-to-area ratio:

	Non-Compliant (% Parcels)	Non-Compliant (% Land)
# Residential Units (Residential Land)		
<i>Zoned 1-Family</i>	18%	20%
<i>Zoned 2-Family</i>	23%	25%
<i>Zoned 3-Family</i>	16%	20%
Lot Size (Res/Nonresidential Land)	42%	12%
Floor-to-Area Ratio (Res/ Nonresidential Land)	58%	24%

They found that roughly one in five parcels zoned for single-family homes, duplexes, or triplexes has a higher number of units than the Zoning Code currently allows for the district. Across all land (residential and nonresidential alike), 42% of parcels fail to comply with the Zoning Code’s lot-size requirements. And an incredible 58% of parcels citywide fail to comply with floor-to-area ratio rules. Given that the studied nonconformities cover just three of the dozens of rules the Zoning Code imposes on each parcel, the potential scope of potential nonconformities is vast.

Usually drafters of zoning codes attempt to craft amendments that avoid rendering large numbers of properties nonconforming. The prevalence of nonconformities in Boston may owe to the piecemeal method by which the Code has been updated over the last six decades. With so many nonconformities, there’s no “truth” in the Boston Zoning Code as written: in other words, someone cannot simply review it and quickly understand development patterns in the city. It diverges too greatly from built reality.

¹⁷ The Zoning Code does allow nonconforming uses to be expanded by 25% after a public hearing before the Board of Appeal. Zoning Code § 9-1. But this process requires a property owner to undergo significant expense and effort, possibly with only a small payoff given the 25% cap on expansion. The 25% cap may also encourage proposals that seek the maximum amount, since no one wants to apply twice, even though a smaller expansion may be preferable and more reasonable for the building or neighborhood.

3. VARIANCES

The Boston Zoning Code’s disconnect from reality is also reflected in the number of variance applications and issuances. A property owner will apply for a variance if he or she wishes to build something that deviates from strict compliance with the Zoning Code. They might seek to build a bigger or taller building than the code allows, use their property in the way the code does not allow, or make improvements to the lot that differ from existing requirements. Some variance requests result from the Zoning Code barring new types of uses, modern construction techniques, or evolving personal preferences. Others come from owners of nonconforming parcels, who in most circumstances¹⁸ must apply for a variance to build anything that does not eliminate or reduce the nonconforming condition.

To receive a variance, a property owner must meet the high bar set by the Code, proving special circumstances and “practically difficulty and demonstrable and substantial hardship,” among other things.¹⁹ One might guess that this high burden of proof deters all but the most worthy of applicants, and that even those who apply rarely meet this high bar. However, Boston sees a high number of both variance applications and variance issuances. Suffolk Law professor John Infranca found that in 2019, the city received 1,096 applications and issued 948 variances.²⁰ The largest group of requests sought deviations from the dimensional requirements (such as lot size and lot frontage) in the neighborhood-specific districts. The 86% approval rate suggests that the Boston Board of Appeal, which reviews variance applications, may accommodate these requests because the requests are viewed as minor or reasonable, even if the property owners can’t show a substantial hardship. It might also imply the Board of Appeal views the Zoning Code as overly restrictive, especially when many variance requests come with either community support or community silence (i.e., a lack of opposition). Whatever the reason, their high approval rate hints at a certain degree of infidelity to the Zoning Code as written.

Compared to other large cities, Boston again occupies an extreme, according to Infranca’s research. The number of variances in 2019 issued in Boston dwarfs the number of variances granted that same year in large cities with readily-available information, including Austin (109), Charlotte (99), Los Angeles (109), New York City (19), San Antonio (129), and San Francisco (101). Infranca concludes that Boston’s outlier status should inspire zoning reform that reduces reliance on the ad hoc variance process.

Revising the Zoning Code to reduce nonconforming uses and clarify desired flexibility could start to wean the city from its overuse of variances. It could also spare property owners the time and expense of a code so complex they need New York City-style “zoning expeditors” to navigate it.

C. INCONSISTENT

All zoning codes articulate different regulations for different districts, and different types of projects and properties. Indeed, that is the essence of zoning. In its bloated condition, however, the Boston Zoning Code enshrines an overwhelming number of regulatory inconsistencies that lack rational justification. This holds true for the 89 base districts assigned to every property, the 32 overlay districts assigned to some

¹⁸ But see Zoning Code § 9-1 (allowing a 25% expansion of a nonconformity after a public hearing, and under certain circumstances).

¹⁹ Zoning Code § 7-3.

²⁰ John J. Infranca & Ronnie M. Farr, *Variances: A Canary in the Coal Mine for Zoning Reform?*, 50 *Pepperdine L. Rev.* 443 (2023).

properties (and modifying the impact of underlying base districts), and the “negotiated” districts. This section will highlight a few examples and issues for each of these categories of districts.

Before we move on to these examples, though, I want to point out a single provision allowing the Board of Appeal to change virtually any provision it wishes. The Zoning Code expressly provides that for any project requiring a conditional use permit from the Board of Appeal, the Board may authorize deviations from the code’s written provisions on setbacks, lot dimensions, occupancy, maximum building size, driveways, parking, and other regulations, as long “as it deems [such deviation] necessary to assure harmony with the general purposes and intent of this code.”²¹ This provision functions like a variance in that it enables property owners to legally ignore the Zoning Code, but it relieves the owner of the burden of proving a hardship. It empowers the Board overseeing individual zoning applications with virtually unlimited power to abandon the written requirements of the Zoning Code. It seems to wholly undermine the rationale for all the slightly distinct rules, discussed next, in the first place.²²

1. BASE DISTRICTS

The Boston Zoning Code establishes 89 base zoning districts: 34 residential (including 18 neighborhood-specific districts), 31 commercial or mixed-use (including 9 downtown districts and 4 neighborhood-specific districts), 13 industrial, and 11 special districts (including 10 open space districts).²³ As noted above, the large number of districts suggest an inherent complexity. The large number of districts also introduces the possibility of inconsistency, intentional or unintentional, across the districts themselves.

Inconsistency indeed characterizes the Zoning Code’s treatment of its base zoning districts. The proliferation of neighborhood-specific articles – each with their own regulations of uses, structures, and lots – is one primary structural root of these inconsistencies. These articles often copy in full, then slightly or significantly modify, the Zoning Code’s generally-applicable regulations. Other articles, especially those more recently added, introduce additional deviations and contribute to the regulatory patchwork. In both substantive provisions and procedural requirements, the Zoning Code often applies very different regulations for the exact same type of development or feature. Cumulatively, these minor and arbitrary differences present an equity issue from neighborhood to neighborhood.

Substantive inconsistencies abound in the Zoning Code, making it easy to pick a few examples for illustrative purposes. Consider the following three examples in the areas of lot development (parking), buildings (height), and uses (housing conversions):

- **Parking:** Most cities cover minimum parking requirements in one section of a zoning ordinance, assigning minimum requirements to certain uses regardless of the location of those uses. In other words, parking requirements for shops, apartments, movie theaters, and office buildings do not differ for shops, apartments, movie theaters, and office buildings citywide. Article 23 of the Zoning Code (“Off-Street Parking”) appears at first glance to be the place to find such requirements in Boston.²⁴

²¹ Zoning Code § 6-4.

²² The Board of Appeal has the power to deviate from the rules in at least one other place in the Zoning Code: in the Coastal Flood Resilience Overlay District, the Board need not apply the district’s standards to properties listed on the National Register of Historic Places. Zoning Code § 25A-6.3.

²³ Zoning Code § 3-1.

²⁴ Confusingly, Article 23 calculates required parking spaces based on the maximum floor area required in the district for the particular use, rather than using the more common method, based on number of residential units or number of square feet in a commercial

However, BPDA staff recently documented almost 200 places in the Zoning Code with minimum parking requirements, including many requirements that differ even among similarly-developed neighborhoods.²⁵ It is hard to fathom a rational reason for so many different standards within a city of just 48 square miles.

- **Height:** Most cities cover maximum height requirements in a single chart, with specific caps assigned to districts. In Article 13 of the Zoning Code (“Dimensional Requirements”), Boston seems to offer just that: a dimensional regulations table, with 71 different height caps for buildings in various districts,²⁶ plus a few additional rules for the areas around the Boston Common and Public Garden, among other things.²⁷ But the Zoning Code’s dimensional regulations table is not the final word on height, any more than the parking article is the final word on parking. By my count, more than 800 pages govern heights – and not just through ordinary caps based on number of feet or number of stories. As one example of the Zoning Code’s regulatory “creativity,” downtown’s Midtown Cultural District offers street-frontage, subdistrict, housing priority area, planned development area, shadow, skyline, and skyplane-setback rules.²⁸ Besides making building design difficult, the myriad rules on height, along with the myriad *types* of rules, undermines the Zoning Code’s cohesiveness. Like the way it treats height, the Zoning Code extensively deviates from the table’s other provisions on lot size, lot area, lot width, floor-to-area ratio, usable open space, and setbacks.
- **Housing:** Most cities articulate which districts allow which uses through a “use” table. Boston employs this method, adopting a use table for some of its districts. However, its table occupies 51 pages and is filled with puzzles.²⁹ Among the many is the treatment of existing residential buildings that increase the number of units of housing (“housing conversions”). The use table allows apartments and group residences as-of-right (i.e., not as conditional uses) in two residential and two business districts.³⁰ However, in those very same districts, housing conversions are allowed as-of-right only with an asterisk, or are allowed as conditional uses with this symbol “↑” explained in the Zoning Code as follows:

*Where structures after conversion will conform to this code; provided that, in a density limitation district, the maximum number of dwelling units with usable interior living area of (1) less than 750 square feet, in a building having a gross floor area of 2,000 or more square feet, or (2) less than 525 square feet, in a building having a gross floor area of less than 2,000 square feet, is as follows, unless after public notice and hearing... the Board of Appeal grants permission for a larger number: one such unit, if the number of stories containing dwelling units is one to five inclusive; two such units, if the number of stories containing dwelling units is six or seven; and such units not limited if the number of stories containing dwelling units is eight or more.

building. In other words, Article 23 determines parking based on the hypothetical build-out of a particular lot, rather than the actual built reality – a bizarre way, even in the bizarre world of minimum parking requirements, to determine required spaces.

²⁵ Not encompassed in the BPDA count are several districts, largely downtown, that decline to require any parking for the typical project. See, e.g., Zoning Code § 38-22 (Midtown Cultural District), § 44-11 (Leather District); § 45-18 Government Center/Markets District); § 46-10 (Bulfinch Triangle District); § 47A-13 (Cambridge Street North District).

²⁶ Zoning Code § 13-1, tbl. B.

²⁷ Zoning Code § 13-1, tbl. B. (13).

²⁸ Zoning Code §§ 38-5, 38-7, 38-11, 38-16.1, 38-19.4, & tbl. B.4.

²⁹ Zoning Code § 8-7, tbl. A.

³⁰ Zoning Code § 8-7, tbl. A.7, 7B.

↑Provided that after conversion, the lot area per dwelling unit, the open space, and the off-street parking each meet not less than one-half the requirements of this code and that after conversion any nonconformity as to floor area ratio and yard dimension is no greater than prior to conversion.³¹

These convoluted provisions beg the question as to why housing conversions should be treated differently, and worse, in the very same districts, as apartment buildings with the same number of units.³²

Without delving too far into yet more examples, it bears repeating that the gaps widen between base districts (which can be placed anywhere in the city) and neighborhood-specific base districts tied to certain geographies (including the downtown districts). One illustration of this gap is that the use table, mentioned above, does not apply to any of the neighborhood districts.³³ As another example, the definitions of terms used in the Zoning Code differ in that Article 2A (“Neighborhood District Definitions”) applies to the neighborhood-specific base districts while Article 2 (“Definitions”) applies more generally. To make matters more confusing, neighborhood-specific district regulations (located in later articles in the Zoning Code) often redefine terms already defined in Article 2 and 2A, including those that should be used universally and consistently throughout the Zoning Code, such as “height,” “proposed project,” “applicant,” “floor to area ratio,” and “structure.” Differences among these competing definitions appear to serve no practical purpose.

Another major inconsistency between neighborhood-specific base districts and other base districts are design standards that vary widely from neighborhood to neighborhood. Applied by agencies, departments, and community groups, differing standards can result in arbitrary outcomes. Even the *same* standards can be applied differently, depending on unwritten rules – particularly when decision-makers retain significant discretion. A roof style, fencing option, material, or sign that might pass muster in one neighborhood might be totally barred a few streets over, whether the rules differ or not.

The Zoning Code misses an opportunity for consistency in design standards in the way it incorporates federal standards for the rehabilitation of historic properties.³⁴ Local governments often incorporate these standards verbatim into their historic district ordinances. The Boston Zoning Code declines to adopt them verbatim, instead including modified versions of them in several (but not all) neighborhood-specific articles. Boston regulators must review these provisions carefully to ensure they apply the unique version of the standards, and the slight differences likely befuddle architects and engineers trying to design to satisfy them.

Beyond substantive requirements, the Zoning Code also has an unusually complicated array of procedures. It requires most proposed projects to receive approval by multiple decision-making bodies, undergo design reviews, and/or manage public hearings. For any given application, public hearings might be required by the Boston Planning and Development Agency at two separate points (after the initial application and after a determination requiring additional “scoping”), the Boston Civic Design Commission at three points (after a referral to that commission, at a meeting of the design subcommittee, and at a full meeting of the

³¹ Zoning Code § 8-7, tbl. A.8.

³² My second favorite example is the “Airport-related remote parking facility” which is forbidden, according to a note, in: “the area of North Dorchester bounded on the north by Southampton Street, on the west and east by the Roxbury and Dorchester Avenue Neighborhood Districts, respectively, and on the south by Dudley, Stoughton, and Thornley Streets.” Zoning Code § 8-7, tbl. A.59A.

³³ Zoning Code § 8-7 (declining to apply the use table to a “special purpose overlay district, neighborhood district, downtown district, waterfront service district, waterfront manufacturing district, light manufacturing district, or the Harborpark District”).

³⁴ Secretary of the Interior Standards for the Treatment of Historic Properties, 36 C.F.R. § 67.7.

commission), the Boston Conservation Commission at two points, the Boston Parks Department (if the applicant proposes removing street trees or if the project is within 100' of a parkway), the Public Works Department, and the Air Pollution Control Commission. Additional reviews by ad hoc advisory committees appointed by the mayor³⁵ and neighborhood-specific community groups may also be required. These process requirements can dissuade developers from pursuing community-benefitting projects, including affordable housing, where years-long delays can drive up costs and jeopardize financing. Their inconsistent treatment from one neighborhood to another is also deeply problematic.

2. OVERLAY DISTRICTS

In addition to the multitude of base districts, the Boston Zoning Code identifies 32 overlay districts, including 17 subdistricts in the downtown overlay, which sit atop the base districts and, often, other overlay districts.³⁶ One overlay will change key regulatory features of underlying districts; overlapping overlay districts will do the same, but may contradict each other.

Generally, cities tend to use overlays somewhat sparingly, to achieve specific outcomes or planning. In most cities, overlay districts cover only a small portion of land. The most common type of overlay relates to flood hazards, usually assigned to flood-prone waterways and restricting development around them. Other common types of overlays relate to environmental conservation and affordable housing. Boston does have a flood hazard overlay, as well as at least two types of overlays that promote affordable housing construction. But it also far more overlays than most cities. The eight comparison cities, for example, have an average of eight overlay districts³⁷; Boston has four times as many.

In Boston, the Zoning Code imposes overlay districts (and their additional regulations) on 43% of the city.³⁸ That surprising figure implies an over-reliance on overlays to achieve desired outcomes.

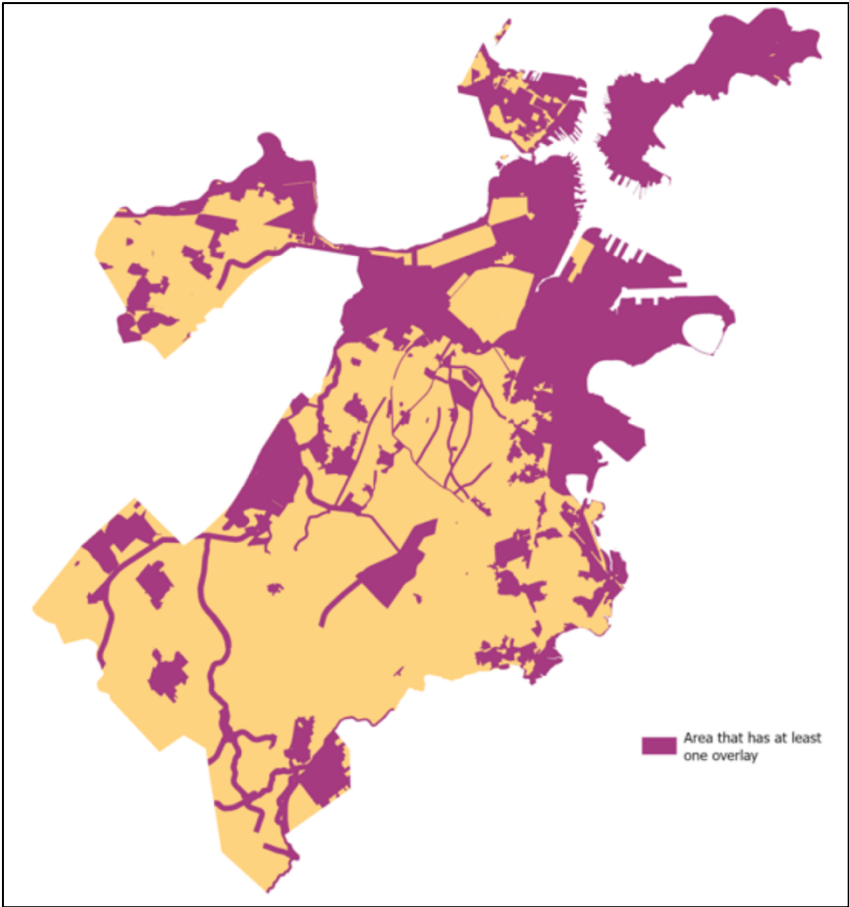
³⁵ Zoning Code § 2(36A).

³⁶ Zoning Code § 3-1A.

³⁷ Portland, Oregon, has the highest number of overlays in the group, at 19. Las Vegas and Memphis have 12 and 11, respectively.

³⁸ BPDA GIS staff calculated that the overlay districts described in this section, as well as historic districts and the Logan Airport area, govern 50% of the City's land area.

The following image shows all of the overlays in Boston in one combined map:



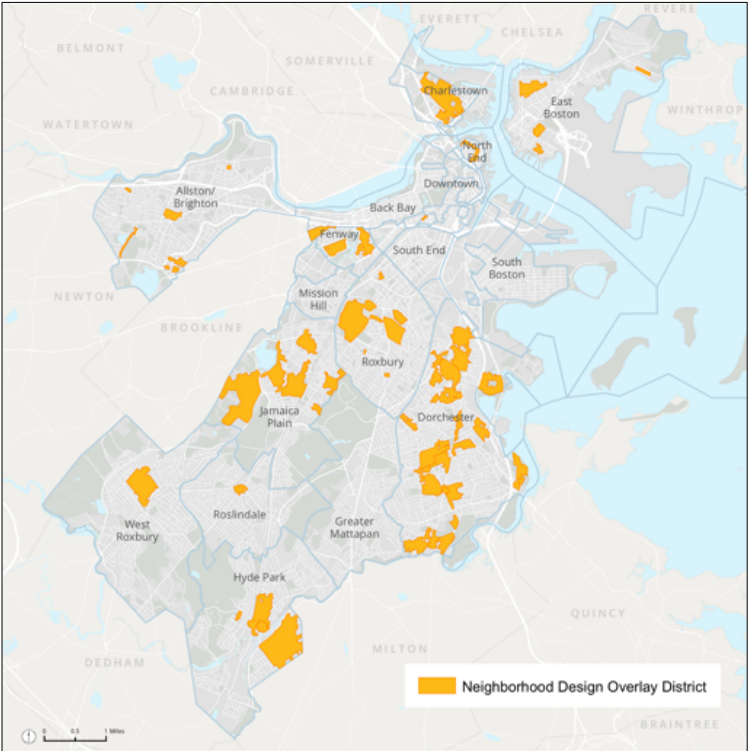
Of these, the Neighborhood Design Overlay District (NDOD) warrants additional discussion, because it exemplifies Boston’s piecemeal approach. The NDOD applies to 69 different areas³⁹ that together total 7% of the city’s land area,⁴⁰ which compared to other cities is a very high percentage of land to be devoted to a single overlay. Many of the areas subject to NDODs are historic, low-to-medium density, and lower-scale in terms of height, suggesting that a unified set of specific design guidelines could be easily applied to proposed projects within those areas. A review of NDOD provisions yields no such guidelines.

Instead, the NDOD offers open-ended processes, including design reviews, public hearings, and/or community discussions for even small projects within an NDOD. The NDOD designation puts residents in a reactive position (responding to projects after they have been designed), rather than a proactive position (establishing clear rules to which projects must be designed). So while NDODs are sometimes billed as a way for residents to assert more control over proposed projects, the timing of residents’ involvement leaves them flat-footed. What’s worse, the NDOD processes likely make projects more expensive solely because of extra costs and delays, and they do not necessarily result in better outcomes for those ostensibly empowered by an NDOD.

³⁹ Zoning Code §§ 51-43, 52-18, 53-42, 54-15, 55-27, 55-28, 56-27, 61-6, 61-13, 62-19, 63-18, 65-32, 66-32, 67-26, 69-23.

⁴⁰ This figure was provided by the BPDA GIS team.

The following map depicts the patchwork of NDODs throughout the city:



Putting the NDOD aside, and returning to the issue of overlay districts generally, we can revisit our prior discussion about specific zoning provisions. In Boston, overlays add additional complexity to the three examples in lot development (parking), building articulation (height), and uses (housing):

- Parking:** As noted above, parking requirements vary greatly among the base districts. Similarly, they vary greatly between the base districts and the overlay districts. As one example, Article 23 requires apartment buildings to provide around 0.7 spaces per unit (depending on district requirements), while the Roslindale Interim Planning Overlay District requires large apartment buildings to provide 1.5 spaces per unit.⁴¹ Adding more complexity, the Smart Growth Overlay District leaves the parking requirement amounts to negotiation between the City and the property owner.⁴² In addition, several overlay districts treat parking structures and requirements differently from how parking is treated in the base districts on which they are overlain. For example, the Restricted and Limited Parking District prohibits certain types of parking structures absent a conditional use approval (requiring a public hearing), and in some cases bans parking lots and parking garages outright.⁴³
- Height:** Height, too, varies as much, if not more, between the base and overlay districts as among the base districts. One overlay, the Limited Height District, allows for some properties to be assigned

⁴¹ Zoning Code §§ 23-1; 22R-11 tbl. B.

⁴² Zoning Code § 87-8.

⁴³ Zoning Code § 3-1A(c). Presumably, the ban on large-scale parking facilities should change minimum parking requirements otherwise associated with the base district zoning, because the ban would prevent property owners from compliance, but I could not find provisions on this point.

a specific height cap, which overrides base zoning and may differ from one application of the Limited Height District to another.⁴⁴ The various downtown overlays also offer differing height caps, sometimes for buildings within a block of each other. Then there is the Density Limitation District, an overlay that uses homogeneity among *existing* building heights as a trigger for restricting density.⁴⁵ Ironically, it uses existing height consistency to trigger piecemeal inconsistency.

- **Housing:** The use table for base districts covers housing, differentiating between different types of housing (including, as noted above, conversions). Overlays complicate the housing permitting story in different ways. “Housing priority overlay areas” function in various districts sometimes to mandate the construction of housing, even where other uses might be allowed by the use table⁴⁶ and sometimes to trigger caps on square footage.⁴⁷ The portion of the Zoning Code creating the Smart Growth Overlay District also articulate affordable housing provisions, including provisions on income eligibility and occupancy of persons per bedroom, as well as deed restrictions for permanent affordability.⁴⁸

In sum, Boston’s overlays complicate the application of the Zoning Code, introducing increasingly complex rules for property owners. With 32 distinct overlays covering nearly half of the land within city limits, Boston once again positions itself as a zoning outlier.

3. NEGOTIATED DISTRICTS

The Boston Zoning Code also allows “planned development areas,” or PDAs,⁴⁹ and institutional master plans, or IMPs.⁵⁰ The PDAs and IMPs are governed by individually-tailored regulations usually negotiated between the City and the property owner, which is why I called them the “negotiated” districts. In total, the City has authorized 129 PDAs⁵¹ and 27 IMPs.⁵²

Each of these negotiated districts differ greatly in substance and purpose. They tend to be created when a property owner or developer has a specific project in mind, and not necessarily created to achieve the City’s planning goals. In that sense, the negotiated districts can be characterized as reactive, rather than proactive.

The existence of negotiated districts is not necessarily unusual. Many cities with zoning have negotiated districts, often called planned development districts or planned unit developments. In some places, zoning codes clearly articulate the parameters for developments in these districts, but most tend to leave the design open-ended. However, Boston seems to rely on them more heavily than other communities. One measure of this is the volume of land subject to negotiated districts.

⁴⁴ Zoning Code § 3-1A(i).

⁴⁵ Zoning Code § 3-1A(k).

⁴⁶ See, e.g., Zoning Code § 27D, appx. E (Downtown); § 42A-18.4 (North End Housing Priority Overlay).

⁴⁷ See, e.g., Zoning Code § 42F-14 (Charlestown Navy Yard Housing Priority Area, capping square footage at 144,000).

⁴⁸ Zoning Code § 87-6.

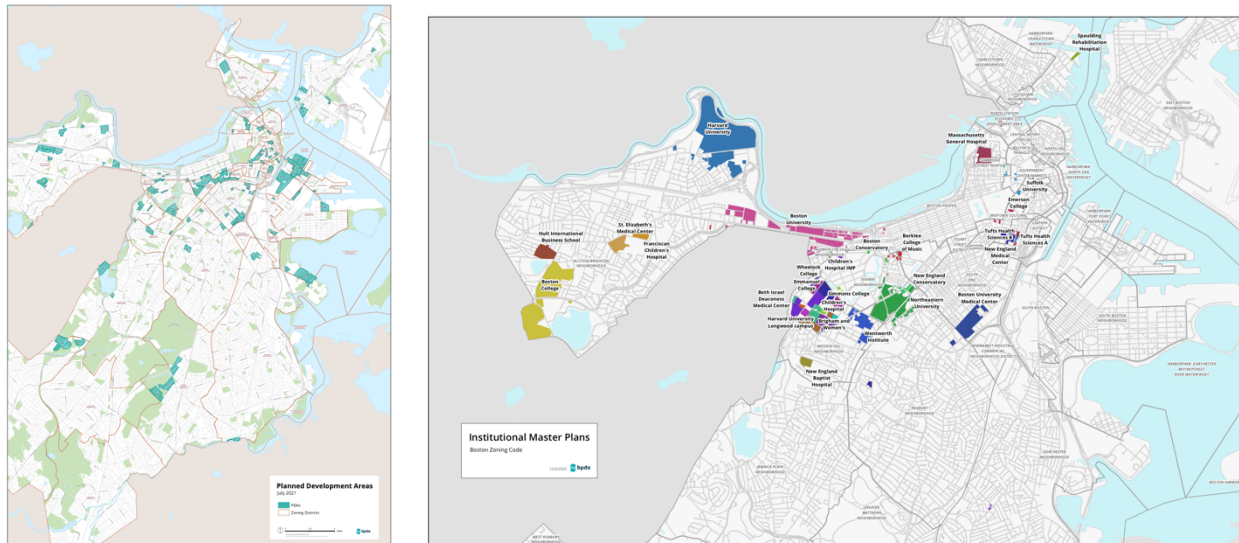
⁴⁹ Zoning Code § 80C.

⁵⁰ Zoning Code § 80D.

⁵¹ Boston, Mass., Planned Development Areas (Map), July 2021.

⁵² Boston, Mass., Institutional Master Plans (Map), October 2020.

These maps depict the 9% of land in the city governed by PDAs (in turquoise on the left) and the 3% of land governed by IMPs (in multiple colors, on the right):



While this report cannot review each PDA and IMP in exhaustive detail, it must recognize they govern 12% of Boston land through individualized rules. By definition, they add complexity and inconsistency to the city’s land use framework.

D. INEQUITABLE

The Boston Zoning Code’s complexity, outdatedness, and inconsistency leads to inequity across several dimensions.

At a basic level, people simply cannot understand what the Zoning Code says. The cross-references, use of jargon, competing rules, repetition, and inconsistencies make comprehension nearly impossible, even for an expert. The Zoning Code is so long and complicated that the City has declined to produce non-English versions or summaries of it, running afoul of its own language policy and the City’s declaration that “Everyone deserves to have meaningful access to the information and services they need.”⁵³ This, too, is an equity issue, given that 35.6% of city residents speak a language other than English in their homes. If people (English speakers and non-English speakers alike) cannot understand or access the zoning code, they cannot participate meaningfully in the planning process.

The Zoning Code is also inequitable in its imposition of unreasonable costs on property owners. A homeowner who wishes to put a gabled dormer on a roof or a small business owner who wants to add a takeout component to their restaurant may pay \$10,000 and undergo a six-month review process to achieve what in other places might have a one-day approval turnaround time and cost less than \$100. The costs of zoning compliance make Boston less affordable, because those costs get internalized or passed on, including to tenants and customers. Moreover, the Code imposes *different* costs on similarly-situated property owners, given the inconsistencies in substantive regulations and procedural requirements, noted above.

⁵³ City of Boston, Language and Communications Access Ordinance (2021).

Similarly, a proposed project may have to undergo certain review processes in one neighborhood but not in another. As one example, the Roxbury Neighborhood District requires a public hearing and design review for what in most other cities would be subject to a same-day or over-the-counter staff review: exterior alterations exceeding 300 square feet of façade or a 750-square-foot building addition.⁵⁴ The Leather District ups the trigger for facades to 500 square feet and gets rid of the square footage minimum for additions.⁵⁵ The Huntington Avenue/Prudential Center District requires design review for “any exterior alteration or construction.”⁵⁶ In these and many other ways, the Zoning Code establishes divergent procedural paths for similar projects located in different base districts. Moreover, in most other cities, these minor projects would not trigger potentially arbitrary and costly design reviews and could be reviewed by staff.

The Zoning Code hurts a large group – possibly a majority – of property owners whose properties have become nonconforming. Again, these properties only became “illegal” after a code amendment they may not have even realized was being proposed. Even if they did know about a proposed amendment in their neighborhood, they might not have been able to make heads or tails of it, given the Zoning Code’s inaccessibility and complexity. Yet they must bear the burden of nonconformance, which includes, as described above, reduced property values, a bar on improvement projects, and high costs should they ever wish to pursue renovations legally.

Finally, the Zoning Code affords large, sophisticated institutions and wealthy property owners the opportunity to tailor approvals, especially approvals for the negotiated districts. These opportunities do not appear to be readily available to residents or to institutions with less political power or income. Those able to navigate the Zoning Code might have an incentive to maintain the status quo, if they believe they can benefit from their knowledge.

The positive spin on these potentially discouraging diagnoses is that the Boston Zoning Code has lots of room to improve. It can easily become shorter, more straightforward, and easier to read. It can be modernized to shed antiquated terms and incorporate Boston’s built reality. It can harmonize provisions and eliminate inconsistencies. And it can become more equitably accessed and applied. But for this to happen, Bostonians will need to muster significant political will and buy in to a unifying vision.

⁵⁴ Zoning Code § 50-38.

⁵⁵ Zoning Code § 44-8.

⁵⁶ Zoning Code § 41-18.5.

II. DIAGNOSING THE PLANNING-ZONING RELATIONSHIP

Key to understanding the Boston Zoning Code is an understanding of its relationship to the City's planning processes. Plans at the citywide or neighborhood level can be a starting point for understanding shared aspirations for a place. While the goals articulated by any plan will evolve, and conditions motivating those goals will change, at a minimum a plan offers a point-in-time snapshot of a consensus sufficiently strong to be incorporated into a formal, written document. In a series of plans, Boston residents have clearly articulated their vision: a more affordable, equitable, inclusive, healthy, resilient, and connected city. Unfortunately, the Zoning Code fails to enact this vision in a comprehensive manner, because it relies only on planning at the neighborhood scale.

In many jurisdictions, a citywide comprehensive plan guides the development and adoption of zoning amendments that promote the aims of the plan. Historically, that has not been the case in Boston. The city did not even *have* a comprehensive plan for the 50 years preceding its 2017 plan, *Imagine Boston 2030*. Its ambivalence toward citywide plans continues, as *Imagine Boston's* call to reform the Zoning Code to carry out its goals appears to have gone entirely unheeded. Consistent with this neglect and ambivalence, the Zoning Code lacks a coherent overall vision.

In lieu of citywide planning, Boston has had a very strong neighborhood planning ethic. Land use policy changes seem almost exclusively geared to achieve aims established by individual neighborhood groups. To achieve these aims, the Zoning Code has been amended hundreds of times, through neighborhood-specific zoning provisions. Unfortunately, the piecemeal manner of these amendments has failed to recognize consistencies between neighborhood plans or consistencies between neighborhood plans and *Imagine Boston 2030*. The Zoning Code's drafters have thus missed opportunities to draw connections and enact a shared vision.

As a result of this dynamic, the Boston Zoning Code is all trees, and no forest. This Part analyzes the planning-zoning relationship, providing additional context for Parts III and IV.

A. A WEAK CITYWIDE PLANNING ETHIC

In 2017, the City adopted its first citywide plan in 50 years, *Imagine Boston 2030*. It draws from several previous plans (including those on economic inclusion,⁵⁷ housing,⁵⁸ small business⁵⁹) and from the input of more than 15,000 residents.

⁵⁷ City of Boston, *Economic Inclusion + Equity* (2014), at https://www.boston.gov/sites/default/files/document-file-07-2018/economicinclusionagenda_0.pdf.

⁵⁸ City of Boston, *Guiding Growth: Toward an Inclusive City* (2015), at https://www.boston.gov/sites/default/files/embed/file/2018-06/guiding_growth_report.pdf.

⁵⁹ City of Boston, *Small Business Plan* (2016), at [https://www.cityofboston.gov/images_documents/160330%20Boston%20Small%20Business%20Full%20Report%20-%20Web%20\(144dpi\)_tcm3-53060.pdf](https://www.cityofboston.gov/images_documents/160330%20Boston%20Small%20Business%20Full%20Report%20-%20Web%20(144dpi)_tcm3-53060.pdf).

A brief summary of the plan’s contents can illustrate its citywide ambition. It sets out the following five overarching goals:

- encourage affordability, reduce displacement (especially given growth in residential population⁶⁰), and improve quality of life
- increase access to opportunity, particularly with regard to access to homes, transportation, and healthy living
- drive inclusive economic growth
- promote a healthy environment and prepare for climate change (including extreme flood risks exposing more than \$80 billion in property value over the next 50 years) and
- invest in open space, arts and culture, transportation, and infrastructure.⁶¹

Imagine Boston 2030 takes a decidedly “pro-growth” approach, touting the potential for new housing units and commercial space to meet rising demand and to stem displacement. Among other things, it proposes to encourage dense, mixed-use developments in the “core,” while preserving historic architecture; expand housing and mixed-use options in transit-accessible areas between the commercial core and farther-out neighborhoods; and create a resilient waterfront, while addressing climate concerns throughout the city.

To support these substantive priorities, Imagine Boston 2030 calls for several specific zoning reforms, including:

- “predictable regulatory review processes”
- “reduc[tion in] permitting time and development costs”
- zoning coordinated with capital investments in “open space, transit, and flood-protection mechanisms”
- “new best practices and... new zoning typologies” and
- zoning that “is climate-ready, supports mixed-income and mixed-use neighborhoods, and responds to changing transportation patterns and shifting parking demands.”

Despite being enacted to much fanfare, Imagine Boston 2030 seems to have gained very little traction. The Boston Zoning Code has not been amended to address the plan’s substantive goals or its reform demands. The plan’s failure to be given any regulatory heft may have as much to do with the City’s ambivalence toward comprehensive planning as anything else.

B. A STRONG NEIGHBORHOOD PLANNING ETHIC

In addition to citywide planning, neighborhood planning can be an important tool for engaging the public and for building consensus around a community’s aspirations on a smaller scale. In Boston every year, an extraordinary amount of effort goes into neighborhood planning initiatives, with rotating coverage for each of its 23 neighborhoods.

Over the decades, this neighborhood-centric planning approach embedded itself in the Zoning Code. Upon completion of a neighborhood plan, City staff either translates the plan into a new neighborhood-specific

⁶⁰ The city continued to grow after the release of Imagine Boston 2030, jumping 9.3% in residential population between 2010 and 2020. U.S. Census, City of Boston Population, Census, April 1, 2010 (617,594 people); April 1, 2020 (675,647).

⁶¹ City of Boston, Imagine Boston 2030, at <https://www.boston.gov/civic-engagement/imagine-boston-2030#summary>.

article in the Zoning Code, or uses the plan to undertake revisions to an existing neighborhood-specific article. In either case, the City enacts a bespoke package of rules for each neighborhood. Often, these rules introduce new districts and subdistricts, adding to the regulatory volume.

The Zoning Code painstakingly separates the neighborhood-specific articles. Yet reviewing the content of neighborhood planning efforts on which these articles are based demonstrates a striking consistency among neighborhood plans, and even between neighborhood plans and the recent citywide plan. Across the board, neighborhood plans use similar language and similarly push for major zoning reform. From affordable housing to inclusive economic growth to climate resiliency to quality of life, the plans diagnose similar issues and offer similar solutions.

To illustrate this point, consider six draft plans⁶² underway for Charlestown, Downtown, East Boston, Fenway, Mattapan, and Newmarket, and their stated priorities:

- Charlestown: affordable housing, small business support, greater height/density flexibility, mixed-use/walkable node-and-corridor development (including expanding ground-floor retail), reform of problematic planned development area rules/locations, open space, historic preservation
- Downtown: context-specific designs (for scale/historic preservation), small business support, climate resilience, active retail, larger districts, as-of-right development for incentivized projects (including affordable housing), open space
- East Boston: affordable housing, mixed-use/walkable node-and-corridor development (including expanding ground-floor retail and residential use, and increasing height/density near transit), climate preparedness, “neighborhood economies,” context-specific designs (form-based coding?), simplified waterfront zoning
- Fenway: greater height/density flexibility, mixed-use expansion (Longwood), reform of problematic planned development area rules/locations
- Mattapan: affordable housing (including detached/attached accessory dwelling units), mixed-use/walkable node-and-corridor development (including expanding ground-floor retail and residential use), small business support, greater height/density flexibility, open space (lot coverage requirements?)
- Newmarket: industrial/food-system/creative-economy use retention, climate preparedness, form-based coding and performance standards (for flexible/large industrial uses)

Several of these draft plans express concerns about nonconformities of existing properties (particularly in East Boston, which has the highest volume of variances and highest rates of variance approvals), inconsistencies in terminology, and strategies for reuse of vacant and dilapidated buildings.

Though these neighborhoods differ in character, they each prioritize one or all of the five overarching citywide goals set out in *Imagine Boston 2030*. From this representative sample, we can draw the lesson that Boston has a clear and consistent vision for its development, with citywide plans and neighborhood plans aligned. This consistency suggests that a streamlined, simplified Code can help Bostonians realize their shared vision.

⁶² Fenway is undergoing a rezoning study, while the others are undergoing draft plans. For ease of reference, I will refer to these collectively as the six draft plans.

III. REFORMING THE CODE

Bostonians feel pride in a city rich with history and culture, fantastic architecture, a dynamic and growing economy, and robust public infrastructure. Their citywide plan and neighborhood plans recognize that more can be done to make Boston more affordable, equitable, inclusive, healthy, resilient, and connected. One of the main vehicles for achieving these interconnected goals could be a modern, streamlined Boston Zoning Code.

This section recommends fundamental revisions to the current Zoning Code. First, the City should reverse its longstanding practice of neighborhood-specific zoning. Second, the City should use two key benchmarks to instill discipline in the Zoning Code reform process. Third, the City should adopt a form-based code to achieve key planning goals. And finally, the City should make substantive changes in the Zoning Code's approach to housing, economic growth, climate resiliency, and quality of life. Perhaps the most significant of these substantive suggestions are embracing the concept that housing must be permitted by right, and taking sea level rise risks far more seriously.

The BPDA has taken the first steps toward reform, including beginning to review the definitions in the Zoning Code and pledging to consolidate them by the end of 2023. But it can go farther if it recognizes that it already has a public mandate for major changes to the Code. Given the clear consensus across planning documents, City staff have all the public support and information they need to start drafting text that realizes these plans' ambitions.

A. REVERSING NEIGHBORHOOD-SPECIFIC ZONING

My first recommendation is not a, but *the*, key to a better Code: Boston must reject neighborhood-specific zoning, which raises costs, thwarts sensible growth, creates nonconformities, and does not necessarily achieve what neighborhood plans called for in the first place.

This proposal requires a significant mindset shift, given the entrenched nature of the neighborhood-planning-to-neighborhood-zoning pipeline. But neighborhoods, and the people who live and work in them, will be better off without convoluted, outdated Code provisions interfering with their plans and their property rights. The City must break the pipeline now, and then it must distill key elements of the current and past neighborhood plans into a new, streamlined Code.

1. BREAKING THE PIPELINE NOW

Now is the time to start embracing this approach. Part II.B. mentioned six plans currently underway and representing a cross-section of types of Boston neighborhoods. These plans reflect tremendous effort, robust community input, and solid ideas to address pressing problems. And, as noted above, their plans share many common themes, with each other and with the Imagine Boston 2030 citywide plan.

With these plans nearing the finish line, the City has a choice. Does it take the approach taken over the last several decades, and draft or revise neighborhood-specific rules? Or does it embrace a broader approach to

rule-making? I recommend the latter. The City should not spend the next few years writing neighborhood-specific zoning rules to implement each of these plans. Instead, it should write more broadly-applicable zoning rules flexible enough to advance these plans' shared goals. The six plans currently underway could be just what is needed to catalyze overall Code reform.

2. SYNTHESIZING PRIOR NEIGHBORHOOD PLANS

A Zoning Code overhaul cannot just encompass the six neighborhoods that happen to be undergoing planning processes now. It must incorporate all of Boston's neighborhoods. In any reform effort, I would discourage reformers from looking too closely at the neighborhood articles as they exist today.

The better option is to return to those neighborhood plans, and review and synthesize past plans. These plans would reveal what those communities hoped to achieve, and would enable reformers find ways to connect those aspirations to the citywide vision expressed in *Imagine Boston 2030*.

3. RECOGNIZING THE BENEFITS

While a departure from recent practice, a whole-city approach to zoning offers significant benefits.

Most importantly, it can ensure a level playing field, both within neighborhoods and between neighborhoods. As noted in Parts I.C. and I.D., the Zoning Code creates inequities by treating similar owners of similar properties differently, often in arbitrary ways. A code that treats single-family homeowners in Charlestown like homeowners in East Boston and Mattapan alike would be better than a code that treats them all differently. As an illustration, similar neighborhoods in those neighborhoods could all be part of the same type of residential zoning district; and if one neighborhood receives the right to build accessory dwelling units, they all should, too.

A streamlined Zoning Code can also relieve property owners burdened by its arcane, overly restrictive approach. With its myriad neighborhood-specific rules, it makes compliance both confusing and expensive. These rules also render the majority of Boston's land nonconforming. Most property owners are homeowners or small business owners, who lack the wealth and zoning savvy to navigate the complicated Zoning Code. Indeed, the draft plans in Charlestown, Downtown, East Boston, and Mattapan all speak to this point, citing to small business owners who often have difficulty finding suitable space or getting permission to expand. The Fenway and Newmarket plans, too, call for greater flexibility, and less complicated rules, for commercial and industrial buildings. Intuitively, members of the public who participated in these plans know that they shouldn't be governed by laws they can't make heads or tails of.

A coherent regulatory approach to the public realm could also expedite the completion of capital improvements called for in the neighborhood and city plans. Streetscapes, parks, and façade programs almost always undergo zoning approvals already. Under current rules, proposed façade improvement in commercial areas could trigger reviews of six months to a year, even for simple changes. Code reform that harmonizes the design standards can get desired capital improvements across the finish line faster.

Finally, choosing to focus now on the commonalities among the six draft neighborhood plans would reduce staff time, financial resources, and public patience that would be expended by six different Code reform processes. This focus would also relieve the City from having to ratchet up its Code enforcement team to

ensure people comply with ever-more-arcane rules that would result from extending the current approach to neighborhood zoning.

In summary, the City should not double down on a drafting approach with obvious flaws. Instead, it should recognize that the consistency between the six draft neighborhood plans and the citywide plan as a tremendous opportunity. The City can ensure these six neighborhoods realize their individual goals, while ground-testing and refining citywide Code provisions in accordance with the recommendations that follow next.

B. ESTABLISHING DRAFTING BENCHMARKS

At the outset of any reform, policymakers should declare they will adhere to two key benchmarks: first, reducing the Code's length to fewer than 500 pages, and second, reducing the number of zoning districts to 50. If taken seriously, these two benchmarks can instill discipline in decision-making throughout the process of reforming the Code. And they can improve the clarity, consistency, and fairness of the end product.

1. BENCHMARK #1: A 500-PAGE CODE

As discussed in Part I.A., the Boston Zoning Code sits at an extreme in terms of its volume: longer than the codes of eight comparison cities with the same population, than all cities Boston might consider its peers (regardless of their population), and than even New York City. The average zoning codes in the eight comparison cities run 780 pages and devote just 2.9 pages per square mile of land. If Boston, at 48 square miles, adhered to this average, its Code would run 139 pages. At that length, the Code would still sit just above the 131-page average for Massachusetts' 351 distinct zoning codes. But maybe a proposal for such a dramatic reduction expects too much.

So let's calculate a reasonable page-number cap from another angle. Let's assume Boston's real estate dynamics are five times as complex as the average Massachusetts city. Quintupling the Massachusetts average would yield 655 pages. As an alternative theory, let's assume Boston should desire to be roughly as regulatory as Portland, Oregon, a comparator city with a reputation for having robust land use regulations. Applying the pages-per-square mile rate of Portland, Oregon (13.7) to Boston's 48 square miles brings you to 658 pages.

Albeit arbitrary, 650 pages seems like a reasonable starting point for the number of potential pages in a revised Boston Zoning Code. To accommodate for well-meaning future amendments and impose some discipline on drafters, I would reduce the target benchmark to 500 pages.

The City could start to trim the Zoning Code to this figure with two small moves that would require little heavy lifting. First, it could consolidate the hundreds of pages of definitions spread across the Code into one section – a process staff has already begun. Second, it could consolidate the 51-page use regulations by removing obsolete categories, collapsing overly specific categories into broader ones, and also capturing any relevant use regulations not covered in the use table. This table could be as short as three pages.⁶³ Beyond these two small moves, the most important structural move, described in the next section, would entail

⁶³ This is not actually that difficult. In an overhaul of Hartford's zoning regulations, we consolidated a 61-page use table into 3 pages.

replacing the neighborhood-specific articles and all of the dimensional regulations sprinkled through the Code with a form-based approach executed through the zoning map. Doing so would dramatically decrease the volume of the Code and make it, at long last, a manageable length.

2. BENCHMARK #2: A 50-DISTRICT CODE

Zoning districts, the building blocks of zoning codes, play a valuable function. But too many districts can dilute a clear vision for a city's growth, foster confusion, grow bureaucracy, and create inconsistencies and inequities. To ensure a nimble, fair Code, Boston must dramatically reduce its number of zoning districts, currently at 429, including 32 overlay districts and 308 distinctly regulated subdistricts.

As discussed in Part I.A., Boston has nine times as many zoning districts as the eight comparison cities, which have 47 districts, including just eight overlay districts. A reasonable target for Boston could be 50 zoning districts, including overlays and subdistricts. That number would align the city with its counterparts, and would increase the legibility and rationality of the Code.

In tandem with this dramatic reduction in zoning districts, the City should curb new bespoke planned development agreements and institutionalized master plans, which already govern one-eighth of the land in Boston. The zoning overhaul should proactively identify areas suitable for institutional development, rather than allowing the reactionary system of reviewing opportunistic, externally-driven proposals to endure. There's no data showing that the current system actually gives the community any special benefits.

C. ADOPTING FORM-BASED ZONING

Traditional zoning, which establishes districts and prioritizes the separation of uses, is often a poor instrument for shaping built results. That is because traditional zoning codes were not written to focus on building design, scale, spacing, or orientation. Cities wishing to shape these outcomes have started to adopt form-based codes that articulate these and other physical aspects of desirable buildings. Often, they adopt these form-based codes in tandem with use-based regulation of traditional coding. (Boston should retain use-based regulations, and I will touch on that later.)

Form-based codes regulate the shape, scale, and materials of buildings, and their orientation on the lot and to the street. Virtually everywhere form-based codes have been adopted, planners have first surveyed all of the buildings in the jurisdiction, and worked with the community to identify which types of buildings remain desirable. They log a wide range of information, including the height of buildings, the location of their front doors, the shape of their roofs, and their location on lots. With that information, they develop a menu of "building types" that include the most desirable types of buildings that already exist in the community. The rules for building types that reflect existing buildings are written to ensure that existing buildings conform. In addition, sometimes planners add new building type options deemed to be harmonious. In any event, a property owner can choose from a menu of building types allowed in the applicable zoning district.

1. FORM-BASED CODE ADOPTERS

A diverse array of cities, including Buffalo, Cincinnati, Denver, and Miami, have adopted form-based codes. Closer to Boston, Hartford adopted a form-based code in 2016. Although it has had a different economic and growth trajectory than Boston, it too is a four-hundred-year-old New England city, and it has similar building types. Given my involvement in that effort, the Hartford code will feature prominently in Part IV.⁶⁴

Boston is an excellent candidate for the adoption of a form-based code. Its building stock can be generally grouped into identifiable categories, such as industrial/warehouse-type buildings, high rises, triple deckers, townhomes, and so on. Its compact size limits the number of potential configurations. Its regulations already focus on scale and harmony with neighboring buildings and uses. And its planning documents reveal an overriding interest in the way buildings relate to the street, water, and open space. These conditions lend themselves well to a form-based code. (Indeed, two of the six current neighborhood plans, those of East Boston and Newmarket, explicitly consider form-based coding to be a potential solution to addressing their needs.)

Boston's planning documents have several consistent themes that can be addressed by a form-based code. They seek to balance community control over built results with flexibility in standards. They seek to establish clear and fair design review guidelines and processes. They seek to protect historic places and, relatedly, seek to reduce nonconforming buildings, structures, and lots. A form-based code can achieve these goals – and here's how.

2. IMPROVING CONTROL BUT OFFERING FLEXIBILITY

Bostonians seem to want significant control over what gets built in their neighborhoods – control already asserted in neighborhood planning processes, embedded into the Zoning Code, and exercised again during design reviews for specific projects. At the same time, neighborhood plans currently underway call for flexibility that enables property owners to do more with their properties.

A form-based code can help to balance control and flexibility. Each building type can be defined by a combination of ranges and mandates. For example, a building type for townhouses might provide a height range of 2.5–3.5 stories and require that the front façade be built between two and five feet of the building line, but the code might mandate a flat roof. Similarly, a building type for a building on a “main street” might provide a height range of four to six stories, but might need to have specifically angled setbacks on facades facing public open space.

The building chart for a “downtown” building type that can be located in the three downtown (“DT”) districts for the Hartford Zoning Code can illustrate how this works:

⁶⁴ Codametrics was the consultant that did the diagnosis of Hartford's buildings, as I explained is typical in the preceding paragraph, and was responsible for developing all of the particular building types in Chapter 4 of the Hartford Zoning Regulations.

	DT-1 <small>NOTE 1</small>	DT-2 <small>NOTE 2</small>	DT-3 <small>NOTE 1</small>
A. Building Siting. Refer to Figure 4.4-B Downtown General Building: Building Siting and 4.18.1 Building Siting.			
1 Multiple Principal Buildings	not permitted	not permitted	not permitted
2 Minimum Primary Lot Line Coverage	90% <small>NOTE 3</small>	90% <small>NOTE 3</small>	80% <small>NOTE 3</small>
3 Occupation of Corner	required	required	required
4 Primary Build-to Zone	at or maximum 15' behind the Building Line		
5 Secondary Build-to Zone	at or maximum 15' behind the Building Line		
6 Minimum Side Setback <small>NOTE 9</small>	abutting adjacent building or minimum 7.5'		
7 Minimum Rear Setback <small>NOTE 9</small>	10'		
8 Minimum Lot Width Maximum Building Width	none none		
9 Building Coverage Maximum Impervious Area Additional Semi-Pervious Area	90% no limitation 10%	85% no limitation 10%	90% no limitation 10%
10 Permitted Parking & Loading Locations	rear yard or internal to building (refer to 4.4.2.C. Uses: Building Entrance to Parking requirement)		
11 Permitted Vehicular Access	one driveway permitted off each abutting secondary street; if no secondary street exists, the zoning administrator will determine the appropriate primary street access; circular drop-off drives permitted in DT-2 only		
B. Height. Refer to Figure 4.4-C Downtown General Building: Height & Use Requirements and 4.18.2 Height.			
12 Minimum Overall Height	3 stories and 40'	2 stories and 40'	2 stories and 40'
13 Maximum Overall Height	38 stories; stepback required above 8 stories <small>NOTE 4, NOTE 7</small>	16 stories; stepback required above 8 stories <small>NOTE 4, NOTE 7</small>	8 stories; 5 stories on lower Main Street <small>NOTE 5, NOTE 7</small>
14 Ground Story: (Measured floor-to-floor) Minimum Height Maximum Height	13' 30' <small>NOTE 6</small>	9' 18'	9' 14'
15 Upper Stories: (Measured floor-to-floor) Minimum Height Maximum Height	9' 14'	9' 14'	9' 14'

The Hartford Zoning Regulations require a primary “lot line coverage” by the building of between 80–100% depending on which subdistrict the building is located in. They say the building has to be between 0 and 15 feet of building line, meaning that the building will be built up to the street, not set far back on the lot. The regulations require a minimum height of 40’ across all districts, to ensure new buildings provide a sense of mass. However, they vary in providing a maximum overall height across the three downtown districts (8, 16, and 38 stories), with a stepback required above a certain number of stories. The ground story, too, has a minimum and maximum height, important to maintaining sufficiently welcoming storefronts on key corridors.

3. ESTABLISHING CLEAR GUIDELINES

Bostonians recognize that the current zoning permitting process is confusing. As discussed in Part I.C., a project may undergo several design reviews involving many decision-makers, but the Zoning Code does not provide clear guidance as to what they should or should not permit.

Recognizing that currently many design reviews are completed by the Civic Design Commission and through historic preservation review, there is still a role for zoning to play in specifying the parameters for design – and the Zoning Code already does so, in its current form. One apparent area of interest across these areas of review, for example, is the treatment of facades. A new form-based zoning code might require that buildings on busy pedestrian streets be designed with storefront windows between 2 and 8 feet above

the ground, which would ensure that ground-floor uses can “communicate” with passers-by. The code can also require that a certain percentage of street frontage have particular materials, such as stone or brick. Likewise, it can prohibit “blank facades” on a certain percentage of wall or of a certain size, or require vertical or horizontal façade divisions, to limit boring stretches of the same material. Some might say that including more specific design parameters in the Zoning Code may infringe on the Civic Design Commission’s work, and possibly also historic preservation reviews. I would encourage Bostonians to assess the need for multiple levels of design review and consider narrowing (for example, to monumental public works) those types of projects that might trigger additional reviews beyond zoning.

In any event, a form-based zoning code can provide comfort and certainty about built outcomes, which helps everyone involved in land use decisions. It saves property owners from designing buildings to the “wrong” standard, as judged by subjective decision-makers, and then having to go back to the drawing board one or more times. It saves the City from the burden of guessing what a board or commission might favor, and from extra staff time helping applicants repeatedly refine their designs. And it saves neighbors and community members from having to show up, again and again, at meetings for specific projects, where they repeat views that could have simply been codified in the Zoning Code. Enabling them to participate in the process of drafting clear guidelines is a more respectful and effective use of their time.

4. PROMOTING HISTORIC PRESERVATION AND REDUCING NONCONFORMITIES

Bostonians truly value their historic fabric, evidenced not only by aspirations articulated in neighborhood and citywide plans, but also in the city itself, which is filled with well-maintained historic sites and buildings. Unfortunately, the current zoning code does not protect historic properties well.

As noted above, the Zoning Code provides nebulous guidance for design reviews, which raises the possibility of incongruous additions to existing buildings or neighborhoods that detract from their historic value. Even if the City’s design review staff and “regulars” to public meetings adhere to unwritten standards, clear, written guidance would be the best safeguard against unwelcome outcomes.

In addition, the Zoning Code relies heavily on the outdated concept of the floor-to-area ratio to determine the size and scale of buildings. As discussed in Part I.B., the floor-to-area ratio only measures the square footage of a building in relation to the square footage of the lot. It produces highly divergent results, and it has virtually no relationship to the quality of the built realm.

The Code has also rendered many older buildings “nonconforming,” making them more difficult to rehabilitate without expensive, costly variances. As noted in Part I.B., 58% of nonresidential and residential buildings alike have been rendered nonconforming by floor-to-area ratios enacted after these buildings’ construction. Boston should excise the floor-to-area ratios from its Zoning Code. I suspect that many older properties have also been rendered nonconforming due to their lot size. A minimum lot size requirement dictates how large a parcel must be. The typical form-based code abandons minimum lot size requirements, instead setting forth requirements for street frontage width (i.e., the width of street-adjacent side of the lot) and building frontage (i.e., the width of a building’s street-facing facade). The latter two figures more significantly impact the public realm than the size of the lot.

A form-based code can address these issues. It can ensure context-sensitive design compatible with existing historic neighborhoods. In identifying building types and specifying design standards for them, a form-based code can replace the unclear, cluttered guidance of the current Code. These standards obviate the need for

the outdated floor-to-area ratio. A form-based code can also obviate the need for universal application of other antiquated regulatory tools, such as minimum lot size. A new form-based code for Boston could be written to render more existing buildings conforming, which will facilitate their rehabilitation – whether they are historic or not.

In tandem with form-based codes, the City should consider other options to promote historic preservation. For example, demolition delay provisions can ensure property owners fully consider their decision to demolish a historic structure. As another example, a transferable development rights program can give owners of designated historic structures the right to sell off the “air rights” they aren’t using to neighboring properties, so those neighbors can build a little higher. In other places, these programs have helped owners of historic properties pay for rehabilitation and maintenance, while ensuring the preservation of a community asset benefiting everyone.

D. ADVANCING THE CITY’S PLANNING GOALS

Whether the City adopts a form-based code or not, it can and must undertake specific substantive changes in the Zoning Code’s provisions to reflect the contemporary focus on housing, economic growth, and climate resiliency. The recommendations in this section tackle each aspect of zoning regulation – regulation of uses, structures, and lots – which work together to dictate built results.

1. HOUSING

The Zoning Code accelerates displacement and increases housing costs by placing onerous, unclear, and even conflicting restrictions on housing, making it harder to build. To expand housing options, the Zoning Code must:

- Establish as-of-right pathways for all principal-use housing
- Enable dense housing around squares and transit hubs, and
- Legalize accessory dwellings.

If Boston is serious about creating new housing, it must lift regulatory barriers to housing construction of all shapes and scales, and specifically allow “as-of-right” permitting, which would allow housing to be built after a staff review, without undergoing onerous public hearings, variances, conditional use permits, or rezonings.

Research has shown that public hearings can be a significant barrier to housing. They are time-consuming, costly, and unpredictable, and they don’t even achieve the goal of participation since most participants are the propertied elite.⁶⁵ The Code may have embedded so many extra processes into housing permitting because people believed it was necessary to control the aesthetics of larger buildings. But a burdensome process is not necessary to get the housing (or control) you want.

⁶⁵ See, e.g., Katherine Levine Einstein, David Glick, & Maxwell Palmer, *Neighborhood Defenders: Participatory Politics and America's Housing Crisis* (2019); Anika Singh Lemar, *Overparticipation: Designing Effective Land Use Public Processes*, 90 *Fordham L. Rev.* 1983 (2021).

A form-based code that clearly delineates all acceptable building forms in that neighborhood can eliminate the need for additional design reviews and processes. It can provide some comfort and certainty about built outcomes, and it can reduce administrative burdens (and costs) on the City, enabling the effort previously used to prepare for, hold, and debrief from public hearings to go toward helping property owners improve their designs. Even without a form-based code, the City should evaluate the places housing must grow fastest, establish the most important development parameters, and lift the need for public hearings and onerous processes. If it decides to maintain the negotiated districts (planned development areas and institutionalized master plans), it could embed as-of-right housing into those negotiated districts.

Similarly, the City can achieve its desire to capitalize on transit stations (including MBTA stations) and promote centers of civic activity by rezoning areas around squares and transit to allow multi-family housing at higher densities than currently allowed, and with less process than currently required. This change should occur not just in already-vibrant squares, but also evolving squares like Nubian Square and Sullivan Square. To fast-track this process, the City can create a new, mixed-use zoning district, and place this district within a certain radius of each MBTA station, and on the perimeter of squares. This district should enable as-of-right development for a broad range of office, laboratory, medium- and/or high-density residential, retail, and service uses. It could pilot form-based code concepts by carefully articulating the design particulars for these buildings, including minimum height, minimum lot coverage, façade treatment, door placement, and minimum building frontage. This district should not be an overlay, but rather a base district that replaces other, existing base districts.

Finally, the Zoning Code should be revised to legalize accessory dwelling units, namely those homes located on the same lot as a single-family house. California attempted several times to legalize accessory dwellings through statewide legislation, but people only started building them after the state legislature lifted design and process parameters that thwarted their construction. If Boston wants accessory dwellings to be built, here's what has proven to work in many jurisdictions. First, they have to be permitted as-of-right, without public hearings or extra reviews, for both attached and detached accessory dwellings alike. Second, the Zoning Code should impose no requirements for occupancy of either the primary or accessory dwelling: no "family-only," "elderly-only," "employee-only," or even "owner-only" requirements. Third, people should be allowed to build accessory dwellings of sufficient size to justify the cost of construction: 1,000 or 1,200 square feet, or requiring only that it be smaller than the primary unit. Fourth, there should be no minimum lot size or minimum primary dwelling size requirements. Fifth, there should be no additional minimum parking requirements, especially given robust public transportation and walkable neighborhoods in Boston. If parking is needed for the unit, it will be built or found. Given that we know these best practices work, there's no point for Boston to have a pilot program for accessory dwellings, or to experiment with lifting only some parameters but not others. Finally, it's important to remember that homeowners won't be able to build accessory dwellings if their lots or homes are nonconforming, so I'll flag again the serious need to bring more single-family housing into conformance.

2. ECONOMIC GROWTH

The Zoning Code does not prioritize mixed-use flexibility, does not sufficiently enable small business development and growth, and does not foster industrial uses. To enable economic growth, the Zoning Code must:

- Enable flexible, mixed-use development in hubs (including existing squares) and on corridors
- Zone more land for small businesses (retail and service)

- Diversify industrial zones, while still allowing industrial uses

Imagine Boston 2030 and the six neighborhood plans currently underway all prioritize greater flexibility in commercial areas. It's pretty simple to figure out that the solution to these issues to enable more types of uses in more places. Everyone seems on board with this, so why hasn't it happened? Probably because the structure of the Zoning Code itself makes changing allowable uses in similarly-situated areas a herculean task. With 429 zoning districts across the city, it's hopeless to figure out which correspond to the areas around squares, on key corridors, in small business hotspots, and even in industrial and transitioning-industrial areas.

In a Zoning Code revision, the hodgepodge of districts must be replaced with a slimmed-down series of thematic districts that cut across neighborhoods. A few "high-density" districts that vary based on height, could cover downtown and the areas around squares, and could permit a broad range of commercial, retail, service, and residential uses. A few "neighborhood business" districts that vary based on density and height, could allow the same uses as the high-density districts but at a smaller scale. A couple of "mixed-neighborhood" districts could allow for medium- or lower-density residential, office, and institutional uses. A couple of "mixed-industrial" districts could be used in areas with potential to allow both traditional industry and industry-compatible uses (like offices and laboratories), or even residential uses. And then you could have a district or two focused on "heavy industry," where conditions preclude uses other than factories, warehouses, and processing facilities. Well-articulated districts can help ensure suitable transitions between zones. What other kinds of districts does Boston really need for its commercial areas?

Along with significantly reducing the number of districts, the Zoning Code's engorged and outdated 51-page use table must be slimmed down to just a few pages, and all of the use regulations for the many districts not covered by the use table must be eliminated.⁶⁶ In addition, the Zoning Code should eliminate the provision indicating that only those uses specifically mentioned in its pages will be allowed.⁶⁷ Changing that provision will use enable greater flexibility to accommodate new businesses or industries as they emerge. In general, broadening the categories of uses will give business owners and community leaders the flexibility they desire.

The average business person has no time to deal with the current regulatory morass. A Zoning Code that gives business owners the tools they need to thrive, or at least doesn't hamstring their success, will improve economic opportunities of the city as a whole.

3. CLIMATE CHANGE

The Zoning Code does not squarely address climate change, and it embeds a car-centric approach that undermines the creation of healthy communities. To promote climate resiliency, the Zoning Code must:

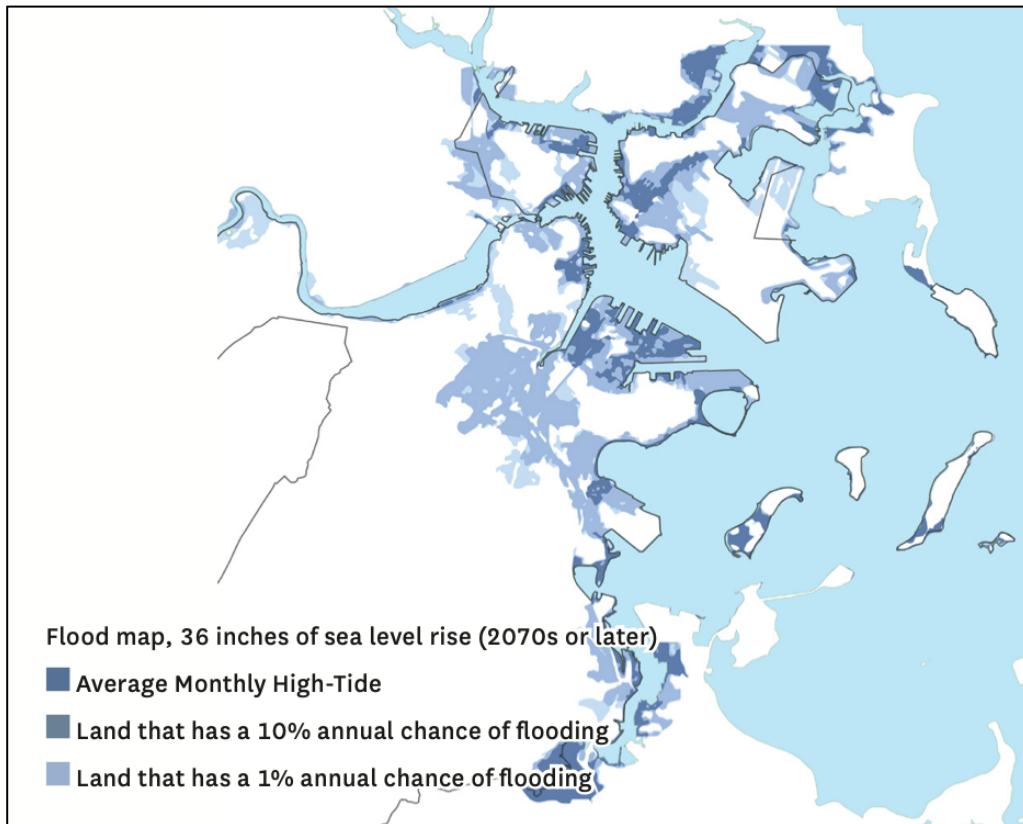
- Accelerate its response to projected sea level rise, including exploration of a moratorium in the riskiest places
- Combat extreme heat by promoting tree plantings and green roofs
- Reduce reliance on cars by eliminating minimum parking requirements

⁶⁶ These districts include any "special purpose overlay district, neighborhood district, downtown district, waterfront service district, waterfront manufacturing district, light manufacturing district, or the Harborpark District." Zoning Code § 8-7.

⁶⁷ Zoning Code §§ 8-2, 8-3.

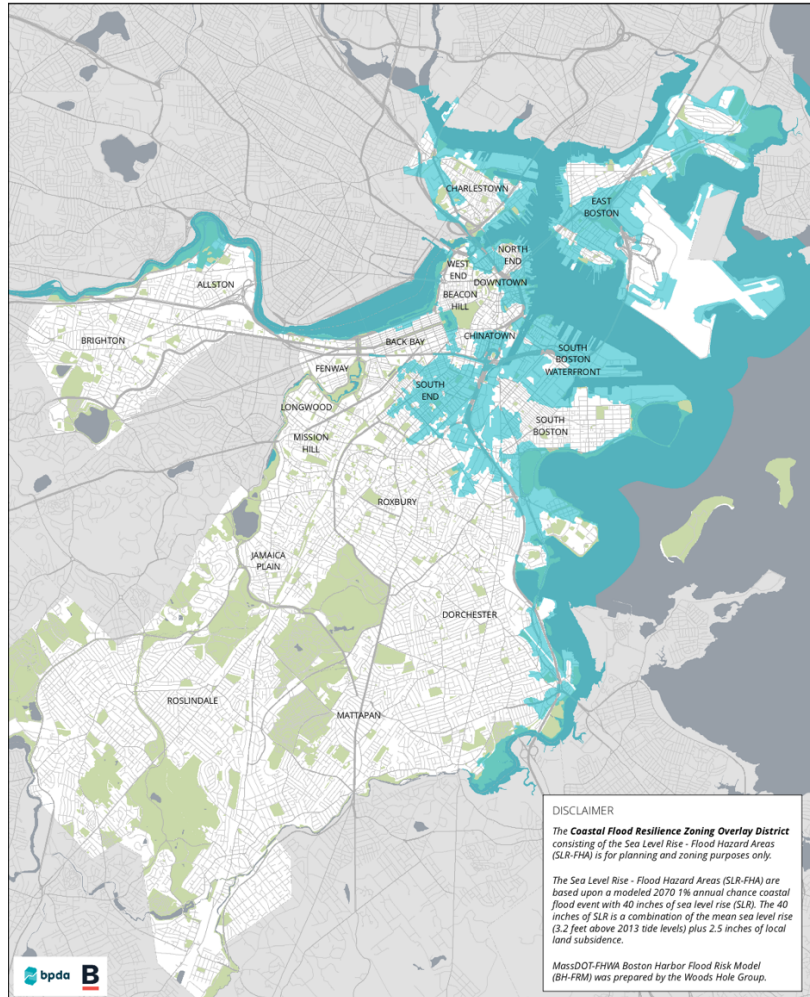
- Unlock dense development around transit hubs, possibly even matching downtown density, to reduce GHGs

Projected sea level rise in Boston is extremely concerning. Take a look at all of those places likely to see flooding by the 2070s:



Bostonians must come to grips with the fact that much of their city will be underwater in 50 years, including beloved neighborhoods and historic buildings, particularly in the downtown, the flat of Beacon Hill, South End, East Boston, South Boston, and the waterfront. The City must get a handle on sea level rise scenarios and must seriously explore a moratorium on new development in those areas which will be flooded at high tide. Outside of zoning, the City must start to make provisions for adaptation, including a managed retreat from the most vulnerable areas.

At the same time, the City should review its existing Coastal Flood Resiliency Overlay District, which roughly corresponds to the areas of projected sea level rise, as shown on the following page:



Large developments in that district must undergo design review,⁶⁸ but the standards set forth in the Zoning Code now⁶⁹ do not provide clear direction. Some provisions deal with below-ground residential use and slight increases to the allowable elevation. But mostly the standards offer a set of non-binding principles, suggesting that proposed designs “incorporate best practices” and “maintain access and egress between a building and the public realm during flood conditions.” In a new Zoning Code, there should be an overlay corresponding to areas vulnerable to sea level rise. This overlay should apply to all types of developments, not large ones, and it should offer clear standards that provide transparency to all property owners. In developing these standards, serious thought must be given to what, exactly, the City thinks property owners at risk should be doing to their properties today – or should be allowed to do with their properties tomorrow – to ensure they and the public can adequately prepare for the future.

Like sea level rise, extreme heat threatens Bostonians’ quality of life. Zoning has a small role to play in adapting to extreme heat as it continues to affect New England more frequently. Perhaps its biggest potential role revolves around trees, because trees can cool the city, provide shade and relief for residents, and clean

⁶⁸ This review is conducted through the Article 80 review process for certain larger projects.

⁶⁹ Zoning Code §§ 25A-6 to 25A-7.

the air, too. Oddly, *Imagine Boston 2030* does not mention the word “tree” or “trees” once, except when quoting a comment by a resident. Even more strange, there is scant mention of trees in the Boston Zoning Code, except in scattered provisions about trees in parking lots and as appropriate options for buffers in manufacturing districts.⁷⁰ The City’s 2022 Urban Forest Plan aims to protect and grow trees citywide, but it echoes the modest ambition of the Zoning Code in calling for zoning reforms only to require trees in new parking lots and negotiate for trees during Article 80 design reviews.⁷¹

In a revised Zoning Code, tree canopy coverage requirements should be articulated citywide, for all new construction requiring a zoning permit. Tree provisions should specify a list of native and climate-resilient trees, set out planting standards, and delineate designs for street tree wells. The Code should also place serious safeguards on mature trees, which draw more carbon dioxide from the air and offer more cooling benefits than the many smaller trees. The Zoning Code should also create incentives for property owners to have vegetation on their roofs. As it stands, the Zoning Code does mention green roofs, but only as a mechanism to satisfy minimum open space requirements.⁷² A cooler Boston requires more trees, and the Zoning Code can help make that happen.

Now we can turn to the single substantive change to the Boston Zoning Code that arguably will do the most good for the city: the elimination of all minimum parking requirement. It will help reduce reliance on cars, reduce housing prices, enable historic properties to be rehabilitated, and encourage small business growth. Zoning codes around the country have for five or six decades required a minimum number of parking spaces for all kinds of uses. Now, as documented by the Parking Reform Network, many communities are eliminating or rolling back these mandates.⁷³ In 2021, Boston eliminated parking mandates for certain developments with 60% or more affordable housing. But it must go further.⁷⁴ Research has shown that when you provide parking, people drive more.⁷⁵ It has also shown that parking mandates can drive up the cost of housing by 17%.⁷⁶ At the same time, parking mandates deter rehabilitation or conversion of older buildings, because rehabilitation and conversion trigger the need for owners to comply with the Zoning Code’s parking mandates. Parking mandates also prevents small business owners from adding more square footage to their businesses – either because doing so triggers the need for additional parking their lot can’t accommodate, or because they can’t grow into their parking lot due to the mandates.

⁷⁰ See, e.g., Zoning Code § 27R-10.C.3. (tree planting in parking lots in the Roslindale Interim Planning Overlay District); § 36-13 (trees an optional buffer in Light Manufacturing District); § 42D-5 (same, but for Waterfront Manufacturing District); § 49-8.5 (requiring trees on the boulevards within the Central Artery District); § 55-38.6 (articulating tree types in Jamaica Plain Neighborhood District); § 68-31.3 (tree planting in parking lots in South Boston Neighborhood District); § 69-27.3 (same, but for Hyde Park Neighborhood District).

⁷¹ City of Boston, Urban Forest Plan 93, 103 (2017), at <https://www.boston.gov/departments/parks-and-recreation/urban-forest-plan>.

⁷² Zoning Code § 17-1.

⁷³ Parking Reform Network, Progress on Parking Mandates Map, at <https://parkingreform.org/mandates-map/>.

⁷⁴ Cambridge recently eliminated all minimum parking requirements for residential and commercial developments. Hartford became the first large city to eliminate minimum parking requirements for all uses in 2017.

⁷⁵ Christopher T. McCahill, Norman Garrick, Carol Atkinson-Palombo, & Adam Polinski, Effects of Parking Provision on Automobile Use in Cities: Inferring Causality, *Transp. Research Record: J. of Transp. Research Bd.* (2016) (an increase in parking spaces from 0.1 to 0.5 spaces/person increased automobile mode share by roughly 30 percentage points).

⁷⁶ See C.J. Gabbe & Gregory Pierce, Hidden Costs and Deadweight Losses: Bundled Parking and Residential Rents in the Metropolitan United States, *Housing Pol’y Debate* (2016) (garage parking increases the price of housing by 17%); Vicki Been & Simon McDonnell, Searching for the Right Spot: Minimum Parking Requirements and Housing Affordability in New York City (March 2012).

Through parking mandates that prevent people from using their properties for beneficial purposes, the City is losing significant tax revenue. (Parking lots generate fewer taxes than occupied buildings.) And I didn't even mention how surface parking lots increase the urban heat island effect. As discussed in Part I.C.1., there are almost 200 provisions in the Boston Zoning Code requiring parking. The City should simply delete them.

I've noted the need for transit-oriented development above, so here, it's worth emphasizing the climate dimension. When we design cities around transit, more people use transit, and they produce fewer greenhouse gas emissions. When we design cities around cars, more people use cars, and they produce more greenhouse gas emissions. So rezoning areas around transit to enable more people to benefit from walkable locations is a climate-smart thing to do. Those rezoned areas should not, by the way, have minimum parking requirements of any kind.

IV. CONSIDERING TWO PATHWAYS TO REFORM

If the City of Boston were starting from scratch, knowing all that it knows, it would never have chosen the current structure and content of the Boston Zoning Code. Yet somehow, over nearly six decades, it has withstood previous reform efforts and endures in governing nearly every construction project in the city.

Part I of this report outlined the deficiencies, abnormalities, and opportunities in the Zoning Code – including the troubling realization that the code is likely the longest (and correspondingly most complex) in the nation. Part II diagnosed the relationship between zoning, citywide planning (weak), and neighborhood planning (strong). Part III provided some ideas about how to improve that relationship and address other issues. It called for the reversal of several longstanding practices, including neighborhood-specific zoning and reactively-negotiated districts (planned development areas and institutionalized master plans). It suggested parameters to instill discipline on a new Code: a 500-page, 50-district maximum. It proposed that Boston adopt a form-based code, to ensure greater control and flexibility, establish clear guidelines, promote historic preservation, and reduce nonconformities. It called for the erasure of the minimum parking requirement and the floor-to-area ratio. And it recommended an overhaul of the use table and new provisions on as-of-right housing, mixed-use transit nodes, accessory dwellings, tree canopy coverage, and flood-prone areas.

This Part takes those ideas and tries to help envision how they might be realized. It discusses two options for reform of the Zoning Code: Option 1 – a complete overhaul; or Option 2 – an incremental approach. I believe Option 1 will more efficiently and effectively achieve the City’s goals, and I suggest a shortcut to get it done faster. In the alternative, I also discuss potential strategies for Option 2, a second-best approach that would make incremental progress.

A. OPTION #1: A COMPLETE OVERHAUL

Given the serious issues with the Boston Zoning Code, I strongly suggest a complete overhaul that redefines zoning districts and their regulatory requirements and draws a new zoning map. A complete overhaul can ensure logical consistency across the entire Zoning Code and alignment between various sections. A code rewritten in one shot would have a chance of coherently achieving Bostonians’ vision, as expressed in various adopted plans, for a more affordable, equitable, inclusive, healthy, resilient, and connected city. It would signal a mindset shift from balkanized and byzantine rule-making to rule-making reflecting “one Boston.” A one-time Zoning Code overhaul would also be faster and far less costly for the City than a series of step-by-step processes, which would likely be conducted by competing consultants tripping over each others’ work scope. And a comprehensive overhaul would avoid the “meeting fatigue” – which dampens high-quality engagement and deters underrepresented people from participation – of an incremental approach.

Based on the experience of other cities that have comprehensively rezoned,⁷⁷ a start-from-scratch overhaul of the Zoning Code could take three or four years, starting with documentation of current conditions (including building types) across Boston. If that seems like too long to wait, a shortcut of one to two years

⁷⁷ Sara C. Bronin, *Comprehensive Rezonings*, 2019 *BYU Law Review* 725, 2020.

might be possible by modeling the Boston Zoning Code on a recently reformed code with form-based components. For discussion purposes, I say more below about the example of Hartford, Connecticut.

In either case, to have a successful code reform process, the City must begin by taking stock of every building in the city, documenting its size, roof shape, location on the lot, and other key characteristics. Only through this survey will it be able to draft a new Code that accommodates existing conditions in the city and reduces the number of properties deemed nonconforming. To undertake this survey, the City may need to hire a consultant. If it chooses to do so, I would advise that the City select a consultant with experience turning such a survey into a zoning code, producing form-based codes with compelling graphics (including photographs), and working in historic cities. Whether that consultant is tasked with starting from an existing model or starting from scratch is a decision the City would need to make. We turn to those two options, and some ideas for community engagement in this process, next.

1. A SHORTCUT, AND THE HARTFORD EXAMPLE

To help make the case that Boston should copy from another city's zoning code, let me establish a basic principle: Zoning is for copycats. A hundred years ago, when state legislatures started adopting laws that allowed local governments to zone, they all copied (virtually verbatim) a federal model law.⁷⁸ In the years since, if one state amended its state enabling statute, other states copied that amendment, too. As local governments adopted zoning codes pursuant to these state laws, they copied from each other.

As someone who has read line-by-line well over a thousand American zoning codes, I can tell you that cities and towns continue to borrow liberally from one another. From a legal perspective, they do no wrong in copying, because zoning codes are public laws, not subject to copyright. Boston should start developing the framework for a new Zoning Code today, and should start gathering ideas for filling out the framework by reading other cities' codes with an eye toward copying their best provisions.

In my view, the Hartford Zoning Regulations could be considered as a potential starting point. (I'm also choosing it as an example because it's very familiar to me.) Drafted at once and occupying fewer than 300 pages, they reflect all of the concepts I suggest for Boston in my Part II report. They establish 14 allowed building types, including "downtown storefront," "cottage commercial," "workshop/warehouse," "civic building," "stacked flats," "row building," and three freestanding-home building types. The regulations also create 20 tidy zoning districts across seven categories: downtown (2), commercial-industrial (2), main street (3), multi-use mix (2), industrial (2), neighborhood mix (3), and neighborhood (5). Lauded for embodying best planning practices, they have received local and statewide awards, and even a national award⁷⁹ for their clarity and effectiveness.

Boston's building stock has very similar architectural characteristics to the building stock in Hartford, albeit in different quantities and configurations, and at different scales. The following images, taken directly from the Hartford Zoning Regulations, illustrate (L-R starting at the top left) buildings compliant with the rules for downtown storefronts, storefronts, general buildings, civic buildings, apartment buildings, row buildings, type A houses, and type B houses:

⁷⁸ U.S. Department of Commerce, A Standard State Zoning Enabling Act (1924).

⁷⁹ The 2020 Richard H. Driehaus Award from Smart Growth America and the Form-Based Codes Institute for best form-based code nationally.



The structure and user-focused approach of the Hartford Zoning Regulations might also help the City of Boston develop key usability principles for its new Code. Instead of 90 chapters, the Hartford code has 9. It covers all administrative issues in Chapter 1, establishes districts in Chapter 2, regulates uses in Chapter 3, regulates form in Chapter 4, sets out overlays in Chapter 5, deals with landscaping and site improvements in Chapter 6, establishes parking (maximums) and bike parking minimums in Chapter 7, regulates signage in Chapter 8, and articulates allowed street design in Chapter 9. Provisions are not duplicated, and they neatly cross-reference each other. Throughout the Hartford regulations, graphics illustrate how to decipher the potentially opaque. For example, there is a one-page flowchart outlining all the places a property owner must go to understand the permitting process. And there are charts like this one which explain how the code should be interpreted:

Regulations are organized in 4 categories:

- A. **Building Siting** defining where the building & parking is located on the site.
- B. **Height** defines the number of stories and height of each story.

- C. **Uses** defines how permitted uses may be distributed within the building.
- D. **Street Facade Requirements** establishes design requirements for street facades related mainly to windows, doors, and roofs.

4.0 BUILDING TYPES
Storefront Building Type

4.1.2 STOREFRONT BUILDING TYPE REGULATIONS.

	MS-1	MS-2	MS-3	CX-2
Building Siting (refer to Figure 4.1-B, Storefront Building Siting and 4.1.3 Building Siting for explanation)	not permitted	not permitted	not permitted	permitted
Min. Lot Area	1000 sq ft	1000 sq ft	1000 sq ft	1000 sq ft
Min. Front Lot Line Coverage	50% w/1'	65% w/1'	60% w/1'	75%
Occupation of Corner	required	required	required	required
Permitted to Build in Zone	within 5' of Building Line	within 5' of Building Line	within 5' of Building Line	within 5' and 10' from front lot line
Corner Build to Zone	within 5' of Building Line	within 5' of Building Line	within 5' of Building Line	within 5' and 10' from corner side lot line
Min. Side Setback	0'	0'	0'	0'
Min. Rear Setback	0'	0'	0'	0'
Min. Lot Width	10'	10'	10'	10'
Min. Lot Depth	no limitation	no limitation	no limitation	no limitation
Min. Building Coverage	70%	70%	60%	70%
Min. Impervious Area	70%	70%	60%	70%
Min. Sealed Pavement Area	70%	70%	60%	70%
Permitted Parking & Loading Location	rear yard, side yard, front yard, street	rear yard, side yard, front yard, street	rear yard, side yard, front yard, street	rear yard, side yard, front yard, street
Permitted Vehicular Access	any driveway per lot, new driveway driveway for lots with over 100' feet in street frontage, shared driveways encouraged	any driveway per lot, new driveway driveway for lots with over 100' feet in street frontage, shared driveways encouraged	any driveway per lot, new driveway driveway for lots with over 100' feet in street frontage, shared driveways encouraged	any driveway per lot, new driveway driveway for lots with over 100' feet in street frontage, shared driveways encouraged
Height (refer to Figure 4.1-C, Storefront Building Height & Use Requirements and 4.1.3 for explanation)				
Minimum Overall Height	2 stories w/1'	2 stories w/1'	1 story	2 stories
Maximum Overall Height	4 stories	4 stories	4 stories	4 stories
Ground Story (refer to Figure 4.1-D, Storefront Building Street Facade Requirements)				
Minimum Height	12'	12'	12'	12'
Maximum Height	18'	18'	18'	12' w/1'
Upper Stories (refer to Figure 4.1-D, Storefront Building Street Facade Requirements)				
Minimum Height	0'	0'	0'	0'
Maximum Height	14'	14'	14'	14'

4.0 BUILDING TYPES
Storefront Building Type

4.1.3 STOREFRONT BUILDING TYPE REGULATIONS.

	MS-1	MS-2	MS-3	CX-2
Uses (refer to Figure 4.1-E, Storefront Building Street Facade Requirements and 4.1.3 for permitted uses)				
Ground Use	retail, service, professional office uses permitted by district	retail, service, professional office uses permitted by district	retail, service, professional office uses permitted by district	retail, service, professional office uses permitted by district
Upper Uses	any permitted use	any permitted use	any permitted use	any permitted use
Parking within Building	permitted fully in any basement and in rear of upper floors	permitted fully in any basement and in rear of upper floors	permitted fully in any basement and in rear of upper floors	permitted fully in any basement and in rear of upper floors
Entrance to Building	rear facade, minor side facade permitted on lots wider than 1000', corner side facade permitted with special permit	rear facade, minor side facade permitted on lots wider than 1000', corner side facade permitted with special permit	rear facade, minor side facade permitted on lots wider than 1000', corner side facade permitted with special permit	rear facade, minor side facade permitted on lots wider than 1000', corner side facade permitted with special permit
Required Land Space	minimum 30' steps on all full floors from the front facade	minimum 30' steps on all full floors from the front facade	minimum 30' steps on all full floors from the front facade	minimum 30' steps on all full floors from the front facade
Street Facade Requirements (refer to Figure 4.1-D, Storefront Building Street Facade Requirements and 4.1.3 for street facade requirements)				
Minimum Transparency on Ground Story of Front Facade (refer to Figure 4.1-D, Storefront Building Street Facade Requirements and 4.1.3 for requirements)	75%	75%	65%	65%
Minimum Transparency per each Story	15%	15%	12%	12%
Blank Wall Limitations	Required per floor on all stories (refer to 4.1.8.4.9 for requirements)	Required per floor on all stories (refer to 4.1.8.4.9 for requirements)	Required per floor on all stories (refer to 4.1.8.4.9 for requirements)	Required per floor on all stories (refer to 4.1.8.4.9 for requirements)
Blank Wall Limitations	none	none	none	none
Principal Entrance Type	front facade	front facade	front facade	front facade
Principal Entrance Location	front facade	front facade	front facade	front facade
Required Number of Street Entrances	1 per each 75' of front facade	1 per each 75' of front facade	1 per each 100' of front facade	1 per each 100' of front facade
Ground Story Vertical Facade Divisions	minimum of every 50' of facade width	minimum of every 50' of facade width	minimum of every 50' of facade width	minimum of every 50' of facade width
Horizontal Facade Divisions	required within 3' of the top of the ground story and within 3' of top story over 3 stories	required within 3' of the top of the ground story and within 3' of top story over 3 stories	required within 3' of the top of the ground story and within 3' of top story over 3 stories	required within 3' of the top of the ground story and within 3' of top story over 3 stories
Permitted Roof Types	parapet, flat, parapet, pitched, flat, parapet, flat	parapet, flat, parapet, pitched, flat, parapet, flat	parapet, flat, parapet, pitched, flat, parapet, flat	parapet, flat, parapet, pitched, flat, parapet, flat
Other Permitted	never permitted	never permitted	never permitted	never permitted

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Figure 4.1-C How to Read the Building Type Table Spread

Unlike Boston’s unwieldy description of uses, the Hartford use table is three pages long, distinguishing between permitted (as-of-right) uses, upper-story uses, uses subject to conditions, and special permit uses requiring a public hearing. Hartford’s approach to its use table is permissive in that the planning and zoning commission may render an interpretation about whether an unlisted use is “substantially similar in nature and impact to a use permitted within a zoning district,”⁸⁰ and then, upon finding of a similar use, regulate the unlisted use the same way as it does the most-similar listed use. In this way, the Hartford regulations achieve the flexibility lacking in the Boston Zoning Code.

Boston need not have precisely the same zoning districts, building types, use regulations, or form-based regulations as Hartford. Given aspirations set forth in prior Boston plans, officials may wish to add a district relating to the waterfront areas and sea level rise, more specific regulations on laboratories (treated as “office” uses in Hartford), and density bonuses for providing certain desirable amenities. They may also wish to use the “Campus Overlay” articulated in Chapter 5 of the Hartford code as a model for placing clearer parameters on desired development in Boston’s current negotiated districts.

Certainly, Boston could find another city with a more pertinent or desirable zoning code by consulting the Form-Based Codes Institute’s library of past form-based codes or by conducting its own review of recently adopted codes and selecting from among them.

2. THE START-FROM-SCRATCH ALTERNATIVE

The alternative to copying is to start from scratch, which will extend the overhaul process to the more common three to four years (or longer). If this method is chosen, the quality and experience of the consultant hired by the City will be critical.

3. ENGAGEMENT PLANNING

In either scenario, the City would need to develop a clear engagement plan. I would recommend convening a zoning advisory board that includes key stakeholders across a range of substantive areas, who could help City staff and any consultant hired to vet text. I would also lay out at the outset a tentative schedule of meetings, which could change based on progress, but would at least provide a sense to the public of the manner in which the City will engage them. Again, given its clear mandate to start drafting, I would encourage the City to use public meetings not as visioning sessions (which have already occurred through neighborhood and citywide planning processes) but as sessions to debate draft language and whether it succeeds in realizing previously-established visions for Boston’s future development.

With regard to meetings, the City should plan for at least a dozen citywide meetings. The first three or four meetings could be used to present the findings from the building survey, including proposing suggested building types and asking people to respond to the building types (through image preference surveys, focus groups, and other feedback). If the building survey takes one year, these public meetings could occur during the three to six months after completion. On a parallel track, citywide meetings could present draft text not involving the form-based regulations. These meetings could include one meeting discussing the overall structure and usability of the proposed framework for the new Code; one or two meetings on proposed definition changes (if folded into the overhaul process); two to four meetings on proposed changes to the

⁸⁰ Hartford Zoning Regulations § 3.2.3.A.

use table (e.g., residential, commercial, industrial, and other uses); one or two meetings on proposed site improvement and landscape provisions; and one or two meetings on street designs (if these will be incorporated into a new Code). City staff should also hold citywide meetings on specific topics, including housing, economic development, climate resiliency, and historic preservation. These meetings could be hosted by organizations that share those interests, and could usefully workshop draft provisions. These meetings could also be used as an opportunity for the City to explain why its draft has the potential to satisfy Bostonians' shared goals in these areas.

In addition to these citywide meetings, City staff should plan to schedule neighborhood meetings to explain how the draft text and proposed mapped districts would guide development in particular neighborhoods. These meetings could take place over a period of six to nine months, and could convene stakeholders from adjacent neighborhoods (e.g., those sharing commercial corridors) or from individual neighborhoods. I would strongly suggest that these meetings take place after most of the citywide meetings have been concluded, and within the last twelve months of the drafting process. Neighborhoods have already communicated, through their plans, how they wish their communities to be zoned. These meetings could be an opportunity to show people living in these neighborhoods how the City has responded to their efforts and receive feedback to refine semi-final provisions.

B. OPTION #2: AN INCREMENTAL APPROACH

An incremental approach to the reform of the Boston Zoning Code has trade-offs relative to a complete overhaul. While it may require less political capital, it could lead to the same piecemeal result as the current code. It could also mean greater expense for the City, and a drop-off in meaningful public participation due to meeting fatigue. If after weighing the trade-offs, the City wishes to proceed with an incremental approach, up to six "short-term" changes could happen on a one-to-three-year timeline. In ascending order of difficulty, the City may be able to accomplish: definition consolidation, parking minimum elimination, use table consolidation, tree canopy coverage, a squares-and-transit-hub district(s), and an institutional campus district(s).

The Boston Zoning Code has an inordinate number of terms with definitions, and many of these are duplicated throughout the Code. Definition consolidation, which will modestly shrink the length of the Code, is already underway and expected to be completed by the end of 2023. This consolidation process need not require excessive, drawn-out public engagement; any engagement should happen at a handful of citywide meetings to present and refine text.

The Zoning Code has hundreds of places with minimum parking requirements for uses in various districts. These outdated requirements serve no beneficial purpose and should be deleted entirely.⁸¹ The City should also delete all existing parking lot design standards and develop a set of citywide design standards for parking lots that property owners insist on building, including landscaping, robust provision for shade trees, sidewalks, crossing marking, EV charging stations, lighting (Dark Sky preferably), and screening from public rights of way. Urban areas considering lifting parking mandates sometimes see opposition from people whose neighborhoods rely heavily on street parking. As part of the rollout for eliminating parking mandates, the City would benefit from showing that its parking authority will monitor demand on street parking and be ready to implement demand management strategies. The City could consider adding parking maximums

⁸¹ Donald Shoup's *The High Cost of Free Parking* (2011) remains the classic treatment of this topic for the layperson.

for every use, which would prevent property owners from overbuilding parking, but given the difficulties in working with the Zoning Code's current organization of use-based regulation (as described in the next paragraph), this is likely infeasible. Given the significant amount of information about parking mandates and best practices in parking lot design, it seems possible that eliminating parking mandates and developing citywide design standards for parking lots could be achieved within a few months of it being proposed, with engagement focused on neighborhoods that rely heavily on street parking.

The Zoning Code's treatment of uses is disjointed, with hundreds of provisions regulating use scattered throughout. Even if the City simply takes every use in every district as it is currently allowed, and does not change these permissions substantively, streamlining all use-based provisions into a single table would be valuable. Note, however, that the biggest barrier to a truly efficient use table is Boston's large number of zoning districts. Practically speaking, they might not fit into a table on a standard-sized page. But being able to, for the first time, compare districts to each other might also reveal unexpected commonalities. The City should start reviewing and consolidating its use table only after it completes its definitions consolidation exercise. The reason is that it is possible that within the definitions, there will be opportunities for consolidation; for example, a definition of "manufacturing" might obviate the need for pages of manufacturing uses in the use table. Once the process does begin, engagement should focus on citywide, not neighborhood, meetings and should be based on the presentation of actual draft text.

The omission of tree canopy coverage requirements in the Boston Zoning Code is at odds with best practices nationally and at odds with the City's recently completed Urban Forest Plan. Tree canopy coverage requirements can be added in a new section, with a payment-in-lieu alternative compliance option for property owners with limited space to satisfy requirements on their own land.⁸² Discussion of appropriate requirements could happen at any time, but because tree canopy coverage requirements ideally relate to the uses being permitted, these requirements cannot be effectively implemented until after the use table consolidation occurs. The speed with which tree provisions can be adopted could depend on the engagement of Boston's tree-loving community. The City may float the idea for tree-centered zoning reform to those involved in the Urban Forest Plan to assess their enthusiasm.

Within three years, it is possible that the City might be able to write into the Zoning Code a new base district that replaces all zoning within a certain distance from squares and from transit stations. This base district could be one district that treats these areas similarly, or two or three related districts that vary based on their allowable density. As discussed in Part III.C., this district could enable an array of mixed uses as of right and could pilot form-based code regulations. That means that any consultant hired by the City to do a write a form-based code could be tasked with looking at these areas first. From a political perspective, the biggest opponents of these types of rezonings tend to be occupants of low-density housing (including single-family housing) in the nearby area. So the City may focus engagement on neighborhoods with lots of low-density housing around areas that may be affected by this proposal. More serious engagement on the citywide level, too, would be needed for this effort. As for timing, this reform would be independent of any other reform. Building consensus for it may be something that can start now, even if it takes a little longer to draft and adopt.

Also within three years, it may be possible for the City to write into the Zoning Code a new framework for considering institutional campus developments, currently governed through the negotiated districts (planned

⁸² These payments could be tendered to a nonprofit organization that specializes in planting and maintaining street trees or trees on public land.

development areas and institutionalized master plans). The City could review all neighborhood plans and proactively identify areas suitable for larger and more complex developments, changing the zoning map to expressly allow such developments through the placement of a new institutional campus district(s). The Zoning Code could then establish guidelines for these districts, including contextual design standards that draw from existing neighborhood conditions, site improvement standards (including parking lot location and design criteria, loading location and design criteria, and tree canopy coverage), and street design standards. These building, lot, and street standards could be developed with a mind toward expanding them citywide in the case of a future overhaul.

None of the above reforms should be positioned as pilot programs, which tend to dilute the impact of reforms and delay their benefits. Everything I've suggested here has been tested in other cities and should be low-hanging fruit.

Pushing back the timeline for major reforms has consequences. The adoption of a form-based code is critical path to the City allowing housing as-of-right; that change may be politically infeasible without clear design standards that provide some comfort about the scale of the housing that could be built. The late timeline also pushes back the elimination of the floor-to-area ratio, because people will not allow it to be eliminated unless it is replaced with some other safeguards on bulk and height, such as the safeguards offered in the form-based code. If the floor-to-area ratio endures, the majority of properties citywide will remain nonconforming. And if that's the case, the City should not bother legalizing accessory dwelling unit provisions until that regulatory barrier is eliminated, because most single-family homeowners wouldn't be able to add one. All of this is to say that there are trade-offs with an incremental approach, so it must be carefully considered before proceeding with one.

CONCLUSION

The first sentence in the summary for Imagine Boston 2030 continues to ring true: “Today, Boston is in a uniquely powerful position to create quality jobs, strengthen our competitive economy, add the housing our city needs to become more affordable, and prepare for climate change.” City leaders can achieve all of this and more, as long as they tackle longstanding zoning issues and take a clear-eyed look at the best solutions modern planning practice can offer.

Code reform is long overdue. In this report, I’ve recommended that the City stop the current process of bespoke neighborhood zoning in its tracks, and pivot to a new approach that will better align the Code with a citywide vision that finds common ground across neighborhoods. A shorter, simpler Code will be easier for people to understand and easier to administer, while offering flexibility to property owners. A form-based approach will give Bostonians more control over built results and protect historic places, while providing a more uniform set of guidelines that offer greater predictability for property owners. It will also reduce nonconformities that hinder growth and most burden low-income property owners. And a Code that embraces best planning practices in the areas of housing, economic growth, and climate resiliency will give Boston key tools it needs to thrive.

One way or another, the Boston Zoning Code will be amended again – whether in the same incremental, myopic ways it has been amended in the past, or in the bolder ways envisioned in this report. I’m hopeful that this report helps shape, and even catalyze, an ambitious code reform process that enables Bostonians to realize their vision for a more affordable, equitable, inclusive, healthy, resilient, and connected city.

With that in mind, I will make two final comments about this report’s limitations, and the importance of the City reviewing all of its land use processes within a broader regional context.

First, my report has focused on zoning, and not other parts of Boston’s extraordinarily complicated land use regulatory framework. It has not addressed, in any detail, historic district rules⁸³ enforced by the Boston Landmarks Commission, the design review process enforced by the Boston Civic Design Commission, the Wetlands Protection Ordinance⁸⁴ enforced by the City Conservation Commission, the Article 80 process,⁸⁵ the licenses required for businesses to open (including alcoholic beverage permits), or the permits required for certificates of occupancy or otherwise by the Fire, Public Works, and Inspectional Services Departments. Reforms to these other legal regimes may well be necessary to achieve Bostonians’ goals for a better-functioning, equitable, and sustainable city. City leaders should review these processes, too, with the same critical eye I’ve deployed in this report.

Second, this report has stopped at the city line. It has not covered the suburban zoning codes that influence the affordability, connectivity, and sustainability of Boston’s neighborhoods. Yet an understanding of these codes can and should shape Boston’s decisions, particularly in the areas of housing and equitable economic growth. Here’s why: suburban zoning codes drive up prices in the regional

⁸³ Mass. Gen. Stat. § 772.

⁸⁴ Boston, Mass., Code of Ordinances § 7-1.4

⁸⁵ The City is currently examining its Article 80 processes.

housing market by constraining the construction of new housing, particularly multi-family housing.⁸⁶ Boston may need to overcompensate for its exclusionary neighbors by allowing a greater diversity and abundance of housing within its borders. City leaders should pay close attention to the progress of the Massachusetts Zoning Atlas,⁸⁷ which is nearing completion of documenting every zoning code in the state – every code, that is, except Boston, whose code was too complicated to be included on the first pass.

⁸⁶ One researcher found that between 2010 and 2017, the Boston region added 245,000 new jobs but towns in the region only permitted 71,600 housing units. See Amy Dain, *The State of Zoning for Multi-Family Housing in Greater Boston* (2019), at https://ma-smartgrowth.org/wp-content/uploads/2019/06/03/FINAL_Multi-Family_Housing_Report.pdf.

⁸⁷ Massachusetts Zoning Atlas, National Zoning Atlas, at www.zoningatlas.org/massachusetts. This Atlas builds on an atlas completed by the Metropolitan Area Planning Commission. Metropolitan Area Planning Commission, MAPC Zoning Atlas, at <https://zoningatlas.mapc.org>.