

BUILDING A BETTER BLUEGRASS: EXAMINING LAND USE PLANNING AND ITS IMPACTS ON HOUSING DEVELOPMENT IN KENTUCKY

*Benjamin L. Barberie**

INTRODUCTION

Kentucky must build more housing.¹ Studies across academic disciplines and political affiliations have reached a clear consensus that the United States is facing a housing shortage, and the Commonwealth of Kentucky is no exception.² Kentucky Housing Corporation, the state’s “quasi-government agency” for affordable housing,³ estimated Kentucky’s housing needs in 2024 as 206,207 units of rental and for-sale housing across all income groups.⁴ How can the “Bluegrass State” build to remedy this shortage while protecting and preserving its natural resources and amenities?⁵ Legal and political decisions directly affect how land is used in Kentucky, and sound land use planning will be imperative to balancing stable population and economic growth with effective land and resource management.⁶ The possible upsides of comprehensive solutions include greater housing affordability, decreased sprawl, and improved urban environments.⁷

* J.D. Candidate, 2026, University of Louisville Louis D. Brandeis School of Law; B.A. Economics, B.S. Political Science, 2021, University of Louisville. Thanks to the numerous teachers, professors, and professionals who have nurtured my interest in land use planning and housing issues, the sparks of which began in high school. I owe extra gratitude to my father, David J. Barberie, for frequently letting me pick his brain about the legal or policy issue of the day, and for providing me a model of what a fulfilling legal career might look like. I wrote this Note because I believe we can build sustainable, equitable, and vibrant communities through smart policy that meets housing demand.

¹ See KY. CHAMBER OF COM., BUILDING A FOUNDATION FOR GROWTH (2024), <https://www.kychamber.com/sites/default/files/pdfs/Building%20a%20Foundation%20for%20Growth-%20Meeting%20Kentucky%27s%20Current%20and%20Future%20Housing%20Needs%20Report.pdf> [<https://perma.cc/FH66-E2HQ>].

² *Id.* at 20 (“Researchers on both the left and right of the ideological spectrum agree that a shortage of housing is a root cause of today’s housing challenges.”); *id.* at 21 (“Estimates, regardless of their methods, all point to a severe nationwide housing shortage.”).

³ About KHC, KY. HOUS. CORP., <https://www.kyhousing.org/About-KHC/Pages/default.aspx> [<https://perma.cc/8Y9X-YYYM>] (last visited Feb. 16, 2025).

⁴ Kentucky Housing Supply Gap, KY. HOUS. CORP., <https://www.kyhousing.org/Data-Library/Housing-Gap-Analysis/Pages/default.aspx> [<https://perma.cc/ST4Q-Z7NQ>] (last visited Feb. 16, 2025).

⁵ *The Bluegrass State: A Kentucky Travel Guide*, RAND MCNALLY PUBL’G (Sep. 26, 2017), <https://randpublishing.com/blog/the-bluegrass-state-a-kentucky-travel-guide/?srsltid=AfmBOopkbJcg9Fll2tz0BUF2y7BcTZqWr-IrT2IMqgbu05porjA35OnM> [<https://perma.cc/7XLB-8WVW>] (“Beautiful grass with a bluish hue is the inspiration behind Kentucky’s nickname: The Bluegrass State.”).

⁶ Qingmeng Tong & Feng Qiu, *Population Growth and Land Development: Investigating the Bi-Directional Interactions*, 169 ECOLOGICAL ECON. 1, 9 (2020).

⁷ See Johamary Peña & Sagar Shah, *Infill Development Supports Community Connectivity*, AM. PLAN. ASS’N: EVERYDAY DESTINATIONS (May 2, 2022), <https://www.planning.org/blog/9227414/infill-development-supports-community-connectivity/> [<https://perma.cc/6DXN-DD6D>].

While it is already difficult to measure existing housing needs across different communities, forecasting future demand is arguably even more complicated.⁸ The state is projected to sustain modest population growth through 2050, but the availability of housing, or lack thereof, could directly influence just how much the state's population increases over the next quarter century.⁹ Kentucky's future needs could balloon to anywhere between 361,213 and 529,378 new housing units by 2050, depending on whether the rate of household growth is "moderate" or "robust."¹⁰

Companies may be less likely to make significant economic investments where a community is unable to meet the housing demands of a growing workforce.¹¹ Where housing is abundant and a community is seen as affordable, it may become an attractive destination to relocate.¹² People move for all sorts of reasons, but studies indicate that housing is a primary factor in the decision-making process.¹³ Failure to appropriately meet demand for housing can have adverse effects on communities through gentrification and displacement, pushing existing residents out of increasingly expensive neighborhoods and plunging some into homelessness.¹⁴

Urban sprawl¹⁵ is an additional issue. Homebuyers generally prefer single-family units over multifamily units, reflected in the breakdown of

⁸ See KY. CHAMBER OF COM., *supra* note 1, at 26 (explaining that forecasts are not a "crystal ball" and that "Kentucky's growth trajectory could diverge significantly from these projections").

⁹ *Id.*

¹⁰ KY. CHAMBER OF COM., *supra* note 1, at 30.

¹¹ See Aaron Shroyer & Veronica Gaitán, *Four Reasons Why Employers Should Care About Housing*, URB. INST.: HOUSING MATTERS INITIATIVE (Sep. 11, 2019), <https://housingmatters.urban.org/articles/four-reasons-why-employers-should-care-about-housing> [<https://perma.cc/V52Y-2MFA>] (explaining how housing affordability affects employers).

¹² *Id.*

¹³ See Riordan Frost, *Who is Moving and Why? Seven Questions About Residential Mobility*, HARV. UNIV. JOINT CTR. FOR HOUS. STUD.: HOUS. PERSPS. (May 4, 2020), <https://www.jchs.harvard.edu/blog/who-is-moving-and-why-seven-questions-about-residential-mobility> [<https://perma.cc/3RLR-7F9X>] (analyzing the motivations of American movers).

¹⁴ See generally *Understanding Gentrification and Displacement*, UNIV. OF TEX. AT AUS.: THE UPROOTED PROJECT [hereinafter UNIV. OF TEX.], <https://sites.utexas.edu/gentrificationproject/understanding-gentrification-and-displacement/>

[<https://perma.cc/GR47-XM4B>] (last visited Feb. 16, 2025) ("Gentrification is a process of neighborhood change where higher-income and higher-educated residents move into a historically marginalized neighborhood, housing costs rise, and the neighborhood is physically transformed through new higher-end construction and building upgrades, resulting in the displacement of vulnerable residents and changes to the neighborhood's cultural character.").

¹⁵ See generally John P. Rafferty, *Urban Sprawl*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/urban-sprawl> [<https://perma.cc/4374-T7B7>] (last visited Feb. 16, 2025) ("[U]rban sprawl, the rapid expansion of the geographic extent of cities and towns, often characterized by low-density residential housing, single-use zoning, and increased reliance on the private automobile for transportation.").

housing starts¹⁶ in 2024.¹⁷ At 1.01 million, single-family starts made up about three-quarters of the 1.36 million total housing starts, with multifamily starts comprising the remaining quarter.¹⁸ Only about a quarter of this new single-family development occurs as infill or teardown development,¹⁹ meaning the remainder occurs as greenfield development.²⁰ Improving the percentage of infill development is imperative to managing new housing construction in a manner that does not further urban sprawl.²¹

Understanding that no two communities are the same, the impacts of land use policy on housing development are felt differently across Kentucky.²² This Note takes Louisville/Jefferson County, Lexington/Fayette County, and Covington/Northern Kentucky as three separate lenses through which to examine the current state of housing development policy in Kentucky. The focus is narrowed to these three urban areas because together they represent the three largest population regions in the state. Additionally, while the issues presented by housing shortages are difficult to solve in an urban context, they are arguably even more difficult in small rural communities where governing structures are more fractured and different development issues are present, particularly with the lack of readily available infrastructure in some areas.

Louisville is a good example of the impacts the housing shortage can have on a large city.²³ Lexington offers a study of the effects of the crisis on a mid-sized city where a large research university has major population and

¹⁶ See generally *Housing Starts and Building Permits*, NAT'L ASS'N OF HOME BUILDERS, <https://www.nahb.org/news-and-economics/housing-economics/national-statistics/starts-and-permits> [<https://perma.cc/7BGF-4VBL>] (last visited Feb. 16, 2025) (“A single-family housing start means excavation (ground breaking) has begun for the footings or foundation of a residential structure. For a multifamily structure, all units are counted as started when the structure is started.”).

¹⁷ See *Housing Starts End 2024 on an Up Note*, NAT'L ASS'N OF HOME BUILDERS (Jan. 17, 2025), <https://www.nahb.org/news-and-economics/press-releases/2025/01/housing-starts-end-2024-on-an-up-note> [<https://perma.cc/E94W-UFPU>].

¹⁸ *Id.*

¹⁹ *25% of New Single-Family Homes are Infills or Teardowns*, NAT'L ASS'N OF HOME BUILDERS (Dec. 9, 2021) [hereinafter HOME BUILDERS], <https://www.nahb.org/blog/2021/12/25-percent-of-new-single-family-homes-are-infills-or-teardowns> [<https://perma.cc/M34F-RR54>].

²⁰ See generally *Greenfield*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/greenfield> [<https://perma.cc/G7FA-FQ58>] (last visited Feb. 16, 2025) (“[G]reenfield” land not previously developed or polluted.”).

²¹ See Peña & Shah, *supra* note 7.

²² See generally KY. CHAMBER OF COM., *supra* note 1, at 24 (showing differences in housing needs across Kentucky communities).

²³ See *Annual Estimates of the Resident Population for Incorporated Places of 20,000 or More, Ranked by July 1, 2023 Population: April 1, 2020 to July 1, 2023*, U.S. CENSUS BUREAU (May 2024) [hereinafter U.S. CENSUS BUREAU], <https://www2.census.gov/programs-surveys/popest/tables/2020-2023/cities/totals/SUB-IP-EST2023-ANNRKN.xlsx> [<https://perma.cc/CZB8-ZAN6>] (estimating Louisville’s 2023 population at 622,981 residents, making it the 28th largest incorporated place in the United States by population at the time).

economic ties.²⁴ Covington provides a model for how suburbs of large cities can manage their own urban form despite the inability to control housing policy decisions made by the larger metropolitan center city.²⁵

Developing housing in metropolitan areas of Kentucky has become more difficult over time because of the misguided aims of land use and zoning regulations in core cities. Rather than providing clear pathways for vibrant, mixed-use housing development, the complex web of regulation often increases development costs, extends development timelines, and deters some projects from the outset. Part I provides a historical background of planning, zoning, and land use concepts in the United States before detailing the histories of these concepts in the merged Louisville and Jefferson County, merged Lexington and Fayette County, and Covington and the greater Northern Kentucky area. Part II analyzes the failures of existing land use and zoning regulations in these three cities and highlights positive attributes where present. Part III offers solutions to combat sprawl and environmental degradation while improving housing supply and affordability.

I. BACKGROUND

Underlying the regulatory web of policies that affect housing development today are concepts and tools that significantly predate the modern era. Before discussing their impact, three critical terms must first be understood: planning, zoning, and land use. How these concepts specifically inform current policy in Louisville, Lexington, and Covington becomes clear after first reviewing the origins and histories of these concepts generally.

A. *An Overview of Planning, Zoning, and Land Use*

Planning, sometimes in this context also referred to as “urban planning” or “city planning,” is “the drawing up of an organized arrangement (as of streets, parks, and business and residential areas) of a city,” and is a practice of management for the future of cities.²⁶ Zoning is “the legislative division

²⁴ See generally UNIV. OF KY., UNIVERSITY OF KENTUCKY BOARD OF TRUSTEES 4, <https://www.uky.edu/trustees/sites/www.uky.edu.trustees/files/PR%204-1%20%28attachment%29%20Overview%20of%20proposed%20regulation%20changes.pdf> [<https://perma.cc/25J6-SEEV>] (last visited Feb. 28, 2025) (“34,000 students, 26,000+ staff, 3,400+ faculty..”).

²⁵ Paul Tenkotte, *Our Rich History: ‘Connecting the dots’ between Cincinnati, Covington and Newport*, N. KY. TRIB. (Mar. 8, 2021), <https://nkytribune.com/2021/03/our-rich-history-connecting-the-dots-between-cincinnati-covington-and-newport/> [<https://perma.cc/8CC7-SJUX>] (explaining the historical ties between Cincinnati, Covington, and Newport).

²⁶ *City Planning*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/city%20planning/> [<https://perma.cc/ZNK2-2XKE>] (last visited Feb. 16, 2025).

of a region, [especially] a municipality, into separate districts with different regulations within the districts for land use, building size, and the like” that determine what can and cannot be built on a specific parcel of land.²⁷ Land use “represents the economic and cultural activities (e.g., agricultural, residential, industrial, mining, and recreational uses) that are practiced at a given place.”²⁸

Each of these terms is distinct and carries varying degrees of connection to law and binding enforcement.²⁹ Planning might often be a set of best practices, principles, or goals set by a given city.³⁰ Planning initiatives frequently include broad community engagement and listening sessions that inform the drafting and publication of robust final documents that include the use of pictures and charts.³¹ Zoning and land use regulations are codified at the local level and carry penalties for noncompliance.³² Planning, zoning, and land use decisions each shape the built environment³³ of cities in innumerable ways.³⁴

The three concepts of planning, zoning, and land use blend together under the umbrella of “land use planning,” which is “the deliberate, systematic development of real estate through methods such as zoning, environmental-impact studies and the like.”³⁵ It can also be thought of as what “control[s] the development of private land through use, density, design, and historic preservation requirements.”³⁶

In a vacuum, a natural flow exists among the three concepts. A city solicits input on how it should approach development over a given period of time. The city’s residents make clear that they desire a particular land use for an area through the planning process. The city then adopts a zoning ordinance that permits the desired land use, and a private party can accordingly develop the land.³⁷

²⁷ *Zoning*, BLACK’S LAW DICTIONARY (6th Pocket ed. 2021).

²⁸ *Land Use*, EPA (Jan. 15, 2026), <https://www.epa.gov/report-environment/land-use> [<https://perma.cc/CBF2-KF2T>].

²⁹ *See generally Land Use Planning and Zoning*, EJ GREEN BOOK (Oct. 22, 2024) [hereinafter EJ GREEN BOOK], <https://ejgreenbook.com/resources/land-use-planning-and-zoning/> [<https://perma.cc/W9JJ-35T9>] (explaining land use planning concepts).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *See Basic Information About the Built Environment*, EPA (Jan. 22, 2026), <https://www.epa.gov/smm/basic-information-about-built-environment> [<https://perma.cc/ZA25-RBMQ>] (defining the built environment as “our nation’s roads, buildings, bridges, and other infrastructure”).

³⁴ *See generally* EJ GREEN BOOK, *supra* note 29 (explaining land use planning concepts).

³⁵ *Land-Use Planning*, BLACK’S LAW DICTIONARY (6th Pocket ed. 2021).

³⁶ *The Basics of Land Use and Zoning Law*, TULANE UNIV. L. SCH.: TULANE ONLINE L. BLOG (Aug. 26, 2021) [hereinafter TULANE BLOG], <https://online.law.tulane.edu/blog/land-use-and-zoning-law> [<https://perma.cc/AU3G-M7E8>].

³⁷ This hypothetical illustrates how a responsive land use planning process might function from the planning phase to the development of a parcel.

The problem is that this process often flows backward in the real world or, at a minimum, is messier.³⁸ Often, convoluted zoning codes have been in place in many American cities for decades.³⁹ They see infrequent amendments, and nonconforming projects are often instead approved with variances.⁴⁰ Planning can still consider desired uses for land, but as cities have grown, they are left with fewer and fewer undeveloped parcels of land where they can start from scratch.⁴¹ Instead of the organic, planning-based approach of looking at an area of land and asking, “What’s the best use for this in the future?” and moving to make it happen from there, rigid zoning codes leave landowners with a set of rules that say, “Here’s what’s allowed” based on maps that may have been drawn decades ago.⁴² Landowners must then take these restrictions as they are, attempt to overcome the rules through variances, waivers, and conditional use permits, or abandon the desired use entirely.⁴³

Even where a city may identify a parcel as ideal for a particular use—say, dense mixed-use development that includes housing and commercial elements—it cannot simply compel a private landowner to develop for that use.⁴⁴ The city can exercise eminent domain powers, but under the Fifth Amendment, private property may not be taken for public use without just compensation.⁴⁵ The Constitution of Kentucky provides a similar protection.⁴⁶ The idea of just compensation involves payment for the fair market value of the property. Fair market value is determined by an appraisal considering the “highest and best use” of the property, which considers what is physically possible, legally permissible, financially feasible, and maximally productive.⁴⁷

Further complexities arise with the “public use” aspect of eminent domain takings. Broadly, the Supreme Court in recent years has stretched the

³⁸ See EJ GREEN BOOK, *supra* note 29.

³⁹ See TULANE BLOG, *supra* note 36.

⁴⁰ See EJ GREEN BOOK, *supra* note 29.

⁴¹ See HOME BUILDERS, *supra* note 19.

⁴² See EJ GREEN BOOK, *supra* note 29 (explaining the role of maps in land use planning).

⁴³ See, e.g., DEP’T OF CODES & REGULS., *Waivers & Variances (Land Development Code Only)*, LOUISVILLE-JEFFERSON CNTY. METRO GOV’T., <https://louisvilleky.gov/government/codes-regulations/waivers-variances-land-development-code-only> [https://perma.cc/393M-WYAV] (last visited Feb. 16, 2025) [hereinafter *Waivers & Variances*]; see also *Board of Zoning Adjustment (BOZA)*, LOUISVILLE-JEFFERSON CNTY. METRO GOV’T., <https://louisvilleky.gov/government/office-planning/board-zoning-adjustment-boza> [https://perma.cc/P5ZP-72ZH] (last visited Feb. 16, 2025) (explaining applications reviewed by the Louisville-Jefferson County Metro Government’s Board of Zoning Adjustment (BOZA), including conditional use permits and dimensional variances).

⁴⁴ See U.S. CONST. amend. V.

⁴⁵ *Id.*

⁴⁶ See K.Y. CONST. § 242.

⁴⁷ Sean J. Metherell, *A Fork in the Road in Condemnation Cases: The Highest and Best Use Question*, FAEGRE DRINKER BIDDLE & REATH LLP (July 20, 2018), <https://www.faegredrinker.com/en/insights/publications/2018/7/a-fork-in-the-road-in-condemnation-cases-the-highest-and-best-use-question> [https://perma.cc/RTA3-E24M].

definition of public use for eminent domain takings to include economic development.⁴⁸ But in an earlier decision, the Kentucky Supreme Court held that cities in the Commonwealth are prohibited from using eminent domain for the sole purpose of economic development under the Constitution of Kentucky.⁴⁹ This is a notable protection of private property rights, but also serves as a further block on development, especially where there is a more economically efficient land use.⁵⁰ An example might be a small grouping of single-family homes in an otherwise dense or highly commercialized area.

Despite this common law limitation on the exercise of eminent domain in Kentucky, state statutes still leave open a loophole for eminent domain to be used for “[t]he acquisition and transfer of property for the purpose of eliminating blighted areas, slum areas, or substandard and insanitary areas....”⁵¹ This broad exception raises the possibility that where a city could offer a rational explanation for the determination that property is blighted, it may exercise eminent domain powers that essentially effectuate the same result as they would under an economic development taking.⁵² Even where they may be able to exercise this power, the potential for gentrification and displacement of residents is an additional consideration for cities to balance.⁵³

Having covered the basic characteristics, conflicts, and complements of planning, zoning, and land use under land use planning, the next subsections will address the history of these concepts in the United States before moving on to their history in Kentucky.

B. History of Land Use Planning in the United States

Many planned cities across the world that predate the founding of the United States inform the elements of land use planning in America.⁵⁴ Mohenjo-Daro and cities of the Indus Valley, early Greek and Roman cities, and the cities of dynastic China all utilized orthogonal grid patterns and date back centuries to millennia.⁵⁵ Native American cities like Cahokia were often

⁴⁸ See *Kelo v. City of New London*, 545 U.S. 469, 484 (2005) (“There is, moreover, no principled way of distinguishing economic development from the other public purposes that we have recognized”).

⁴⁹ See *City of Owensboro v. McCormick*, 581 S.W.2d 3, 7–8 (Ky. 1979).

⁵⁰ See *Kelo*, 545 U.S. 469, 484. See also *McCormick*, 581 S.W.2d 3, 8 (guiding that in Kentucky, “No ‘public use’ is involved where the land of A is condemned merely to enable B to build a factory or C to construct a shopping center”).

⁵¹ KY. REV. STAT. ANN. § 416.675 (West 2006).

⁵² See *id.*

⁵³ See UNIV. OF TEX., *supra* note 14.

⁵⁴ See generally Susan S. Fainstein, *Urban Planning*, ENCYC. BRITANNICA (Jan. 17, 2026), <https://www.britannica.com/topic/urban-planning> [<https://perma.cc/AZA9-W9ZS>] (detailing the history of urban planning as a concept).

⁵⁵ See Ashley Gardini, *Urban Planning, Then and Now*, JSTOR DAILY (Oct. 10, 2023), <https://daily.jstor.org/urban-planning-then-and-now/> [<https://perma.cc/8AQH-R29S>].

organized with celestial alignment patterns.⁵⁶

New Haven, Connecticut, emerged in 1638 as the first planned grid city in the British colonies with its Nine Squares plan.⁵⁷ Savannah, Georgia, became a model following its founding in 1733, with its grid that included public squares, parks, and business centers throughout the city.⁵⁸ The nation's capital, Washington, D.C., was founded in 1790 and adopted Pierre L'Enfant's notorious plan that included diagonal axes cut across a square grid pattern.⁵⁹ The original grid patterns are still visible in these three cities several hundred years later.

Planning has clearly been a concept adopted by American cities since the nation's founding, but what about zoning?⁶⁰ American zoning traces its roots to German zoning in the 1870s, which was based on the segregation of different land uses.⁶¹ The dark history of zoning in the United States is based not just on the segregation of land uses, but also on the segregation of people.⁶²

With a series of ordinances in 1880, San Francisco placed restrictions on the location of public laundries in the city, which had an overwhelmingly discriminatory impact on Chinese residents.⁶³ The ordinances were struck down by the Supreme Court in 1886 as violating the Equal Protection Clause of the Fourteenth Amendment.⁶⁴ Several notable policy implementations across the country followed this ruling.⁶⁵ In 1909, Los Angeles adopted an

⁵⁶ See *Ancient Cahokia and the Mississippian Culture*, UNIV. OF ILL.: MYTHIC MISS. PROJECT, <https://mythicmississippi.illinois.edu/lesson-plans/ancient-cahokia/> [https://perma.cc/2RLW-XJPS] (last visited Feb. 16, 2025).

⁵⁷ See Molly Boyle, *The Failure of America's First City Plan: Why New Haven, the Colonies' First Planned City, Would Have Been Better Left Unplanned*, in *SAW STUDENT PAPER SERIES 6-8* (2010), <https://openyls.law.yale.edu/handle/20.500.13051/5574> [https://perma.cc/G35X-7MB4].

⁵⁸ See *History of Savannah*, VISIT SAVANNAH, <https://visitsavannah.com/article/history-savannah> [https://perma.cc/AQF2-4AWM] (last visited Feb. 16, 2025).

⁵⁹ See Charles LeeDecker, *The L'Enfant Plan*, NAT'L PARK SERV. (Apr. 17, 2020), <https://www.nps.gov/articles/dc-monumental-core-the-lenfant-plan.htm> [https://perma.cc/Q6X4-SU3X].

⁶⁰ See generally Fainstein, *supra* note 54 (detailing the history of urban planning as a concept).

⁶¹ See SONIA HIRT, *TO ZONE OR NOT TO ZONE? COMPARING EUROPEAN AND AMERICAN LAND-USE REGULATION*, PNDONLINE II 2 (2010), https://vtechworks.lib.vt.edu/bitstream/handle/10919/48185/hirt_to_zone_or_not_to_zone.pdf [https://perma.cc/5XFM-JBHW].

⁶² See generally Allison Shertzer & Randall Walsh, *The Origins of Urban Segregation in the United States*, NAT'L BUREAU OF ECON. RSCH.: REP. (Apr. 4, 2018), <https://www.nber.org/reporter/2018number1/origins-urban-segregation-united-states> [https://perma.cc/68QU-G2PR] (explaining the role of zoning in perpetuating racial segregation in U.S. cities).

⁶³ See *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886).

⁶⁴ *Id.*

⁶⁵ See Michael H. Wilson, *The Racist History of Zoning Laws*, FOUND. FOR ECON. EDUC. (May 21, 2019), <https://fee.org/articles/the-racist-history-of-zoning-laws/> [https://perma.cc/ALC9-W83R] (detailing the history of zoning laws in America following the *Yick Wo v. Hopkins* decision).

ordinance broadly regulating industrial and commercial uses.⁶⁶ Baltimore barred African Americans from buying homes on majority-White blocks and Whites from buying on majority-Black blocks in 1910.⁶⁷ The nation's first comprehensive zoning code was adopted in New York City in 1916.⁶⁸ Louisville played an infamous role in this period as well, which will be addressed later in this Note.⁶⁹

The following decade built up to the landmark Supreme Court case of *Village of Euclid, Ohio v. Ambler Realty Co.* in 1926.⁷⁰ In *Euclid*, the Supreme Court ruled that the zoning ordinance adopted by Euclid, Ohio, a village suburb of Cleveland, was a valid exercise of the government's police power.⁷¹ In dicta as part of the majority's opinion, Justice Sutherland explained that the experts of the time:

[C]oncur in the view that the segregation of residential, business and industrial buildings will make it easier to provide fire apparatus suitable for the character and intensity of the development in each section; that it will increase the safety and security of home life, greatly tend to prevent street accidents, especially to children, by reducing the traffic and resulting confusion in residential sections, decrease noise and other conditions which produce or intensify nervous disorders, preserve a more favorable environment in which to rear children, etc.⁷²

In the past century since the Court's decision, segregation of uses has become the predominant style of land use regulation in the United States, so much so that the method is commonly referred to as "Euclidean zoning."⁷³

Segregation of uses, at the outset, appeared to be motivated by facially neutral or even laudable aims like the promotion of public health, and it is easy to understand why policymakers would want to separate city residents from harmful or nuisance uses.⁷⁴ But the second and third-order effects of

⁶⁶ See Amanda Erickson, *The Birth of Zoning Codes, a History*, BLOOMBERG (June 19, 2012, at 08:02 ET), <https://www.bloomberg.com/news/articles/2012-06-19/the-birth-of-zoning-codes-a-history> [<https://perma.cc/8NRZ-J8C5>].

⁶⁷ See RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 44 (2017).

⁶⁸ See Erickson, *supra* note 66.

⁶⁹ See discussion *infra* Section I.C.1.

⁷⁰ *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926).

⁷¹ *Id.*

⁷² *Id.* at 394.

⁷³ See *Euclidean Zoning - Historic Documents*, EUCLID, <https://www.cityofeuclid.com/euclidean-zoning---historic-documents> [<https://perma.cc/7MLV-S9UT>] (last visited Feb. 16, 2025).

⁷⁴ See Joseph Schilling & Leslie S. Linton, *The Public Health Roots of Zoning: In Search of Active Living's Legal Genealogy*, 28 AM. J. PREV. MED. 96, 100 (2005).

Euclidean zoning have been devastating to the American city.⁷⁵ Scholars have offered analysis supporting the conclusion that the practice has “exacerbated segregation issues, limited housing supply, and encouraged urban sprawl. Restrictions on minimum lot sizes, strict building codes, and other elements of Euclidean zoning have increased housing costs, limited new housing construction, worsened affordability issues, and increased the inequality divide in urban areas.”⁷⁶ Euclidean zoning additionally draws scorn from across the political aisle, as it “violates conservative principles by distorting the market and restricting property rights to an absurd degree, and it offends liberal ones by perpetuating America’s decades-long slide into stark racial and socioeconomic segregation.”⁷⁷

Given that “Euclidean systems of separation—conventional zoning—have been implemented ubiquitously”⁷⁸ across America, it should be no surprise that Kentucky cities have followed that pattern for much of their modern history.⁷⁹ But as will be explored in the forthcoming sections, the land use histories of Louisville, Lexington, and Covington have not always been in lockstep, and recent diversions may result in meaningful differences in their urban forms in the coming decades.

C. Land Use Planning in Kentucky

Land use and zoning policies across the Commonwealth of Kentucky trace their roots to the 1890s, where the state legislature adopted a classification structure for cities and began granting them the limited ability to self-govern.⁸⁰ This was followed by years of convoluted action:

Four years before the *Euclid* decision, Kentucky’s 1922 General Assembly enacted the City Planning and Zoning Act (“the Act”), which granted first and second class cities the right to create a city planning commission to survey and zone the city. In 1924, the General Assembly repealed the

⁷⁵ Rachel Watsky, *The Problems with Euclidean Zoning*, B.U. SCH. L.: DOME (July 19, 2018), <https://sites.bu.edu/dome/2018/07/19/the-problems-with-euclidean-zoning/> [https://perma.cc/Y7DW-NBVF].

⁷⁶ *Id.*

⁷⁷ Eliza Hall, *Divide and Sprawl, Decline and Fall: A Comparative Critique of Euclidean Zoning*, 68 U. PITT. L. REV. 915, 952 (2007).

⁷⁸ Andres Duany & Emily Talen, *Making the Good Easy: The Smart Code Alternative*, 29 FORDHAM URB. L.J. 1445, 1451 (2002).

⁷⁹ See generally *Developing Real Estate in Kentucky: A Labyrinth of Zoning Laws and Other Stuff*, STOLL KEENON OGDEN PLLC (Feb. 24, 2019), <https://www.skofirm.com/news/developing-real-estate-in-kentucky-a-labyrinth-of-zoning-laws-and-other-stuff> [https://perma.cc/C8AN-G69L] (broadly commenting on zoning across Kentucky).

⁸⁰ KY. REV. STAT. ANN. § 2740 (West 1893); 1893 Ky. Acts ch. 244, sec. 1, An Act for the Government of Cities of the First Class; KY. REV. STAT. ANN. §§ 2742, 2783 (West 1899).

Act “... as applie[d] to cities of the first class,” which included only Louisville. The legislature did not pass an act providing for planning and zoning in first class cities until 1930, even though it had passed such an act for second class cities two years earlier.⁸¹

Today, Kentucky’s land use regulations are broadly housed in Chapter 100, “Planning and Zoning,” of the Kentucky Revised Statutes.⁸² This legislative history laid the foundation for the local codes we see today in Louisville, Lexington, and Covington.⁸³

1. Adoption of Zoning and Land Use Principles in Louisville

Settled by George Rogers Clark and others in 1778, Louisville’s early growth was fueled by its importance as a trading hub along the Ohio River.⁸⁴ Following its charter in 1828, Louisville officially became a city.⁸⁵ In the two centuries that have followed, Louisville has continued to grow and industrialize, becoming an important player in manufacturing, cargo services, and the distillation of its perhaps most famous product, bourbon whiskey.⁸⁶

With industrialization came the need to manage growth effectively, which Louisville did in various ways.⁸⁷ Most infamously is the city’s central role in *Buchanan v. Warley*.⁸⁸ Motivated by the increasing integration of Louisville’s neighborhoods with a Black entrepreneurial and professional class, “[i]n November 1913, in a speech before the Real Estate Exchange, W.D. Binford of the *Louisville Courier-Journal* and *Louisville Times*, called for the passage of a racially restrictive zoning ordinance... [and] [i]n March 1914, the Louisville city council passed an ordinance to segregate the city

⁸¹ Connie Archer, *The Zoning of the Bluegrass: How the U.S. Supreme Court’s Decision in Euclid Influenced Kentucky Law*, BENCH & BAR HOT TOPICS (2014) (citing City Planning and Zoning Act, 1922 Ky. Acts 99; Repeal of The City Planning and Zoning Act, 1924 Ky. Acts 87; 1928 Ky. Acts 80; 1930 Ky. Acts 86), https://cdn.ymaws.com/www.kybar.org/resource/resmgr/Hot_topics/14_ConnieArcher_03.pdf [<https://perma.cc/JC7J-BQED>].

⁸² KY. REV. STAT. §§ 100.010–100.991 (West 2026).

⁸³ See discussion *infra* Sections I.C.1–3.

⁸⁴ See *Louisville*, ENCYC. BRITANNICA (Feb. 16, 2026) [hereinafter *Louisville*, ENCYC. BRITANNICA], <https://www.britannica.com/place/Louisville-Kentucky> [<https://perma.cc/CF6D-L4XF>].

⁸⁵ See *Louisville Summary*, ENCYC. BRITANNICA, <https://www.britannica.com/summary/Louisville-Kentucky> [<https://perma.cc/78J3-DVAX>] (last visited Feb. 16, 2025).

⁸⁶ See *Louisville*, ENCYC. BRITANNICA, *supra* note 84.

⁸⁷ See generally Carl E. Kramer, *The Evolution of the Residential Land Subdivision Process in Louisville, 1772-2008*, 107 REG. KY. HIST. SOC’Y. 33 (2009) (detailing more than two centuries of land use planning history in Louisville).

⁸⁸ *Buchanan v. Warley*, 245 U.S. 60 (1917).

into White and color blocks.”⁸⁹ In a transaction specifically designed by the NAACP to violate the ordinance, Charles Buchanan, a white realtor, sold property to William Warley, an African American and local NAACP chapter member, on the condition that the sale was only valid if Warley could legally occupy the property.⁹⁰

Following related litigation challenging the validity of Louisville’s racial zoning ordinance, in a 1917 decision, the Supreme Court deemed the ordinance unconstitutional, ruling that “this attempt to prevent the alienation of the property in question to a person of color was not a legitimate exercise of the police power of the state.”⁹¹ Although *Buchanan* is often rightly held up as a significant civil rights victory, the Court may not have primarily been motivated by civil rights expansion.⁹² The Court instead expressed economic concerns, as they “[were] enamored of the idea that the central purpose of the Fourteenth Amendment was not to protect the rights of freed slaves but a business rule: ‘freedom of contract.’...the Court ruled that racial zoning ordinances interfered with the right of a property owner to sell to whomever he pleased.”⁹³

Undeterred, segregationists in the city turned to a new tool—deed restrictions. In building out the neighborhoods of the city:

Louisville’s new generation of subdividers made increasing use of judicially enforceable deed restrictions, a form of voluntary private contract between the original seller and the buyer of a building lot, to control certain types of behavior by present and future lot owners...[i]n many cases, these documents included racially restrictive covenants that prohibited the sale of lots to African Americans, Jews, and other population groups considered detrimental to property values.⁹⁴

This practice continued for several decades beyond *Buchanan* until the Supreme Court finally outlawed racially restrictive covenants in its 1948 *Shelley v. Kraemer* decision, rendering them unenforceable.⁹⁵

In the intervening decades between the two Supreme Court opinions,

⁸⁹ DORCETA E. TAYLOR, TOXIC COMMUNITIES: ENVIRONMENTAL RACISM, INDUSTRIAL POLLUTION, AND RESIDENTIAL MOBILITY 161 (2014).

⁹⁰ *Id.* at 161–62.

⁹¹ *Buchanan*, 245 U.S. at 82.

⁹² See ROTHSTEIN, *supra* note 67, at 45.

⁹³ *Id.*

⁹⁴ *Kramer*, *supra* note 87, at 56.

⁹⁵ *Shelley v. Kraemer*, 334 U.S. 1, 22 (1948) (“The Constitution confers upon no individual the right to demand action by the State which results in the denial of equal protection of the laws to other individuals”).

zoning and land use principles in Louisville emerged, first “in 1930, when the [Kentucky] General Assembly enacted the City Planning and Zoning Act, which provided for creation of a City Planning and Zoning Commission in Louisville,” then later “[i]n the fall of 1932, [when] the Board of Aldermen adopted the first Comprehensive City Plan.”⁹⁶ The importance of comprehensive city planning grew as Louisville did, particularly with Jefferson County residents voting by a 54% to 46% margin in 2000 to merge Louisville and Jefferson County.⁹⁷ The merger did not take effect until 2003, but it immediately provided Louisville with a significant infusion of population and land now under its planning and zoning jurisdiction.⁹⁸

Today, this evolution leaves us with two guiding documents that shape zoning and land use in Louisville: Plan 2040, the city’s most recent comprehensive plan, and the Land Development Code (LDC).⁹⁹ Plan 2040 first went into effect on January 1, 2019, before being readopted on February 1, 2024, pursuant to state law requiring planning commissions to readopt or amend comprehensive plans every five years.¹⁰⁰ The Land Development Code now fills eleven chapters and more than seven hundred pages.¹⁰¹ Having covered zoning and land use principles in Kentucky’s largest city, its second-largest now warrants attention.¹⁰²

2. Adoption of Zoning and Land Use Principles in Lexington

Named in honor of the Revolutionary War Battles of Lexington and Concord, Lexington was first settled in 1775 before receiving full charter as

⁹⁶ Kramer, *supra* note 87, at 67.

⁹⁷ See Bruce Schreiner, *Vote Secures Status as Largest City Kentucky Races Bipartisan Effort Pushes Area Into Top 25 Population Centers*, LEXINGTON HERALD-LEADER (Nov. 8, 2000), <https://infoweb-newsbank-com.echo.louisville.edu/apps/news/document-view?p=AWNB&docref=news/0EB735AB70464DF4&f=basic> [<https://perma.cc/ZME7-XYQ8>].

⁹⁸ See Bruce Schreiner, *Vote to Merge Remakes Louisville’s Image*, LEXINGTON HERALD-LEADER (Nov. 9, 2000), <https://infoweb-newsbank-com.echo.louisville.edu/apps/news/document-view?p=AWNB&docref=news/0EB735ACDDBF8473&f=basic> [<https://perma.cc/GY29-JUNH>].

⁹⁹ See LOUISVILLE-JEFFERSON CNTY. METRO GOV’T., PLAN 2040: A COMPREHENSIVE PLAN FOR LOUISVILLE METRO (2019), https://louisvilleky.gov/sites/default/files/migration/missing-files/comprehensive_plan/plan2040louisvillemetrocomprehensiveplanfinal11-1-18.pdf [<https://perma.cc/W4LU-Q8JL>]; LOUISVILLE METRO PLAN. COMM’N, LAND DEV. CODE FOR LOUISVILLE METRO ZONING AUTH. (2025), https://louisvilleky.gov/sites/default/files/2023-10/louisville-metro-land-development-code-october-2023_0.pdf [<https://perma.cc/26BZ-4AVX>].

¹⁰⁰ See *Comprehensive Plan*, LOUISVILLE-JEFFERSON CNTY. METRO GOV’T., <https://louisvilleky.gov/government/office-planning/comprehensive-plan> [<https://perma.cc/MU3N-UAVC>] (last visited Feb 17, 2025).

¹⁰¹ See LOUISVILLE METRO PLAN. COMM’N, LAND DEV. CODE FOR LOUISVILLE METRO ZONING AUTH. (2025), https://louisvilleky.gov/sites/default/files/2023-10/louisville-metro-land-development-code-october-2023_0.pdf [<https://perma.cc/6YY7-FRVG>].

¹⁰² See U.S. CENSUS BUREAU, *supra* note 23 (estimating Lexington’s 2023 population at 320,154 residents, making it Kentucky’s second largest city by population).

a city in 1782.¹⁰³ The city is a major medical center for central and eastern Kentucky because of the presence of the state's flagship university, the University of Kentucky, and the farmland surrounding the city gives it an important role in the agricultural and equine industries.¹⁰⁴ Lexington's reliance on these agricultural uses has shaped land use patterns significantly as the city has grown into the second largest in the state of Kentucky.¹⁰⁵

Like Louisville, Lexington's early zoning practices were motivated by racial segregation.¹⁰⁶ Nationally, however, Lexington gained land use notoriety for a different reason. Following significant growth post-World War II, the city "created the nation's first urban growth boundary in 1958. The urban growth boundary limited the outward sprawl of developed area and protected the horse racing-related landscape that surrounded the city."¹⁰⁷ In recent history, the city has maintained boundary limits for lengthy periods of time, spurring infill development, with no expansion approved for nearly three decades from 1996 onward until a recent 2023 vote to expand the urban service boundary.¹⁰⁸

Louisville and Lexington share an additional similarity. Each is a merged city and county, though the two mergers have some technical differences.¹⁰⁹ Lexington's merger significantly predates Louisville's, as "[o]n November 7, 1972, the voters of Lexington and Fayette County, Kentucky, decided by a rather substantial margin to consolidate their city and county governments into a single, unified, 'urban county government.'"¹¹⁰ Only Louisville is considered a "consolidated city," because of the eighty-three separately incorporated places therein; Lexington is instead an "urban county" because of the single incorporated place therein.¹¹¹ A minor detail, but the names of

¹⁰³ See *Lexington*, ENCYC. BRITANNICA, <https://www.britannica.com/place/Lexington-Kentucky> [<https://perma.cc/K328-JVUR>] (last visited Feb. 16, 2025).

¹⁰⁴ *Id.*

¹⁰⁵ See U.S. CENSUS BUREAU, *supra* note 23.

¹⁰⁶ *Milestones: The First 50 Years of Planning and Zoning in Lexington*, SEGREGATED LEXINGTON, <https://www.segregatedlexington.com/planning-and-zoning/milestones-the-first-50-years-planning-and-zoning-in-lexington> [<https://perma.cc/8X8M-FKMJ>] (last visited Feb. 17, 2025).

¹⁰⁷ Bryan D. Orthel, *Preservation and Negotiation of History and Identity in Lexington, Kentucky*, 23 *BLDGS. & LANDSCAPES: J. VERNACULAR ARCHITECTURE* F. 23, 30 (2016).

¹⁰⁸ See Beth Musgrave, *Costs to Add to Growth Boundary Will Top \$570 Million*, LEXINGTON HERALD-LEADER (Sep. 6, 2024), <https://infoweb-newsbank-com.echo.louisville.edu/apps/news/document-view?p=AWNB&docref=news/19B6EB53243103C0&f=basic> [<https://perma.cc/SHT5-UTH4>].

¹⁰⁹ See *A 10-Year Perspective of the Merger of Louisville and Jefferson County, KY*, ABELL FOUND. (Oct. 2013), <https://abell.org/publication/a-10-year-perspective-of-the-merger-of-louisville-and-jefferson-county-ky/> [<https://perma.cc/ZH7W-2PUL>] (analyzing the city-county merger of Louisville and Jefferson County).

¹¹⁰ W. E. LYONS, *THE POLITICS OF CITY-COUNTY MERGER: THE LEXINGTON-FAYETTE COUNTY EXPERIENCE* 1 (1977).

¹¹¹ See *Kentucky*, U.S. CENSUS BUREAU (Oct. 8, 2021), <https://www.census.gov/geographies/reference-files/2010/geo/state-local-geo-guides-2010/kentucky.html> [<https://perma.cc/28TZ-4844>].

the two governing structures bear this difference out: the Louisville-Jefferson County Metro Government and the Lexington-Fayette Urban County Government.¹¹²

Zoning, planning, and land use principles in Lexington are primarily shaped today by two guiding documents: Imagine Lexington 2045, the city's comprehensive plan, and the Lexington-Fayette County, Kentucky Zoning Ordinance, the city's zoning code.¹¹³ Imagine Lexington 2045 was adopted by Lexington's Planning Commission on November 30, 2023, and further amended on October 31, 2024.¹¹⁴ The Lexington-Fayette County, Kentucky Zoning Ordinance spans thirty articles across more than four hundred pages.¹¹⁵ Having explored the foundation of zoning and land use principles in Lexington, Covington's history is next.

3. Adoption of Zoning and Land Use Principles in Covington

Continuing to underscore the longstanding impact of the spirits industry on the Commonwealth of Kentucky, the site that eventually became Covington in 1815 was traded for a keg of whiskey in 1780.¹¹⁶ Positioned opposite Cincinnati, Ohio, along the Ohio River, Covington's development has been shaped by its proximity to its larger neighbor, and the Kentucky city has grown into an agricultural market for tobacco, corn, and livestock and a manufacturing center for products like fabricated metal and textiles.¹¹⁷

Situated in Kenton County,¹¹⁸ Covington is part of the larger Northern Kentucky area, primarily considered to include Boone, Campbell, and Kenton counties, each of which borders Hamilton County, Ohio, home to Cincinnati.¹¹⁹ The neighboring Kentucky counties of Gallatin, Grant, Pendleton, and Bracken are counted as part of the Greater Cincinnati region

¹¹² See LOUISVILLEKY, <https://louisvilleky.gov/> [<https://perma.cc/8LZC-MDFK>] (last visited Feb. 17, 2025); *Welcome to the Horse Capital of the World*, LEXINGTON-FAYETTE URBAN CNTY. GOV'T., <https://www.lexingtonky.gov/> [<https://perma.cc/XW66-WQNR>] (last visited Feb 17, 2025).

¹¹³ See LEXINGTON-FAYETTE URBAN CNTY. GOV'T., IMAGINE LEXINGTON 2045 COMPREHENSIVE PLAN (2024), <https://www.imaginelexington.com/2045> [<https://perma.cc/D52L-LTBQ>]; LEXINGTON, KY., LEXINGTON-FAYETTE COUNTY, KY. ZONING ORDINANCE (2025), https://codelibrary.amlegal.com/codes/lexingtonfayettecoky/latest/lexingtonfayettecoky_zone/0-0-0-1 [<https://perma.cc/SS3R-PFPR>].

¹¹⁴ See LEXINGTON-FAYETTE URBAN CNTY. GOV'T., IMAGINE LEXINGTON 2045 COMPREHENSIVE PLAN (2024), <https://www.imaginelexington.com/2045> [<https://perma.cc/D52L-LTBQ>].

¹¹⁵ See LEXINGTON, KY., LEXINGTON-FAYETTE COUNTY, KY. ZONING ORDINANCE (2025) https://codelibrary.amlegal.com/codes/lexingtonfayettecoky/latest/lexingtonfayettecoky_zone/0-0-0-1 [<https://perma.cc/H9CY-ZRHF>].

¹¹⁶ See *Covington*, ENCYC. BRITANNICA (Jan. 27, 2026), <https://www.britannica.com/place/Covington-Kentucky> [<https://perma.cc/XPS9-TSA5>].

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Northern Kentucky Life: Vibrant Community, Growing Economy*, LANE REP. (Apr. 5, 2022), <https://www.lanereport.com/154457/2022/04/northern-kentucky-life-vibrant-community-growing-economy/> [<https://perma.cc/L4EL-WUBS>].

along with Northern Kentucky.¹²⁰ Even though Covington is the largest city in Northern Kentucky, it holds only about a tenth of the area's population, illustrating the suburban sprawl from Cincinnati.¹²¹

Covington adopted its modern zoning code on August 15, 2006,¹²² and true to the common form at the time, it followed Euclidean patterns through strict restrictions and segregations of use.¹²³ Notably, however, after twenty-three months of public input and consideration, Covington replaced its Zoning Ordinance with a new Neighborhood Development Code (NDC) on October 15, 2020.¹²⁴ Discussed more extensively later in this Note, the NDC shifts away from strict segregation of uses and instead “focuses on how development fits within the ‘character’ or ‘form’ (and historical look) of its Covington surroundings.”¹²⁵ The other primary document that shapes zoning, planning, and land use principles in Covington and Kenton County at large is the Direction 2030 comprehensive plan,¹²⁶ adopted on September 5, 2024.¹²⁷

Having now covered the histories of zoning, planning, and land use concepts in Louisville, Lexington, and Covington, the next section will address the pitfalls of the current policy regime. Overregulation, particularly in the land use and zoning context, increases development costs, extends development timelines, and prevents some otherwise viable and needed projects from ever being developed.¹²⁸ This creates housing supply constraints, driving up the cost of buying or renting housing.¹²⁹ As developers rationally respond to economic conditions and seek the path of least resistance to project completion, they are driven toward suburban

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² See COVINGTON, KY., CODE OF ORDINANCES tit. XV, ch. 158, §158.01 (2006), https://codelibrary.amlegal.com/codes/covington/latest/covington_ky/0-0-0-27398#JD_158.01 [<https://perma.cc/94PD-C52N>].

¹²³ See *generally Euclidean vs. Form-Based?*, CITY OF COVINGTON, KY. (Apr. 19, 2019), <https://www.covingtonky.gov/news/2019/04/19/euclidean-vs-form-based> [<https://perma.cc/Q2GS-HXJF>] (describing Covington's 2006-adopted zoning code as Euclidean and explaining the distinctions of form-based codes).

¹²⁴ *23 Months Later, a New Approach to Zoning*, CITY OF COVINGTON, KY. (Oct. 15, 2020) [hereinafter CITY OF COVINGTON], <https://www.covingtonky.gov/news/2020/10/15/23-months-later-a-new-approach-to-zoning> [<https://perma.cc/CEC6-9P3F>]; COVINGTON, KY., NEIGHBORHOOD DEVELOPMENT CODE (2026), <https://online.encodeplus.com/regs/covington-ky/doc-viewer.aspx#secid-830> [<https://perma.cc/7ATZ-S94Z>].

¹²⁵ See CITY OF COVINGTON, *supra* note 124; see discussion *infra* Sections II.A.1–2.

¹²⁶ *2024 Kenton County Comprehensive Plan*, KENTON CNTY. PLAN. COMM'N, <https://kcpcy.org/maps-plans-studies/2024-comprehensive-plan/> [<https://perma.cc/WH3G-8QSK>] (last visited Feb. 17, 2025).

¹²⁷ *2024 Kenton County Comprehensive Plan: Amendments*, KENTON CNTY. PLAN. COMM'N, <https://kcpcy.org/maps-plans-studies/2024-comprehensive-plan/amendments-2/> [<https://perma.cc/ERJ8-EC8Z>] (last visited Feb. 17, 2025).

¹²⁸ See KY. CHAMBER OF COM., *supra* note 1, at 36.

¹²⁹ See *id.*

development, exacerbating urban sprawl and depriving core cities of much-needed density and vibrancy.

II. ANALYSIS

This analysis section will first cover the pitfalls and shortcomings of land use planning in Louisville, Lexington, and Covington, primarily through discussions about how the unwieldiness of local code and planning documents and historical focus on “use” over “form” in approving or denying development projects have caused several different issues. Then, positive policies like urban service boundaries and zoning code reforms will be highlighted before addressing counterarguments to the theory that land use planning failures are a primary driver of housing unaffordability.

A. Pitfalls and Shortcomings

1. Unwieldiness of Zoning Ordinances as a Feature, Not a Bug

Due to the immense amount of information they are meant to convey, zoning ordinances are inherently complex.¹³⁰ This is a unique tension, as “[t]he zoning ordinance text, in addition to being the prime source of information on the most widely employed form of land use control, is an instrument of communication, requiring, though often lacking, a high degree of comprehensibility.”¹³¹

Logically, it might follow that as a city increases in size, so too might the length of its zoning ordinance—with more land and population to account for, the number and complexity of uses might also increase.¹³² That is not always the case; cities have unique social, geographic, and economic needs and constraints, which they craft their zoning codes to address.¹³³ However, it is true for the three Kentucky cities presented here: Louisville’s Land Development Code stretches 724 pages; the Lexington-Fayette County, Kentucky Zoning Ordinance, exclusive of a Code Comparative Table, measures 433 pages; and Covington’s Neighborhood Development Code, exclusive of a duplicative Table of Contents and brief Amendment History,

¹³⁰ See Jenny Schuetz, *Is Zoning a Useful Tool or a Regulatory Barrier?*, BROOKINGS (Oct. 31, 2019), <https://www.brookings.edu/articles/is-zoning-a-useful-tool-or-a-regulatory-barrier/> [<https://perma.cc/378U-PJKC>] (evaluating zoning’s utility as a regulatory tool).

¹³¹ Jerome L. Kaufman, *Illustrating the Zoning Ordinance*, AMERICAN PLANNING ASSOCIATION (Dec. 1962), <https://www.planning.org/pas/reports/report165.htm> [<https://perma.cc/D5WJ-TC7V>].

¹³² See generally Schuetz, *supra* note 130 (using the contrasting examples of Falls Church, Virginia and Montgomery County, Maryland to show the varying complexities and lengths of zoning codes in the Washington, D.C. metropolitan area).

¹³³ See generally Kaufman, *supra* note 131 (illustrating both the importance and complexity of zoning codes).

fills 419 pages.¹³⁴

None of these lengths are easily digestible, given the technical nature of the ordinances, but length is an imperfect proxy for ease of use. An ordinance lighter on detail might be more difficult to interpret than one with clear examples of conforming properties. The NDC is a great example of this, containing well over a hundred different images and illustrations interspersed throughout.¹³⁵ Contrastingly, the Land Development Code contains several dozen images and illustrations throughout, despite being a larger document.¹³⁶ The Lexington-Fayette County, Kentucky Zoning Ordinance contains just two illustrations, both on the same page.¹³⁷

Planning professionals argue that illustrations help clarify definitions, distinguish related terms, and summarize sections:

There are numerous possibilities for using illustrations to good advantage in the district regulations section of the zoning ordinance. Quite often, the ordinance contains lengthy, involved passages describing how particular uses—parking facilities, accessory uses, signs—should be handled in a particular zoning district. An appropriate diagram or illustration can aid considerably in clarifying the text provisions. Complicated methods for dealing with special situations, such as computing the setback of a new building in a developed residential block, sometimes are difficult to understand without accompanying illustrative diagrams. Another use of graphics is to show with a single illustration how the major requirements for a particular zoning district—setback, height, yard, parking, lot area—apply to a typical structure. The ordinance user will then have a better idea of

¹³⁴ LOUISVILLE METRO PLAN. COMM'N, LAND DEV. CODE FOR LOUISVILLE METRO ZONING AUTH. (2025), https://louisvilleky.gov/sites/default/files/2023-10/louisville-metro-land-development-code-october-2023_0.pdf [<https://perma.cc/6YY7-FRVG>]; LEXINGTON, KY., LEXINGTON-FAYETTE COUNTY, KY. ZONING ORDINANCE (2025) https://codelibrary.amlegal.com/codes/lexingtonfayettecoky/latest/lexingtonfayettecoky_zone/0-0-0-1 [<https://perma.cc/H9CY-ZRHF>]; COVINGTON, KY., NEIGHBORHOOD DEV. CODE (2026), <https://online.encodeplus.com/regs/covington-ky/doc-viewer.aspx#secid--1> [<https://perma.cc/C5ZP-R7P8>].

¹³⁵ See COVINGTON, KY., NEIGHBORHOOD DEV. CODE. (2026), <https://online.encodeplus.com/regs/covington-ky/doc-viewer.aspx#secid--1> [<https://perma.cc/C5ZP-R7P8>].

¹³⁶ LOUISVILLE METRO PLAN. COMM'N, LAND DEV. CODE FOR LOUISVILLE METRO ZONING AUTH. (2025), https://louisvilleky.gov/sites/default/files/2023-10/louisville-metro-land-development-code-october-2023_0.pdf [<https://perma.cc/6YY7-FRVG>].

¹³⁷ LEXINGTON, KY., LEXINGTON-FAYETTE COUNTY, KY. ZONING ORDINANCE § 3-3 (2025), https://codelibrary.amlegal.com/codes/lexingtonfayettecoky/latest/lexingtonfayettecoky_zone/0-0-0-13714 [<https://perma.cc/F2YU-RE6J>].

the distinguishing characteristics of each zoning district.¹³⁸

By this measure, Covington scores well; Louisville and Lexington, less so. Developers might be able to avoid a back-and-forth approval process by modeling projects from the beginning based on clear examples of conforming properties.¹³⁹

In recent years, cities have moved their code or ordinances online, with a myriad of companies offering external hosting solutions.¹⁴⁰ The three Kentucky cities have taken advantage of this to varying degrees. The complete Lexington-Fayette County, Kentucky Zoning Ordinance is available online with a drop-down menu and expandable tabs for ease of navigation through American Legal Publishing.¹⁴¹ Covington's entire Neighborhood Development Code is available through enCodePlus with a similar navigation structure.¹⁴² The general Louisville/Jefferson County Metro Government Code of Ordinances is available through American Legal Publishing.¹⁴³ The bulk of the Land Development Code is notably absent, though, and is instead available in full through Portable Document Format (PDF) on the Metro Government website.¹⁴⁴

All three cities make use of searchable geographic information system (GIS) maps tied to their code or ordinance, which “[analyze] and [display] geographically referenced information.”¹⁴⁵ Louisville's Louisville/Jefferson County Information Consortium (LOJIC), Lexington's Zone Finder, and Covington's LINK-GIS offer layers of overlaid information for their

¹³⁸ Kaufman, *supra* note 131.

¹³⁹ *See id.*

¹⁴⁰ *See generally* ENCODEPLUS, <https://www.encodeplus.com/> [<https://perma.cc/9VM6-JCFG>] (last visited Feb. 17, 2025) (describing the business of enCodePlus, a code management platform); GENERAL CODE, <https://www.generalcode.com/> [<https://perma.cc/C56G-XZTP>] (last visited Feb. 17, 2025) (describing the business of General Code, a code management platform); MUNICODE, <https://www.municode.com/code/page/code-ordinances-online-hosting-municodenext> [<https://perma.cc/DP7G-7KKY>] (last visited Feb. 17, 2025) (describing the business of MunicodeNEXT, a code management platform).

¹⁴¹ LEXINGTON, KY., LEXINGTON-FAYETTE COUNTY, KY. ZONING ORDINANCE (2025) https://codelibrary.amlegal.com/codes/lexingtonfayettecoky/latest/lexingtonfayettecoky_zone/0-0-0-1 [<https://perma.cc/H9CY-ZRHF>].

¹⁴² COVINGTON, KY., NEIGHBORHOOD DEV. CODE. (2026), <https://online.encodeplus.com/regs/covington-ky/doc-viewer.aspx#secid--1> [<https://perma.cc/C5ZP-R7P8>].

¹⁴³ LOUISVILLE, KY., LOUISVILLE/JEFFERSON COUNTY. METRO GOV'T. CODE OF ORDINANCES (2025), https://codelibrary.amlegal.com/codes/louisvillemetro/latest/loukymetro/0-0-0-35#JD_10.01 [<https://perma.cc/KWR8-K5DL>].

¹⁴⁴ LOUISVILLE METRO PLAN. COMM'N, LAND DEV. CODE FOR LOUISVILLE METRO ZONING AUTH. (2025), https://louisvilleky.gov/sites/default/files/2023-10/louisville-metro-land-development-code-october-2023_0.pdf [<https://perma.cc/6YY7-FRVG>].

¹⁴⁵ *What is a Geographic Information System (GIS)?*, USGS (Jan. 29, 2025), <https://www.usgs.gov/faqs/what-a-geographic-information-system-gis> [<https://perma.cc/9R68-ZTLW>].

respective areas.¹⁴⁶ These tools allow users to search associated zoning information for specific addresses, among other features.¹⁴⁷

Beyond the navigation assistance that drop-down menus, expandable tabs, and searchable GIS maps provide, an additional benefit of online hosting is the ability for developers or their counsel to find references within the legal document quickly.¹⁴⁸ All three sites are searchable to varying degrees, but only Covington goes as far as adding “How Do I?” and “FAQs” tabs with linked answers about application processes, character district summaries, building type standards, and other frequently asked questions.¹⁴⁹ This has resulted in award-winning ease of use, with the American Planning Association’s Kentucky Chapter granting Covington the Special Merit Award for Outstanding Project/Program/Tool in 2021 for the Neighborhood Development Code.¹⁵⁰

Even with a number of different tools available to improve ease of use, zoning codes and ordinances might best be described as unwieldy.¹⁵¹ Take this 2021 example from the Lexington-Fayette County, Kentucky Zoning Ordinance:

[T]he B-1 Neighborhood Business Zone alone lists out forty-seven principal uses, ten accessory uses, and nineteen conditional uses. That means forty-seven kinds of commercial uses—ranging from restaurants to rehabilitation centers—are allowed to operate on their own without any additional review, ten are allowed to operate in conjunction with one of those principal uses, and nineteen may only operate after receiving a special permit. As a result, new business formulas, or businesses that blur these lines in any

¹⁴⁶ *LOJIC Online*, LOJIC, <https://www.lojic.org/lojic-online> [https://perma.cc/FU7C-ZTPJ] (last visited Feb. 17, 2025); *Zone Finder*, ARCGIS, <https://www.arcgis.com/apps/instant/lookup/index.html?appid=53d4ecc4d0d04859b4c1e78a8d009325> [https://perma.cc/Q2S4-QF79] (last visited Feb. 17, 2025); *LINK-GIS Map Viewer*, LINK-GIS, <https://linkgis.org/mapviewer/index.html?slayer=0&exprnum=1&esearch=&submit=Open+the+Map> [https://perma.cc/D3L2-VWRN] (last visited Feb. 17, 2025).

¹⁴⁷ *Id.*

¹⁴⁸ *See Five Reasons Your Municipality Should Host Its Code Online*, CIVICPLUS: BLOG (June 23, 2022), <https://www.civicplus.com/blog/cs/five-reasons-your-municipality-should-host-its-code-online/> [https://perma.cc/Q8U4-4VGY] (explaining the benefits of online hosting of local code).

¹⁴⁹ COVINGTON, KY., NEIGHBORHOOD DEV. CODE. (2026), <https://online.encodeplus.com/regs/covington-ky/doc-viewer.aspx#secid--1> [https://perma.cc/C5ZP-R7P8].

¹⁵⁰ *New Approach to Zoning Wins Top Statewide Award*, CITY OF COVINGTON, KY. (Oct. 6, 2021) [hereinafter *New Approach*], <https://www.covingtonky.gov/news/2021/10/06/new-approach-to-zoning-wins-top-statewide-award> [https://perma.cc/PJC7-ESNW].

¹⁵¹ *See* Schuetz, *supra* note 130.

way, often face substantial permitting hurdles.¹⁵²

Those numbers have only shifted slightly with recent amendments. Permitted uses are now down to just thirty-six categories, accessory uses remained at ten, and conditional uses dropped to nine.¹⁵³

If shifts in simplicity of codes and ordinances are only resulting in moderate changes to the approvals process at best, does failure permeate deeper than the structure of the legal documents themselves? The next subsection explores how the focus on segregation of land uses rather than the collective form those uses take deprives residents of the development of amenity-rich neighborhoods and results in the construction of expensive, suburban-style single-family housing.

2. Focus on Use over Form

As has been discussed, the land use planning patterns of Louisville, Lexington, and Covington have historically been Euclidean, with a focus on segregation of uses.¹⁵⁴ Only with Covington's 2020 adoption of the Neighborhood Development Code did one of the three Kentucky cities make a wholesale change from use-based regulation to form-based.¹⁵⁵ Covington's own city government described the shift in a press release:

The Neighborhood Development Code—or NDC—replaces the City's existing Zoning Ordinance, a rigid, one-size-fits-all document that was widely criticized for being frustrating, expensive, and time-consuming to navigate; and for failing to reflect the historic character of Covington's architecture and neighborhoods, thus often blocking cohesive, desired development.¹⁵⁶

The mention of historic character is important to note. Covington, as a

¹⁵² M. NOLAN GRAY, *ARBITRARY LINES: HOW ZONING BROKE THE AMERICAN CITY AND HOW TO FIX IT* 38 (2022).

¹⁵³ LEXINGTON, KY., LEXINGTON-FAYETTE COUNTY, KY. ZONING ORDINANCE (2025) https://codelibrary.amlegal.com/codes/lexingtonfayettecoky/latest/lexingtonfayettecoky_zone/0-0-0-1 [<https://perma.cc/H9CY-ZRHF>].

¹⁵⁴ *Id.*; LOUISVILLE METRO PLAN. COMM'N, LAND DEV. CODE FOR LOUISVILLE METRO ZONING AUTH. (2025), https://louisvilleky.gov/sites/default/files/2023-10/louisville-metro-land-development-code-october-2023_0.pdf [<https://perma.cc/6YY7-FRVG>]; COVINGTON, KY., NEIGHBORHOOD DEV. CODE (2026), <https://online.encodeplus.com/regs/covington-ky/doc-viewer.aspx#secid--1> [<https://perma.cc/C5ZP-R7P8>].

¹⁵⁵ CITY OF COVINGTON, *supra* note 124.

¹⁵⁶ *City Tosses Rigid Zoning Code*, CITY OF COVINGTON, KY. (Sep. 24, 2020), <https://www.covingtonky.gov/news/2020/09/24/city-tosses-rigid-zoning-code> [<https://perma.cc/4DCP-FRVE>].

suburb, has its development activity influenced by its proximity to Cincinnati.¹⁵⁷ Allowing dense, multifamily construction all along the Ohio Riverfront could be of great economic benefit to Covington, but a focus on form with the new code allows the approval board to consider how a proposed development impacts the character of a neighborhood. A form-focused approach assists Covington with placemaking and the retention of an independent identity, separate from but complementary to the larger metro.¹⁵⁸

Notably, the other ordinances and codes examined here each attempt to recognize the modern shift to regulation of form over use, just not in the same wholesale fashion as Covington.¹⁵⁹ In fact, Louisville's convoluted attempt to consider form may only increase confusion for developers.¹⁶⁰ The Land Development Code includes forty different zoning classifications.¹⁶¹ Louisville Metro has also adopted eleven different form districts in the Code.¹⁶² In addition to zoning and form classifications, one of seven Planned Development Districts, one of seven Local Preservation Districts, one of three Design Overlay Districts, or the special Floyd's Fork Zoning Overlay District may apply, depending on the parcel's location.¹⁶³ Rather than one determination to guide both form and use, parcels in Louisville instead are marked with separate zoning district and form district classifications, and potentially several other classifications for design or historic preservation. In Louisville, developers and their counsel must consult and cross-reference the rules of multiple designations for potential development projects, increasing complexity.¹⁶⁴ Covington has more form districts in the NDC with sixteen

¹⁵⁷ See Tenkotte, *supra* note 25.

¹⁵⁸ See *City Tosses Rigid Zoning Code*, *supra* note 156.

¹⁵⁹ *Id.* (explaining the significance of Covington's overhaul).

¹⁶⁰ See generally LOUISVILLE METRO PLAN. COMM'N, LAND DEV. CODE FOR LOUISVILLE METRO ZONING AUTH. (2025), https://louisvilleky.gov/sites/default/files/2023-10/louisville-metro-land-development-code-october-2023_0.pdf [<https://perma.cc/6YY7-FRVG>] (Louisville's form districts are housed in an entirely different chapter of the Land Development Code than zoning districts, making cross-references necessary and frequent).

¹⁶¹ *Id.* § 2.1-1.

¹⁶² *Id.* §§ 5.1-1 to 5.1-2.

¹⁶³ LOUISVILLE METRO PLAN. COMM'N, LAND DEV. CODE FOR LOUISVILLE METRO ZONING AUTH. (2025), https://louisvilleky.gov/sites/default/files/2023-10/louisville-metro-land-development-code-october-2023_0.pdf [<https://perma.cc/6YY7-FRVG>]; *Local Preservation Districts & Individual Landmarks*, LOUISVILLE-JEFFERSON CNTY. METRO GOV'T.: OFF. OF PLAN., <https://louisvilleky.gov/government/office-planning/local-preservation-districts-individual-landmarks> [<https://perma.cc/8VDJ-FSVQ>] (last visited Feb. 17, 2025); *Design Overlay Districts*, LOUISVILLE-JEFFERSON CNTY. METRO GOV'T.: OFF. OF PLAN., <https://louisvilleky.gov/government/office-planning/design-overlay-districts> [<https://perma.cc/V9Y9-84AH>] (last visited Feb. 17, 2025); *Floyds Fork DRO*, LOUISVILLE-JEFFERSON CNTY. METRO GOV'T.: OFF. OF PLAN., <https://louisvilleky.gov/government/office-planning/floyds-fork-dro> [<https://perma.cc/P7M7-L4QP>] (last visited Feb. 17, 2025).

¹⁶⁴ LOUISVILLE METRO PLAN. COMM'N, LAND DEV. CODE FOR LOUISVILLE METRO ZONING AUTH., *supra* note 160.

Primary District classifications, but unless the parcel is subject to one of three possible Secondary District overlays, the Primary District classification is the only designation a project being planned in Covington needs to consult.¹⁶⁵

In attempting to consider form, the Lexington-Fayette County, Kentucky Zoning Ordinance is only slightly less complicated in its designations than the Land Development Code.¹⁶⁶ The Zoning Ordinance contains thirty-two zones, three planned-unit-development zones (specifically created for larger, planned projects), two agricultural overlays, two design-related overlays, and a historic preservation overlay.¹⁶⁷ Lexington makes modest consideration of form in the overlay determinations through design guidelines for projects, and this is a less obvious consideration than those made in the other two codes.¹⁶⁸

It might not be immediately intuitive, but when a developer must consult both a zoning classification and a form classification for a project rather than just a single, all-encompassing classification, an extra step stands in the way of beginning what might be a desirable development project.¹⁶⁹ Perhaps a hypothetical example using Louisville's Land Development Code would be illustrative. A developer identifies a corner parcel on a high traffic corridor that they believe would be the perfect spot for a bar, coffee shop, restaurant, or boutique, and they want to construct it to four stories in height so that they can lease six apartment units on the upper three floors. At first glance, that parcel's C-2 Commercial District zoning designation looks great. All the desired uses are allowed, even the use mix incorporating residential units.¹⁷⁰ But you must still consult the form district classification. The Traditional Neighborhood Form District is a common designation across Louisville and applies to this parcel. Upon a closer look, the form district limits their building height to three stories.¹⁷¹ This developer can build higher, but in

¹⁶⁵ COVINGTON, KY., NEIGHBORHOOD DEV. CODE, art. 158.02 (2026), <https://online.encodeplus.com/regs/covington-ky/doc-viewer.aspx#secid--1> [<https://perma.cc/C5ZP-R7P8>].

¹⁶⁶ LEXINGTON, KY., LEXINGTON-FAYETTE COUNTY, KY. ZONING ORDINANCE (2025), https://codelibrary.amlegal.com/codes/lexingtonfayettecoky/latest/lexingtonfayettecoky_zone/0-0-0-1 [<https://perma.cc/H9CY-ZRHF>]; LOUISVILLE METRO PLAN. COMM'N, LAND DEV. CODE FOR LOUISVILLE METRO ZONING AUTH. (2025), https://louisvilleky.gov/sites/default/files/2023-10/louisville-metro-land-development-code-october-2023_0.pdf [<https://perma.cc/6YY7-FRVG>].

¹⁶⁷ LEXINGTON, KY., LEXINGTON-FAYETTE COUNTY, KY. ZONING ORDINANCE (2025), https://codelibrary.amlegal.com/codes/lexingtonfayettecoky/latest/lexingtonfayettecoky_zone/0-0-0-1 [<https://perma.cc/H9CY-ZRHF>].

¹⁶⁸ *See id.* § 12–8.

¹⁶⁹ *See* Schuetz, *supra* note 130 (explaining the labor-intensive process of reading zoning codes).

¹⁷⁰ *See* LOUISVILLE METRO PLAN. COMM'N, LAND DEV. CODE FOR LOUISVILLE METRO ZONING AUTH. § 2.4.4 (2025), <https://codelibrary.amlegal.com/codes/louisvillemetro/latest/loukyldc/0-0-0-1370> [<https://perma.cc/Q4YA-FDHY>].

¹⁷¹ *See id.* § 5.2.2.

doing so, they will trigger additional restrictive yard setback¹⁷² requirements.¹⁷³ The parcel is too small to make this realistically feasible, so three stories it is. Without the additional two apartment units they can construct on the fourth floor, the project no longer “pencils” or is financially feasible.¹⁷⁴ The developer abandons the mixed-use project for a coffee shop and boutique hybrid instead, giving the neighborhood new amenities. In this example, regulations have deprived the community of six potential housing units to enjoy those amenities, and in the process dulled the vibrancy of the final developed project.

This example illustrates the hurdles even moderately ambitious development projects often face. Of course, waivers, variances, and conditional use permits exist for this exact reason—projects that are sensible and meet a demand should be able to clear restrictive codes and ordinances that stand in the way of approval.¹⁷⁵ But every turn back and forth from an approval body or additional spot for application review adds cost and delays project timelines.¹⁷⁶ It is estimated that “overly-restrictive land-use and zoning rules contribute, on average, to 22.2 percent of the final cost of a single-family home and 38 percent of the final cost of multi-family housing.”¹⁷⁷

A simplified code that minimizes the need for variances, waivers, and conditional use permits reduces the cost of development.¹⁷⁸ Cities should be careful to balance the need for speed in permitting with meaningful opportunities for community input. Following the shift from a use-focused zoning ordinance in Covington to the form-focused NDC, residents are still allowed to offer feedback or express concerns where they arise, but the threshold at which a project requires additional review has been raised:

Under the new code, the roles of the [Urban Design Review Board] and Board of Adjustment were consolidated under a single board, the newly appointed Board of Architectural Review and Development—and the new code will require

¹⁷² *Setback*, CORN. L. SCH.: LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/wex/setback> [<https://perma.cc/GB67-FSN5>] (last visited Feb. 17, 2025) (defining setback as the “areas, measured from the property line to any structure, within which building is prohibited, but which may include driveway areas or other similar surface improvements.”).

¹⁷³ See LOUISVILLE METRO PLAN. COMM’N., LAND DEV. CODE FOR LOUISVILLE METRO ZONING AUTH. § 5.2.2 (2025), <https://codelibrary.amlegal.com/codes/louisvillemetro/latest/loukyldc/0-0-0-5300> [<https://perma.cc/RP2X-LRHE>].

¹⁷⁴ Conor Dougherty, *Does it Pencil?*, N.Y. TIMES: BUSINESS (June 16, 2024), <https://www.nytimes.com/2024/06/14/business/does-it-pencil-real-estate.html> [<https://perma.cc/Q8Z3-LEU7>].

¹⁷⁵ See *Waivers & Variances*, *supra* note 43.

¹⁷⁶ See KY. CHAMBER OF COM., *supra* note 1, at 36.

¹⁷⁷ *Id.*

¹⁷⁸ See *id.*

fewer issues and concerns to go before it. Likewise, while the roles of the planning commission and City Commission still exist, they will be set into motion less often.¹⁷⁹

With efficiency in mind, the NDC procedures are designed to address cost and time.¹⁸⁰

Covington offers a contemporary test case for the merits of a form-focused code.¹⁸¹ In 2020, the city purchased a former Internal Revenue Service processing facility from the federal government for \$20.5 million.¹⁸² After demolishing the building, the city initiated the process of selecting multiple developers for the twenty-three-acre site with development of an entirely new neighborhood comprising a mix of uses in mind.¹⁸³ The project, dubbed “Covington Central Riverfront,” is subdivided into more than a dozen parcels across four city blocks.¹⁸⁴ Covington hosted a groundbreaking in April 2024, and activity on the site will continue for years to come.¹⁸⁵ The development of Covington Central Riverfront and the surrounding area over decades will shape the broader city and offer a meaningful opportunity to measure the merits of a form-based land use planning regime.

Having now covered the shortcomings of focusing on use over form, the next section examines the positive aspects of land use planning in Kentucky.

B. Where Kentucky Cities Have It Right

1. Urban Service Boundaries

The impact of Lexington’s Urban Service Boundary (“USB”) on land use in the area cannot be understated.¹⁸⁶ The USB controls “where urban services (including city garbage collection, streetlights and street sweeping) are

¹⁷⁹ CITY OF COVINGTON, *supra* note 124.

¹⁸⁰ *Id.*

¹⁸¹ *Covington Buys IRS Site to Prep for Private Development*, FOX19 NOW (May 13, 2020, at 12:10 ET), <https://www.fox19.com/2020/05/13/covington-buys-irs-site-prep-private-development/> [<https://perma.cc/UC8J-LYAK>].

¹⁸² *Id.*

¹⁸³ *For 55 Years an ‘Island,’ IRS Site to be Woven Back into Urban Fabric*, CITY OF COVINGTON, KY. (Dec. 15, 2022), <https://www.covingtonky.gov/news/2022/12/15/for-55-years-an-island-irs-site-to-be-woven-back-into-urban-fabric> [<https://perma.cc/7UBA-WYLH>].

¹⁸⁴ *Covington Central Riverfront: Plans*, CITY OF COVINGTON ECON. DEV., <https://thecovky.gov/covington-central-riverfront/#the-plans> [<https://perma.cc/9KWC-RYYZ>] (last visited Feb. 17, 2025).

¹⁸⁵ Kenton Hornbeck, *Covington Breaks Ground on Mixed-Use Development at Former IRS Site*, KY. LANTERN (Apr. 11, 2024, at 09:52 ET), <https://kentuckylantern.com/briefs/covington-breaks-ground-on-mixed-use-development-at-former-irs-site/> [<https://perma.cc/SN26-DRWN>].

¹⁸⁶ Kit Anderson, *The Urban Service Boundary*, CIVICLEX (Aug. 26, 2024), <https://civiclex.org/big-issues/urban-service-boundary> [<https://perma.cc/TTD4-EAKT>] (explaining the Urban Service Boundary in Lexington).

provided and a higher density for development is allowed.”¹⁸⁷ Because of the city’s historic reluctance to expand the boundary, even with five approved areas measuring 2,800 acres to be added in the coming years, only about half of Fayette County is covered within the USB.¹⁸⁸ Lexington’s Planning Commission adopted the Urban Growth Master Plan as of October 31, 2024, the contents of which will shape the future development of the expansion areas.¹⁸⁹

By limiting development outside of the USB, Lexington has effectively preserved land for its signature equine and agriculture industries.¹⁹⁰ This preservation has immense positive economic impacts for the area.¹⁹¹ A 2017 study estimated that agriculture and associated businesses generate a \$2.3 billion annual output, which supports one out of twelve jobs in Fayette County.¹⁹² Keeneland, the thoroughbred auction company and racing facility located in Lexington, generates between \$1.4–1.6 billion annually for the Lexington metro area through thoroughbred sales, racing operations, new construction, associated hospitality spending, and other factors.¹⁹³ These two industries are critical not just to Lexington, but all of Central Kentucky, and the USB effectively mitigates some of the pressures of urban development.¹⁹⁴

An interesting possible downside of the USB might be that Lexington has lost some development activity over the long run to the surrounding area, particularly to the cities of Versailles and Nicholasville in Woodford and Jessamine counties, respectively.¹⁹⁵ Lexington’s growth would appear to have certainly benefitted development activity in those areas, but it might be through more dense nodes of development than would have otherwise occurred.¹⁹⁶ One example of this would be the Brannon Crossing development, which sits on the northern edge of Jessamine County, bordering the southwest edge of Fayette County.¹⁹⁷

¹⁸⁷ *Input Sought on Urban Service Boundary Expansion Draft Designs*, LEXINGTON-FAYETTE URBAN CNTY. GOV’T. (July 10, 2024, at 05:00 ET), <https://www.lexingtonky.gov/news/input-sought-urban-service-boundary-expansion-draft-designs> [<https://perma.cc/942S-F7UV>].

¹⁸⁸ See Anderson, *supra* note 186.

¹⁸⁹ LEXINGTON-FAYETTE URB. CNTY. GOV’T, DIV. OF PLAN., LEXINGTON URBAN GROWTH MASTER PLAN (2024), <https://www.urbangrowthlex.com> [<https://perma.cc/E3XP-R9E2>].

¹⁹⁰ See Anderson, *supra* note 186.

¹⁹¹ *Id.*

¹⁹² Carol Lea Spence, *New UK Study Shows Agriculture’s Impact on Fayette County Economy*, UNIV. KY.: UKNOW (June 28, 2017), <https://uknow.uky.edu/research/new-uk-study-shows-agricultures-impact-fayette-county-economy> [<https://perma.cc/UDY3-L42D>].

¹⁹³ *New Study Highlights Keeneland’s \$1.6 Billion Impact to Fayette and Surrounding Counties*, KEENELAND (Oct. 9, 2024), <https://www.keeneland.com/media/news/new-study-highlights-keenelands-16-billion-impact-fayette-and-surrounding-counties> [<https://perma.cc/B5TA-RTPM>].

¹⁹⁴ See Anderson, *supra* note 186.

¹⁹⁵ See STOLL KEENON OGDEN PLLC, *supra* note 79.

¹⁹⁶ Ricky Sayer, *‘Massive’ Brannon Crossing Development to Include Retail, Grocery, Apartments, and a Hotel*, LEX18 (July 31, 2024, at 17:52 ET), <https://www.lex18.com/news/massive-brannon-crossing-development-to-include-retail-grocery-apartments-and-a-hotel> [<https://perma.cc/5EUN-VH74>].

¹⁹⁷ *Id.*

An analysis of how Lexington’s Urban Service Boundary and Zoning Ordinance have influenced development in the areas of surrounding counties that directly abut Fayette County—which possibly have less restrictive land use policies—may provide more insight into how the policies of the urban core shape the whole metro area, but that is beyond the scope of this Note. This tension between metropolitan center and suburban counties also describes Louisville, but Covington experiences opposite pressures under that dichotomy as a suburb of Cincinnati. All three cities point to difficulties posed by the nonbinding nature of regional planning, another issue outside the scope of this Note that may warrant further attention.

The urban service boundaries in Louisville and Covington are far less influential on their land use outcomes.¹⁹⁸ Louisville has an Urban Services District, which is a tax district and a notable remnant city boundary from before the merger with Jefferson County.¹⁹⁹ The boundary determines the city’s provision of a limited number of services, like garbage collection.²⁰⁰ Covington has no constrained urban service boundary—public works services are provided up to the city limits.²⁰¹

Urban service boundaries are just one thing major cities in Kentucky get right; another is the recent shift among its cities to intentionally consider form and promote housing development through code reform.

2. Movement Toward Form Over Use and Prioritizing Housing Development in Code Reform

Covington’s 2020 adoption of the Neighborhood Development Code signaled that Kentucky’s cities are beginning to reexamine the utility of their primarily use-focused zoning codes.²⁰² The movement toward form-based codes is understandable; their appeal lies in the possibility of creating a more human-scaled built environment with improvements to pedestrian access, public spaces, diversity of housing stock, and the unification of a mix of

¹⁹⁸ See *Garbage Collection*, LOUISVILLE-JEFFERSON CNTY. METRO GOV’T.: DEP’T OF PUB. WORKS, <https://louisvilleky.gov/government/public-works/services/garbage-collection> [<https://perma.cc/4V9H-EFKG>] (last visited Feb. 17, 2025); *Public Works*, CITY OF COVINGTON, KY., <https://www.covingtonky.gov/government/departments/public-works> [<https://perma.cc/UH9F-4CKP>] (last visited Feb. 17, 2025).

¹⁹⁹ LOUISVILLE, KY., LOUISVILLE/JEFFERSON COUNTY. METRO GOV’T. CODE OF ORDINANCES § 38.60 (2025), <https://codelibrary.amlegal.com/codes/louisvillemetro/latest/loukymetro/0-0-0-4630> [<https://perma.cc/P3WP-QP83>].

²⁰⁰ *Garbage Collection*, *supra* note 198.

²⁰¹ *Public Works*, CITY OF COVINGTON, KY., <https://www.covingtonky.gov/government/departments/public-works> [<https://perma.cc/UH9F-4CKP>] (last visited Feb. 17, 2025).

²⁰² CITY OF COVINGTON, *supra* note 124.

uses.²⁰³ There are additional economic benefits to the switch, as “places with form-based codes generally experience a greater increase in property values and tax revenues, maintain their values better, attract a wider range of housing types, attract more investment, and generate more employment than similar areas with more conventional zoning.”²⁰⁴ Anecdotal evidence also suggests developers favor places with form-based codes for potential development due to the efficiency and clarity of their project approval processes compared to places with traditional zoning codes.²⁰⁵

While Louisville has not changed the Land Development Code in nearly the same comprehensive manner as Covington’s complete overhaul that resulted in the adoption of the NDC, Louisville has advanced several measures intended to improve the function of the LDC and spur the construction of new housing units.²⁰⁶ The amendments that may have a significant impact on housing development include changes to simplify accessory dwelling unit (ADU)²⁰⁷ approvals, reduction of front yard setbacks in certain form districts, and removal of floor area ratio (FAR)²⁰⁸ requirements in residential zones.²⁰⁹

Louisville also explored potentially even more impactful “Middle Housing” reform that would allow for the construction of duplex, triplex, fourplex, townhouse, and court-style housing types in all residential zoning districts across the city.²¹⁰ However, the Kentucky General Assembly passed House Bill 388 in the 2024 session, preempting Louisville and other cities from amending their zoning codes until April 15, 2025.²¹¹ This now-expired amendment moratorium drew mixed reactions, but it unquestionably put a

²⁰³ See FBCCI & SMART GROWTH AM., ZONED IN: ECONOMIC BENEFITS & SHARED PROSPERITY WITH FORM-BASED CODES 2–3 (Sep. 2021), [https://perma.cc/66H9-EBBX].

²⁰⁴ *Id.* at 41.

²⁰⁵ *Id.*

²⁰⁶ See *Land Development Code Reform*, LOUISVILLE-JEFFERSON CNTY. METRO GOV’T.: OFF. OF PLAN., [https://louisvilleky.gov/government/office-planning/land-development-code-reform] [https://perma.cc/9JQV-A63D] (last visited Feb. 17, 2025).

²⁰⁷ *Accessory Dwelling Units*, AM. PLAN. ASSOC., [https://www.planning.org/knowledgebase/accessorydwellings/] [https://perma.cc/DFV6-4P4M] (last visited Feb. 17, 2025) (“An accessory dwelling unit (ADU) is a smaller, independent residential dwelling unit located on the same lot as a stand-alone (i.e., detached) single-family home.”).

²⁰⁸ Marshall Hargrave, *Understanding Floor Area Ratio: Definition, Formula, and Examples*, INVESTOPEDIA (Aug. 23, 2025), [https://www.investopedia.com/terms/f/floor-area-ratio.asp] [https://perma.cc/7WAR-FTKU] (“The floor area ratio is the relationship between the total amount of usable floor area that a building has or has been permitted to have and the total area of the lot on which the building stands.”).

²⁰⁹ *LDC Reform: Completed Amendments*, LOUISVILLE-JEFFERSON CNTY. METRO GOV’T.: OFF. OF PLAN., [https://louisvilleky.gov/government/office-planning/ldc-reform-completed-amendments] [https://perma.cc/5WCY-JGYF] (last visited Feb. 17, 2025).

²¹⁰ *Middle Housing*, LOUISVILLE-JEFFERSON CNTY. METRO GOV’T.: OFF. OF PLAN., [https://louisvilleky.gov/government/office-planning/middle-housing] [https://perma.cc/8P4G-S5MQ] (last visited Feb. 17, 2025).

²¹¹ H.B. 388, 2024 Reg. Sess. (Ky. 2024).

pause on an ambitious effort by Kentucky's largest city to advance reforms intended to increase the construction of housing.²¹² Preemption of local authority by states is not unprecedented—California passed housing laws that preempt conflicting local laws restricting housing development²¹³—but Kentucky's preemption achieves the opposite, stalling reforms designed to “increas[e] housing choices and opportunities in new and existing neighborhoods.”²¹⁴ The effects of state preemption of local authority on land use planning and housing policy deserve further scrutiny, but again, that analysis is beyond the scope of this Note.

As part of its Imagine Lexington 2045 comprehensive plan, Lexington adopted numerous zoning reforms.²¹⁵ Many of the eleven ordinances adopted “in direct response to the recommendations within Imagine Lexington” relate to housing and reformed aspects such as floor area ratios, parking standards, and the ADU approval process.²¹⁶ Additionally, the Urban Growth Master Plan, which will guide development of the 2,800 acres added to Lexington's Urban Service Boundary, contemplates the importance of new housing development.²¹⁷ Its five guiding values include building successful neighborhoods, protection of the environment, creation of jobs and prosperity, improvement of transportation networks, and promotion of social and racial equity.²¹⁸

Despite the impact that form-based codes and zoning reforms may have on increasing the construction of new housing units, there are counterarguments to the importance of land use planning mechanisms in the overall picture of the housing shortage.

C. Counterarguments to Land Use Planning's Significance to the Housing Shortage

This Note takes the position that the failure of land use planning policies in Kentucky has been a primary driver in restricting housing supply and pushing costs higher. Detractors are likely to argue that the effects of these

²¹² See Bailey Loosemore, *A New State Law is Halting Zoning Reforms in Louisville. Here's Why That Matters*, COURIER J. (Apr. 4, 2024, at 07:40 ET), <https://www.courier-journal.com/story/news/local/2024/04/04/new-kentucky-law-halts-zoning-reforms-in-louisville-why-that-matters/73103616007/> [<https://perma.cc/7AEL-3ZK5>].

²¹³ David L. Preiss & Bradley B. Brownlow, *California's Pro-Housing State Legislation Prevails Over Local Voter Measures*, HOLLAND & KNIGHT LLP (June 22, 2021), <https://www.hklaw.com/en/insights/publications/2021/06/californias-prohousing-state-legislation-prevails-over-local-voter> [<https://perma.cc/2ATK-E28U>].

²¹⁴ *Middle Housing*, *supra* note 210.

²¹⁵ *Zoning Reform*, IMAGINE LEXINGTON, <https://www.lexingtonky.gov/imagine/plans-projects/zoning-reform> [<https://perma.cc/2DPS-2NTV>] (last visited Feb. 17, 2025).

²¹⁶ *Id.*

²¹⁷ LEXINGTON-FAYETTE URBAN CNTY. GOV'T.: DIV. OF PLAN., *supra* note 189.

²¹⁸ *Id.*

policies are more attenuated than major, and that other factors are greater determinants of housing stock and affordability.

A popular counterargument might be that the cost of construction materials and labor is the most significant issue preventing new housing starts and driving prices higher for the units that are ultimately constructed. Labor shortages are a substantial concern for most builders,²¹⁹ and the growth of material costs impacts overall project budgets, business profit margins, housing affordability, and appraisal values.²²⁰ Together, the cost of materials and labor nominally²²¹ doubled between 2001 and 2019.²²² This certainly is a factor in the overall affordability equation, but zoning reform reduces the regulatory barrier restricting supply on the front end and expands potential supply by allowing increased density.²²³

Another potential counterargument may be the importance of interest rates to borrowing costs for both the construction and purchase of homes. As interest rates rise, the costs of construction loans and residential mortgages also rise.²²⁴ When paired with already high home values, homebuyers suffer, as “[t]he combination of rising home prices and elevated mortgage rates means that housing affordability remains a meaningful problem.”²²⁵ High borrowing costs also dissuade existing homeowners from selling, as they may not want to swap their existing low-rate mortgage for a higher rate as a buyer in the contemporary market.²²⁶ High borrowing costs certainly distort the market for construction and homebuying, but again, zoning reform

²¹⁹ See *Labor Shortages Remain Top Concern for Builders*, NAT’L ASSOC. OF HOME BUILDERS (Feb. 20, 2020), [<https://perma.cc/825Y-BW9G>].

²²⁰ See *Material Costs Affect Housing Affordability*, NAT’L ASSOC. OF HOME BUILDERS (June 16, 2024), [<https://www.nahb.org/advocacy/top-priorities/building-materials-trade-policy/material-costs>] [<https://perma.cc/XE74-F2XV>].

²²¹ *Nominal or Real Value: How to Tell the Difference*, SANTANDER (March 7, 2023), [<https://www.santander.com/en/stories/nominal-real-value>] [<https://perma.cc/2NVR-H7N9>] (“[U]nlike the real value, the nominal value of something does not factor in market conditions. In economics, the nominal value of something is its current price; the real value of something, however, is its relative price over time.”).

²²² Peter Lawrence, *Rising Construction, Labor Costs Increase Rents, Contributing to the Affordable Housing Crisis*, NOVOGRADAC (Feb. 23, 2022, at 00:00 ET), [<https://www.novoco.com/notes-from-novogradac/rising-construction-labor-costs-increase-rents-contributing-affordable-housing-crisis>] [<https://perma.cc/9UPD-SHQG>].

²²³ See Cameron Rifkin, *Increasing the Housing Supply by Reducing Costs and Barriers*, NAT’L COUNCIL OF STATE LEGISLATURES (June 7, 2024), [<https://www.ncsl.org/human-services/increasing-the-housing-supply-by-reducing-costs-and-barriers>] [<https://perma.cc/P467-8DZ5>].

²²⁴ *How Interest Rates and Monetary Policy Impact Real Estate Financing*, WALTER DUKE + PARTNERS (Jan. 15, 2025), [<https://walterduke.com/how-interest-rates-monetary-policy-impact-real-estate-financing/>] [<https://perma.cc/4FT5-BW6T>].

²²⁵ *The Impact of Today’s Changing Interest Rates on the Housing Market*, U.S. BANK (Jan. 27, 2026), [<https://www.usbank.com/investing/financial-perspectives/investing-insights/interest-rates-impact-on-housing-market.html>] [<https://perma.cc/4LBK-Z554>].

²²⁶ Nicole Friedman, *Home Buyers Are Ready to Buy. But Sellers Aren’t Selling.*, WALL ST. J. (Dec. 17, 2023, at 21:00 ET), [<https://www.wsj.com/economy/housing/home-buyers-sellers-market-interest-rate-4f88b030>] [<https://perma.cc/F2QR-R5JL>].

addresses friction in housing supply by increasing the potential availability for development at the outset.²²⁷

A final major counterargument might be that rental housing markets are insufficiently regulated to ensure affordability. Nationwide, rent growth outpaced wage growth between 2019 and 2023, with rents increasing 30.4% and wages 20.2%.²²⁸ Rent control policies have broad support as a measure to potentially address this mismatch, with a September 2024 survey showing 82% of respondents in favor.²²⁹ However, a significant portion of America's affordable housing stock is already rent-restricted under the low-income housing tax credit (LIHTC) program.²³⁰ LIHTCs provide an indirect federal subsidy for the construction and rehabilitation of rental housing in exchange for a thirty-year period of rent restrictions and the requirement to rent to low-income tenants.²³¹ The program is falling short of meeting affordable housing demand, though, so the popularity of rent control measures for non-LIHTC properties is sensible given current conditions.²³² Tenants occupying rent-controlled units bear lower costs and displacement pressure so long as they choose not to move, but tradeoffs exist.²³³ Over extended periods of time, rent control has been shown to “[lead] to a lower supply of rental accommodation, less new rental housing construction, and a fall in the quality of rental housing too.”²³⁴ Rent control has popular appeal and may be useful in limited circumstances to address price spikes in rental markets, but land use planning reforms follow a supply-side approach to meet market demand.²³⁵ The merits of any one proposal to address the housing shortage

²²⁷ See Rifkin, *supra* note 223.

²²⁸ Christopher J. Brooks, *Rents Are Rising Faster than Wages Across the Country, Especially in These Cities*, CBS NEWS (May 8, 2024, at 17:50 ET), <https://www.cbsnews.com/news/rent-cost-us-2024-housing-national/> [<https://perma.cc/B9U8-YHUZ>].

²²⁹ Dana Anderson, *Roughly 4 in 5 U.S. Residents Believe There Should be Caps on Rent Hikes: Survey*, REDFIN: NEWS (Oct. 24, 2024, at 08:30 ET) [hereinafter REDFIN], <https://www.redfin.com/news/survey-homeowners-renters-support-rent-hikes/> [<https://perma.cc/PF9R-6V32>].

²³⁰ *About the LIHTC*, NOVOGRADAC, <https://www.novoco.com/resource-centers/affordable-housing-tax-credits/about-lihtc> [<https://perma.cc/6SSZ-MZV6>] (last visited Feb. 17, 2025).

²³¹ *Id.*

²³² Yonah Freemark & Corianne Payton Scally, *LIHTC Provides Much-Needed Affordable Housing, but Not Enough to Address Today's Market Demands*, URBAN INST. (July 11, 2023), <https://www.urban.org/urban-wire/lihtc-provides-much-needed-affordable-housing-not-enough-address-todays-market-demands> [<https://perma.cc/6SLW-9SKH>]; see REDFIN, *supra* note 229.

²³³ See Jennifer Ludden, *Rent Control Expands as Tenants Struggle with the Record-High Cost of Housing*, NPR (Nov. 28, 2022, at 05:00 ET), <https://www.npr.org/2022/11/28/1138633419/rent-control-economists-tenants-affordable-housing-ballot-measures> [<https://perma.cc/4588-FR3M>]; Marie Hogan & Michael T. Owyang, *What Are the Long-run Trade-offs of Rent-Control Policies?*, FED. RSRV. BANK OF ST. LOUIS (Feb. 12, 2024), <https://www.stlouisfed.org/on-the-economy/2024/feb/what-are-long-run-trade-offs-rent-control-policies> [<https://perma.cc/MT8Z-FKWR>].

²³⁴ Ryan Bourne & Sophia Bagley, *New Meta-Study Details the Distortive Effects of Rent Control*, CATO INST. (May 31, 2024), <https://www.cato.org/commentary/new-meta-study-details-distortive-effects-rent-control> [<https://perma.cc/V6YD-H9XM>].

²³⁵ See Rifkin, *supra* note 223.

and affordability crisis are debatable, but the need for solutions is apparent.

III. RESOLUTION

This Note is limited in that it only explores solutions related to the land use planning process, so any solution that is too attenuated to that process is not seriously explored. Tax incentives, like tax increment financing or even tax credits, may significantly address affordability by driving down the cost of financing large-scale housing developments. Many of the above counterargued issues are important pieces in the overall puzzle of housing in America and in Kentucky. Housing affordability is a multivariate issue that needs policy action on several different fronts if efforts are to be successful. That being said, possible solutions on the land use planning front are addressed below, with special consideration not just for the three subject cities mentioned throughout this Note, but for cities and counties across the Commonwealth of Kentucky.

A. Repeal and Replace Euclidean Zoning with Form-Based Codes

The replacement of highly technical zoning ordinances that often fill hundreds of pages is no small task. Covington shows it can be done.²³⁶ In November of 2018, the city began the two-year process of overhauling its zoning ordinance by hiring Kendig Keast Collaborative, Thompson & Associates, and Dover, Kohl & Partners at a cost of \$220,000.²³⁷ The need to hire a multi-firm team to start the process over from a blank slate, rather than make piecemeal code amendments where issues arose, indicated the general unworkability of the existing ordinance.²³⁸

As addressed previously in this Note, this unwieldiness is generally descriptive of zoning codes that regulate in the style of Euclidean separation of uses.²³⁹ The introduction of a new ordinance by a local government to tweak the larger code when an issue arises from the strict segregation of uses could demonstrate responsiveness, a trait associated with good governance.²⁴⁰ But when done repeatedly rather than addressing the problem underlying the whole of the ordinance itself, it only further contributes to

²³⁶ CITY OF COVINGTON, *supra* note 124.

²³⁷ *City to Rewrite 'Unworkable' Zoning Code*, CITY OF COVINGTON, KY. (Nov. 20, 2018) [hereinafter *City to Rewrite*], <https://www.covingtonky.gov/news/2018/11/20/city-to-rewrite-unworkable-zoning-code> [<https://perma.cc/7A28-2PAT>].

²³⁸ *Id.*

²³⁹ See Schuetz, *supra* note 130.

²⁴⁰ See Jonas Linde & Yvette Peters, *Responsiveness, Support, and Responsibility: How Democratic Responsiveness Facilitates Responsible Government*, 26 PARTY POL. 291, 292 (2020).

unworkability.²⁴¹

This leaves the more aggressive option of complete repeal and replacement. Louisville and Lexington have rightly undertaken several notable zoning reforms to streamline the development of new housing, but the better approach may be a complete overhaul.²⁴² Length is not nearly a perfect measure for how well written or structured a legal document is, but the need for amendment after amendment to these zoning ordinances may indicate a deeper problem.

It is too early to make any concrete judgments about the success or failure of Covington's Neighborhood Development Code, but if industry professionals are to be trusted, it has earned the praise it receives for its utility.²⁴³ Cities across the Commonwealth would be wise to follow Covington's example and adopt new form-based zoning codes.

B. Legalize Middle Housing

Middle housing may be a major missing piece to mitigating the housing crisis.²⁴⁴ Louisville appeared to be on the precipice of advancing its own middle housing reform prior to the state-enacted moratorium in the 2024 legislative session.²⁴⁵ With the moratorium having expired in 2025, the Louisville Metro Council may once again advance these reforms, pushing for eventual enactment.²⁴⁶ If this reform comes to pass, lawmakers across the state should keenly observe changes in permit activity in Louisville for the newly legalized housing types as a measure of how much housing development single-family zoning has suppressed in high-demand areas.

Regardless, the broad adoption of similar middle housing reforms in other cities across the state could provide a substantial infusion of new infill housing stock. By revitalizing grayfield²⁴⁷ and brownfield²⁴⁸ sites, “[i]nfill

²⁴¹ See *City to Rewrite*, *supra* note 237.

²⁴² *Middle Housing*, *supra* note 210; *Zoning Reform*, *supra* note 215; see *LDC Reform: Completed Amendments*, *supra* note 209.

²⁴³ *New Approach*, *supra* note 150.

²⁴⁴ MISSING MIDDLE HOUS., <https://missingmiddlehousing.com/> [<https://perma.cc/EA37-AMAB>] (last visited Feb. 17, 2025) (“Missing Middle Housing types... provide solutions along a spectrum of affordability to address the mismatch between the available U.S. housing stock and shifting demographics combined with the growing demand for walkability.”).

²⁴⁵ See Loosemore, *supra* note 212.

²⁴⁶ See *id.*

²⁴⁷ James Davenport & Connie Cooper, *Turning Grayfields Green*, AM. PLAN. ASSOC. (June 2014), <https://www.planning.org/publications/document/9006889/> [<https://perma.cc/HS9Y-CGZT>] (“Grayfields is a collective term used to describe underperforming, obsolete, and often vacant or deteriorating commercial centers. They range in size from small strip centers, to abandoned big box buildings, to entire regional malls.”).

²⁴⁸ *Brownfield Overview and Definition*, EPA, https://19january2017snapshot.epa.gov/brownfields/brownfield-overview-and-definition_.html

development can create walkable destinations, expand housing stock, provide opportunities for economic growth, improve air and water quality, and protect existing natural resources by avoiding sprawl.”²⁴⁹

Policymakers, however, should heed warnings about how to message these changes to the public.²⁵⁰ Phrases like “abolish,” “eliminate,” or “end single-family zoning” are bad political messaging because they insufficiently describe the proposed reform, and “[their] vagueness and negative framing can unnecessarily confuse and scare voters.”²⁵¹ An uninformed public might mistakenly think that a ban on exclusive single-family zoning as part of middle housing reform means that single-family homes are outlawed.²⁵² To mitigate confusion, this Note suggests policymakers use more precise phrases like “legalize middle housing,” “expand allowed housing types,” and “increase density” when communicating the aims of this kind of zoning reform.

C. Adopt Urban Service Boundaries and Explore City-County Mergers in Growing Counties

Lexington’s land use planning regime is relatively unique. Its seven-decade history with the Urban Service Boundary may be less informative as a land use tool for cities like Covington and Louisville, where all or most city services are already provided across the area, than in places like Elizabethtown and Hardin County that may struggle more with boundary determinations as they manage growth. Nearby, Glendale is the site of the planned BlueOval SK Battery Park, with two Ford electric vehicle battery manufacturing facilities.²⁵³ At the time of the initial announcement, Ford’s investment was \$5.8 billion, and an estimated 5,000 resultant jobs would be created.²⁵⁴ This came as part of more than \$11.5 billion in investment related to electric vehicle manufacturing in Kentucky since 2020, reflective of a burgeoning new industry.²⁵⁵ The BlueOval SK joint venture between SK On

[<https://perma.cc/Z85N-TNBS>] (last visited Feb. 17, 2025) (“A brownfield is a property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”).

²⁴⁹ Peña & Shah, *supra* note 7.

²⁵⁰ Jenny Schuetz, ‘End Single-Family Zoning’ Is Bad Political Messaging, BROOKINGS (Sep. 10, 2024), <https://www.brookings.edu/articles/end-single-family-zoning-is-bad-political-messaging/> [<https://perma.cc/5ZEA-QSEM>].

²⁵¹ *Id.*

²⁵² *Id.* (“The government is not plotting to expropriate and demolish single-family homes.”).

²⁵³ Ford to Lead America’s Shift to Electric Vehicles with New Mega Campus in Tennessee and Twin Battery Plants in Kentucky; \$11.4B Investment to Create 11,000 Jobs and Power New Lineup of Advanced EVs, FORD MEDIA CTR. (Sep. 27, 2021), [<https://perma.cc/6YF9-FHCZ>].

²⁵⁴ *Id.*

²⁵⁵ See Olivia Evans & Connor Giffin, *Kentucky Is Electrifying the Future. What to Know About the*

and Ford, however, has since been abandoned.²⁵⁶ In December 2025, Ford announced the planned conversion of the Battery Park into a hub for battery energy storage systems production, leaving 1,500 jobs in flux until the conversion is complete and hiring for the repurposed facility can begin.²⁵⁷

Nonetheless, Hardin County is all but certain to still see growth related to this manufacturing investment, with a population increase of 22,000 residents and demand for 8,800 new housing units anticipated by 2030.²⁵⁸ The Census count for Hardin County in 2020 was 110,702, so anticipated growth would present a roughly twenty percent population increase over a decade.²⁵⁹ It will be difficult to manage that growth responsibly, but an urban service boundary for the county paired with a form-based zoning code for Elizabethtown could yield promising results. Elizabethtown and Hardin County may additionally want to explore a city-county merger–like Lexington and Louisville—as a solution to regional planning and jurisdictional authority issues.²⁶⁰ Adoption of a similar governance model may be wise for cities and counties across Kentucky that exhibit significant future investment and population growth potential.

IV. CONCLUSION

Housing supply is critically short in Kentucky and across America. How policymakers address this crisis in the coming years will have immense economic and environmental implications. The analysis included here should not be considered a broad campaign against land use and zoning regulation, but instead a call to adopt policies that are less restrictive, more efficient, and meaningfully promote the construction of much-needed housing. This Note urges Kentucky cities to repeal and replace Euclidean zoning with form-based codes, legalize middle housing, adopt urban service boundaries, and explore city-county mergers in growing counties to remedy the past and

²⁵⁶ ‘EV Capital of the U.S.’, COURIER J. (Aug. 27, 2024, at 15:26 ET), <https://www.courier-journal.com/story/news/local/2024/08/25/kentucky-is-the-ev-capital-of-the-u-s-what-to-know-about-evs-in-ky/74097625007/> [<https://perma.cc/ZJ9H-24PX>].

²⁵⁷ Olivia Evans & Connor Giffin, *Ford to Repurpose BlueOval SK Battery Park; 1,500 to Lose Jobs*, COURIER J. (Dec. 16, 2025, at 07:55 ET), <https://www.courier-journal.com/story/money/companies/2025/12/15/ford-blueoval-sk-battery-park-repurposing-will-lead-to-1500-job-losses/87781243007/> [<https://perma.cc/8K8W-EQQC>].

²⁵⁸ *Id.*

²⁵⁹ See Olivia Evans, *BlueOval SK Battery Park Spurs Massive Growth in Hardin County. Here's What it Means.*, COURIER J. (July 11, 2024, at 12:27 ET), <https://www.courier-journal.com/story/money/companies/2024/07/11/ford-sk-on-battery-park-spurs-hardin-county-growth-development/74272581007/> [<https://perma.cc/DVW9-DD76>].

²⁶⁰ See *QuickFacts: Hardin County, Kentucky*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/hardincountykentucky/> [<https://perma.cc/R3AX-9A6Y>] (last visited Feb. 16, 2025).

²⁶⁰ See discussion of city-county mergers *supra* Sections I.C.1–2.

present failures of land use planning. By implementing these strategies, municipalities can create a more efficient and supportive regulatory environment for the development of affordable housing, ultimately helping meet the housing needs of their communities.