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Zoning for Low Carbon Transportation

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When addressing the decarbonization of the transport sector, the role of zoning codes does not come immediately to mind. Transportation planning is thought of as being in the realm of regional and state planning, transit, and transportation agencies. Yet local zoning codes can be used—as both carrot and stick—in implementing the transition to sustainable, safer transport options in both urban and non-communities.

This difficult pandemic period is exactly the time for promoting the transition to a more sustainable transport sector. During the lockdown, as cars disappeared from the streets, pollution “plummeted,” and so did automotive related collisions and pedestrian fatalities.¹ Alternative transport options blossomed with bike-sharing increasing by “roughly 150% in Beijing and 67% in New York, where cycling on main thoroughfares increased by 52%. Meanwhile, cycling traffic increased by 151% on trails in Philadelphia and in April Dundee saw cycling traffic increase by 94%.”² And communities—not just major cities—are finding that parking spaces and parking lots can be repurposed for outdoor uses from extended outdoor dining, “parklets,” pedestrian walkways, and pop-up food distribution and COVID testing sites, even drive-in theatres.³ But with the lockdown easing, conflict has arisen among those who want a permanent change in the auto-first approach to land use and those who want a return to pre-pandemic conditions. As Jerold S. Kayden, a Harvard University professor of urban planning and design told the New York Times, “The longstanding tension between those who see cars as evil and those who see cars as essential has been heightened by the pandemic because usable outdoor space is more crucial than ever.”⁴

Heightening concern over increased auto-non-auto tensions is that fear of public transit and ride-share services like Uber and Lyft may significantly increase personal auto usage, both in urban areas and in the suburban commuter zones (which have seen a surge of popularity with city based workers). According to Senior Fellow Nicole Gelinis of the Manhattan Institute a “1% decline in transit use into Manhattan would translate into a 12% increase in car traffic.”⁵ Nor is this the only reason why now is the time for promoting alternative and low-carbon transport. New York State is undertaking a serious effort at decarbonizing and that includes the transport sector. Transportation accounts for 28% of greenhouse gas (GHG) emissions in the U.S.⁶ and 36% of GHG emissions in New York.⁷ New laws have opened up “e-mobility” options and significant investment is being made in electric vehicle infrastructure, including in those sectors serving challenged populations too often neglected in the street use discussion. And the benefits can be felt across our society, imposition of a congestion tax in Central Stockholm reduced ambient air pollution by 5% to 15%, and a study concluded this improvement was related to the significant decrease in the rate of acute asthma attacks among young children that followed.⁸

While municipalities do not have authority to impose congestion taxes they do have the power, as controllers of the built environment, to bring about emission reductions by directly supporting the necessary infrastructure for low carbon transportation, creating healthier, more equitable communities. This article examines techniques that can be used in zoning codes to incentivize low carbon transport options.

Comprehensive Plan

As with all planning and zoning discussions we begin with the need to incorporate sustainable transport goals into the

comprehensive plan. “The location and types of transportation facilities” is one of the specific topics that state law lists as a potential comprehensive plan component.⁹ As transportation concerns travel to, through, and within communities, comprehensive plans should be coordinated with regional transportation plans. Planning across multiple communities is essential to efficient use for transport purposes, such as the location of park-and-ride lots, designing bus and para-transit routes, creation of bike and walking trails, and consistent design of streets.

Policy determinations about the type of land uses encouraged in the community will have a significant impact on local transport, particularly providing opportunities for reduced auto usage. As explained in a PennDOT guide for municipalities:

Transportation and land use need to be considered together for Pennsylvania municipalities to achieve quality of life objectives for their communities. Transportation systems serve communities in various ways: the regional transportation system provides the mobility to travel throughout the region quickly, whereas the local network provides travelers access to the places that they want to go—home, work, school, shopping, appointments, activities, etc. Pennsylvania municipalities should consider how their transportation system meets both the mobility and accessibility needs of the community. Concurrently, municipal land use policies help shape and rearrange the origins and destinations of travel and can either support or hinder mobility and accessibility. Transportation operates most efficiently when it provides a connected network of transportation modes serving a mix of land uses in close proximity. This type of system provides the traveler with a host of options and makes it possible to make fewer, shorter trips and be less dependent on a personal automobile.

A variety, or mix, of land uses, and an increase in land use densities, can lead to shorter trip distances, a better blend of jobs and housing within a community, and an increase in the use of alternative modes of transportation (walking, biking, transit) because different destinations are closer together. A corner store within walking distance of one’s home, for example, means that picking up a bottle of milk can be pleasant exercise rather than requiring another trip to the supermarket by car. Also, by providing a range of transportation choices beyond the automobile, individuals who do not drive are provided with new travel opportunities, and congestion and pollution can be eased. By contrast, separating land use types and/or reducing densities can increase the dependency on motorized transportation, thereby increasing congestion and/or the demand for additional roadways.

Thus, the design of Pennsylvania communities can either encourage or discourage the range of transportation options. Thoughtful and functional land use and transportation design (i.e., streetscapes, roadway design, traffic calming, and the connection commercial and residential developments) can provide a safer environment for travel and encourage the development of healthy communities that appeal to all citizens including pedestrians, bicyclists, and transit riders. Where applicable, roadways should be designed to be “Complete Streets” to accommodate vehicles, pedestrians, bicyclists, the disabled, and transit by providing travel lanes, sidewalks, bike lanes, wider shoulders, raised crosswalks and medians, audible traffic signals, bus pullouts, and improved access to bus stops. The design of communities can also encourage the use of transit through compact, mixed-use development surrounding a transit station. Transit-oriented developments (TODs) may be appropriate for growing municipalities aiming to reduce the need for more highways in favor of broader transit use. Through careful planning, TODs can also be effective in connecting to existing and planned infrastructure, and linking different transportation modes to one another to form one complete system. In more rural municipalities, community design may include land use controls such as agricultural preservation to focus new development in targeted growth areas and lessen the demands on the overall transportation system.¹⁰

An example in the incorporation of these ideals can be found in the City of New Rochelle’s master plan which among other goals aims to “encourage transit oriented development and green job creation and increase transportation options.”¹¹ New

Rochelle aims to be community that “Provides comprehensive transportation options that are safe, efficient and accessible” and “Promotes sustainability by emphasizing strategies to reduce energy consumption and CO2 emissions, reduce waste, promote ecological diversity and public health and encourage smart growth.”¹² The Plan contains many specific initiatives on how to safely integrate autos, pedestrians, and other transport options, including calls to create Pedestrian and Bicycling Master Plans that will increase walking and cycling options throughout the community. The “Key Concept: Encourage Sustainable Transportation” section includes specific policies to encourage low-carbon transport, in coordination with the City’s GreenNR plan:

Explore strategic infrastructure investments to support new technologies for sustainable transportation, such as electric vehicle charging stations, hydrogen powered buses and other alternative-fuel vehicles. This recommendation supports the Renewable Energy Generation (1.5) and Green Fleet Initiatives (1.4) from GreenNR.

8.35: Expand supply of electronic vehicle charging stations and alternative fueling stations To support and encourage use of low emission vehicles, the City should expand its supply of electric vehicle charging stations in municipal parking lots and encourage gas additional gas stations within the city to provide alternative fueling options.

8.36: City Procurement Policy The City should expand its Green Fleet initiative by setting sustainability requirements for contracted service providers and advocate for county-wide measures.

Create financial incentives to discourage single-occupancy vehicle commuting by municipal employees, while also encouraging the adoption of similar policies by major local employers. This recommendation supports the Green Commuting initiative (5.35) from GreenNR.

8.37: City TDM Plan A transportation demand management (TDM) program should be implemented to encourage City employees to take public transit, carpool, bicycle, walk or telecommute. Parking demand should be reduced by discontinuing assigned employee spaces at City Hall parking lot, instead providing preferential parking for registered carpoolers, scooters, motorcycles, bicycles, and car share vehicles. Employee parking permits should be converted into a transportation benefit that can be used towards all modes.

Once established in policy, code provisions can be adopted bringing the goals to life. For example, in order to promote walking and cycling, the City of Buffalo Green Code requires that most projects over 2,500 square feet and substantial renovations provide pedestrian facilities “connecting main entrances to parking, adjacent public rights-of-way and transit stops and stations, and all uses on a site that allow for public access,” and bicycling parking.¹³

Parking Regulations

Now is the time to undertake a comprehensive review of parking requirements as well as the dedication of public land to parking. Few battles have been as pitched as those over the requirements for parking, and so far parking, and thus the automobile, has won. We have as many as two billion parking spots in the United States, the “area of parking per car in the United States is thus larger than the area of housing per human,” according to Donald Shoup, a professor at UCLA’s Department

of Urban Planning who sums up the problem: "Off-street parking requirements are a fertility drug for cars."¹⁴ Communities serious about de-emphasizing cars and promoting sustainable forms of transit need to rethink parking policies.

Changing attitudes have led a number of communities to reduce or remove minimum parking requirements. A number of reasons have been behind these changes, including the recognition that "parking requirements prevent infill redevelopment on small lots where fitting both a new building and the required parking is difficult and expensive" and that "parking requirements prevent new uses for many older buildings that lack the parking spaces required for the new uses."¹⁵ Parking requirements raise costs, impacting affordability of housing and imposing costs on small businesses, Seattle reduced "parking requirements for developers to build affordable housing and 'unbundles' parking from leases in new developments so renters and buyers don't have to pay for spaces that they don't actually use."¹⁶ And because parking space mandates are often designed with peak capacity in mind, they seldom result in efficient use of land. That inefficiency is likely to grow in a post-pandemic world as e-commerce and work from home trends accelerate, reducing the need for acres of asphalt.

This is not to say all off-site and on-site parking requirements should be abandoned, but requirements should be flexible. For example, Buffalo's Green Code states "There are no provisions that establish a minimum number of off-street parking spaces for development. However, certain development proposals are required to complete a transportation demand management plan, per Section 8.4, which can result in the provision of off-street parking."¹⁷

From Parking Space to PARKlet. One idea gaining favor, especially as social distancing rules encourage greater outdoor dining availability is the idea of a "PARKlet" Essentially the conversion of parking spaces to public uses, usually on a temporary basis such as New York City's Pop-up Cafes or seasonal outdoor dining, the hope is that by providing "public space for gathering, parklets may generate additional foot traffic or improve pedestrian flows by providing an extension of the sidewalk."¹⁸ There are a number of design guidelines to consider including safety issues; one excellent guidebook is "Reclaiming the Right-of-Way: A Toolkit for Creating and Implementing Parklets" by the UCLA Complete Streets Initiative,¹⁹ which provides ideas on design permit process and other considerations.

Complete Streets

Complete Streets are about bringing equality to all users of public streets. Complete Streets are streets designed and managed for safe access for all users, including pedestrians, bicyclists (including E-Bikes and E-Scooters), motorists, and transit riders. Interest in Complete Street methods has been growing for a number of years, over 1,600 communities have adopted some form of the policy, and there has been heightened interest in light of potential traffic pattern shifts resulting from the 2020 COVID pandemic. Complete Street concepts have been included in recent federal infrastructure proposed legislation,²⁰ and state law requires consideration of Complete Streets in many projects.²¹

While focused on transportation, Complete Street policies are also an effective tool for addressing equity issues in communities by placing on an equal footing residents and workers who do use private cars for commuting and personal travel. For example, according to the National Complete Street Coalition's 2016 Dangerous by Design report, persons of color and older adults are over 50% more likely to be stuck and killed while walking.²²

Complete Streets are more of a policy than a specific design, each application is as unique as the particular community context. According to the National Complete Streets Coalition, a Complete Streets policy should contain the following elements.²³

1. **Vision and intent:** Includes an equitable vision for how and why the community wants to complete its streets. Specifies need to create complete, connected, network and specifies at least four modes, two of which must be biking or walking.
2. **Diverse users:** Benefits all users equitably, particularly vulnerable users and the most underinvested and underserved communities.
3. **Commitment in all projects and phases:** Applies to new, retrofit/reconstruction, maintenance, and ongoing projects.
4. **Clear, accountable exceptions:** Makes any exceptions specific and sets a clear procedure that requires high-level approval and public notice prior to exceptions being granted.
5. **Jurisdiction:** Requires interagency coordination between government departments and partner agencies on Complete

Streets.

6. **Design:** Directs the use of the latest and best design criteria and guidelines and sets a time frame for their implementation.

7. **Land use and context sensitivity:** Considers the surrounding community's current and expected land use and transportation needs.

8. **Performance measures:** Establishes performance standards that are specific, equitable, and available to the public.

9. **Project selection criteria:** Provides specific criteria to encourage funding prioritization for Complete Streets implementation.

10. **Implementation steps:** Includes specific next steps for implementation of the policy.

Elements may include: sidewalks, micromobility lanes or accommodating wide paved shoulders, special transit lanes, comfortable and accessible public transportation stops—including docking hubs, safe street crossing opportunities, clear and accessible pedestrian signals, curb extensions, bicyclist amenities like bike parking and repair opportunities, narrower travel lanes, roundabouts, and more.²⁴

One of the Nation's leading Complete Streets projects is the City of Rochester's Inner Loop East Transformation Project. Starting with a revised Center City Master Plan as part of building community support, Rochester is filling in a portion of the six-lane sunken expressway, the project also converts the existing surface-level streets that run alongside the Inner Loop into green space and land for redevelopment. In all, the city is eliminating 12 lanes of roadway designed exclusively for high speed traffic, freeing up 5.7 acres of land for mixed-use development along a new, walkable boulevard. The redesigned corridor includes landscaping, protected cycle tracks, wide sidewalks, and frequent crosswalks. This design also reconnects nearby residential neighborhoods to the East End, a vibrant downtown district, by restoring the portions of the street grid formerly blocked of by the Inner Loop.²⁵

Not all programs need be so ambitious to successfully de-emphasize cars in favor of lower carbon emission alternatives. But expanding consideration of transport options beyond cars will offer significant benefits to communities.

Promoting Micromobility

Micromobility is as the use—usually a rental through an app—of electronic scooters and bikes for short travels, often around tourist areas, or to connect to another transit (bus, train, or car).

New York has finally permitted E-Bikes and E-Scooters, providing a boost for micromobility options. With expressed concerns with public transit options post-lockdown, increased personal travel options are needed, and effective August 2, 2020 these options are allowed. Importantly, the new laws grant municipalities regulatory powers, including the ability to ban or limit the use of E-Bikes and E-Scooters. Municipalities can and should also regulate ride-sharing companies

Municipal powers also include setting a lower maximum speed and banning E-Bikes and E-Scooters completely.

New Vehicle and Traffic Law § 102-c. defines E-Bikes as a “Bicycle with electric assist” as one of three classes:

A bicycle which is no more than thirty-six inches wide and has an electric motor of less than seven hundred fifty watts, equipped with operable pedals, meeting the equipment and manufacturing requirements for bicycles adopted by the Consumer Product Safety Commission under [16 C.F.R. Part 1512.1 et seq.](#) and meeting the requirements of one of the following three classes:

(a) “Class one bicycle with electric assist.” A bicycle with electric assist having an electric motor that provides assistance only when the person operating such bicycle is pedaling, and that ceases to provide assistance when such bicycle reaches a speed of twenty miles per hour.

(b) “Class two bicycle with electric assist.” A bicycle with electric assist having an electric motor that may be

used exclusively to propel such bicycle, and that is not capable of providing assistance when such bicycle reaches a speed of twenty miles per hour.

(c) “Class three bicycle with electric assist.” Solely within a city having a population of one million or more, a bicycle with electric assist having an electric motor that may be used exclusively to propel such bicycle, and that is not capable of providing assistance when such bicycle reaches a speed of twenty-five miles per hour.

Newly added Vehicle and Traffic Law § 114-e defines an “Electric scooter” as “Every device weighing less than one hundred pounds that (a) has handlebars, a floorboard or a seat that can be stood or sat upon by the operator, and an electric motor, (b) can be powered by the electric motor and/or human power, and (c) has a maximum speed of no more than twenty miles per hour on a paved level surface when powered solely by the electric motor.”

As noted, municipalities can license or ban ride-share companies, designate docking/hub areas, and establish permitting requirements. The National League of Cities recommends seven policy points to consider:

- Get out in front of surprise deployments.
- Utilize pilot programs to consider right of way policy, cost structure, sustainability and opportunities to work with different companies.
- Consider safety.
- Develop a plan and agreement for trip data.
- Reevaluate bike infrastructure.
- Focus on equity.
- Be proactive about learning from other cities.²⁶

Shared micromobility services should be only allowed to operate in the public right-of-way with legal permission (e.g. license, permit, contract) from the local government. Licensees must designate who will be responsible for fielding complaints, addressing technical difficulties, coordinating the rebalancing and removal of scooters parked illegally and providing public education. The municipality should reserve the right to:

- Terminate permits at any time, for due cause, including causes not specified in the regulatory agreement, and require the operator to remove their entire fleet of vehicles from public streets.
- Limit the number of companies operating (e.g. cap the number of permits or licenses issued, and/or issue exclusive contracts, permits, or licenses).
- Limit the number of vehicles that any individual company can deploy, on a per-permit basis.
- Prohibit specific companies from operating in the public right-of-way based on conduct or prior conduct (e.g. if a company deploys equipment prior to applying for a permit, license, or contract, or fails to comply with permit, contract, or license terms).

It is recommended that communities should limit the duration of licenses and permits to a fixed time period (e.g. 6-12 months) and require all companies to re-apply for each renewal. Contracts developed as the result of competitive bidding processes may have a longer duration. Contracts should reserve the right to update permit terms over time. Contracts should require that operators provide written notice, at least 14 days before ceasing operations, if they are no longer willing or able to provide service.

A privacy issue about ride-share company data. Data from the various ride sharing companies can provide extremely useful information to communities on patterns of travel, helping inform decisions as varied as to where para-transit services need improvement to where additional bike and walking trails are needed. But an objection has arisen over data collected by the ride-sharing companies being shared with the government. A good license agreement will provide that sufficient data will be collected to provide auditable proof that the licensee has paid applicable costs. Disputes have arisen in cities with sophisticated

data collection systems, Los Angeles in particular, which requires (without personal information) the location of each trip start, end, and the route taken to get from A to B, as a part of its scooter PILOT program. One firm, Jump, refused to comply and lost its license. The ACLU is now suing LA asserting constitutional privacy rights may be violated.²⁷ The suit is founded primarily on a Fourth Amendment claim against warrantless collection of vehicular location information based on the Supreme Court's *United States v. Jones* decision.²⁸

Accordingly, unless the community can utilize such detailed information, the license agreement should be focused on providing auditable info on ride shares taken for payment purposes, and generic information to inform the community on most and least popular routes. No personal data should be transferred to the community.

Ride share programs and the space allocated to them should be reviewed regularly as part of overall review of street use patterns, in a continuing effort to maximize use of the public space.

Electric Vehicle Service Equipment

Low carbon transport certainly does not mean no cars or trucks. But emission-free transport requires the creation of new infrastructure for EVs and medium-duty EVs (trucks and buses) to reach the market penetration necessary to significantly bring down emissions. It is well documented that the transition away from fossil fuel transport suffers from the chicken and egg syndrome, as developers of EV supply equipment ("EVSE") need a minimum number of EVs on the road to recover the significant upfront costs, but EV purchasers need confidence there are sufficient charging facilities to fully utilize their vehicle.

The New York Public Service Commission has addressed this conundrum head on with its adoption of the "Make-Ready Program" calling for statewide deployment of more than 50,000 Level 2 charging plugs and 1,500 Direct Current Fast Charging plugs by the end of 2025.²⁹ The Program provides \$701 million in incentives to utilities and developers to develop charging facilities, with \$206 million allocated toward equitable access and benefits for lower-socio-economic and disadvantaged communities. Higher incentives are available if the EVSE is associated with public parking facilities, and potentially 100% of costs can be recovered if 1) Publicly accessible non-proprietary DCFC sites are within one mile of Disadvantaged Communities in the Con Edison, Central Hudson, O&R, or RG&E service territories, or within two miles of such communities in the NYSEG and National Grid service territories, or 2) Level 2 sites are located in multi-unit dwellings within one mile of Disadvantaged Communities in the Con Edison, Central Hudson, O&R, and RG&E service territories, and within two miles of such communities in the NYSEG and National Grid service territories.

Zoning authorities have the ability to promote—or require—the needed EV infrastructure. First, they should clear away obstacles to the placement of EV charging equipment. New York City, for example, has done so by classifying as an allowable accessory use "Electric vehicle charging in connection with parking facilities."³⁰ Many communities clearly welcome EVSE by declaring it shall be permitted in all zoning districts.

Next, consider mandating installation of EVSE. Howard County Maryland has the following provision to create the EVSE installation opportunity.

Provision of Electric Vehicle Charging Infrastructure.

(1) For new construction subject to this section:

- (i) A residential unit with a garage, carport, or driveway shall feature a dedicated electric line of sufficient voltage so that an electric vehicle charging station may be added in the future; and
- (ii) The developer shall ensure that at least one communal parking space for each 25 residential units that are not covered under item (i) of this paragraph features an electric vehicle charging station. If the final calculation of required communal parking spaces with electric vehicle charging stations is an odd number or includes a fraction, the number of spaces required shall be rounded up to the next even number.³¹

Other communities set requirements based on the type of zoning district, and require not just connections, but the charging facility itself:³²

Required Number of Electric Vehicle Charging Stations

LAND USE TYPE	PERCENTAGE OF PARKING SPACES
Multi-household residential	10%
Lodging	3%
Retail, eating and drinking establishment	1%
Office, medical	3%
Industrial	1%
Institutional, municipal	3%
Recreational/entertainment/cultural	1%
Other	3%

Codes should establish definitions, design standards, ADA access rules, signage, and safety standards. Enforcement mechanisms need to be included, such as Parking restrictions.

A. No person shall stop, stand or park any nonelectric vehicle in a space designated through signage as an electric vehicle charging station. Any nonelectric vehicle is subject to removal by the property owner or the property owner’s agent.

B. Any electric vehicle in an electric vehicle parking stall that is signed exclusively for electric vehicle charging and that either (1) is not electrically charging or (2) is parked beyond the days and hours designated on regulatory signs posted at or near the space shall be subject to removal as posted by the property owner or the property owner’s agent. For purposes of this subsection, “charging” means an electric vehicle is parked at an electric vehicle charging station and is connected to the charging station equipment.³⁴

Given the funding now available, communities should undertake a review of their codes, and work with local utilities and developers to promote EVSE installation.

Conclusion

The battle for supremacy over the public space between cars and their critics is nothing new. As Jane Jacobs wrote in 1961, “[t]oday everyone who values cities is disturbed by automobiles. Traffic arteries, along with parking lots, gas stations, and drive ins are powerful and insistent instruments of city destruction.”³⁵ For those communities willing to back up commitment to a sustainable future with implementing regulations, there has never been a better time to implement zoning code provisions that will lead to reduced emissions and a safer, healthier, sustainable future.

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Footnotes

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- 34 Mountlake Terrace, WA Zoning Code, § 19.126.080.
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