

FORM-BASED CODES AND HISTORIC PRESERVATION: RECOMMENDATIONS FOR  
COMMUNITIES CONSIDERING THE ADOPTION OF FORM-BASED CODES

by

ASHTON ELISE MULLINS

(Under the Direction of John C. Waters)

ABSTRACT

This thesis explores Form-Based Codes and how they work in communities with historic preservation goals. Through case studies of three cities, Montgomery, Alabama, Savannah, Georgia, and Charleston, South Carolina, the use of Form-Based Codes within cities with historic districts are assessed. In addition, this thesis explores the history of zoning in the United States, the New Urbanism Movement, and the basics of Form-Based Codes. Finally, recommendations for communities considering the adoption of Form-Based Codes that also have historic resources and historic districts are provided.

INDEX WORDS: Form-Based Codes, SmartCode, New Urbanism, Zoning

FORM-BASED CODES AND HISTORIC PRESERVATION: RECOMMENDATIONS FOR  
COMMUNITIES CONSIDERING THE ADOPTION OF FORM-BASED CODES

by

ASHTON ELISE MULLINS

BA, University of Colorado, 2008

A Thesis Submitted to the Graduate Faculty of The University of Georgia in Partial Fulfillment  
of the Requirements for the Degree

MASTER OF HISTORIC PRESERVATION

ATHENS, GEORGIA

2010

© 2010

Ashton Elise Mullins

All Rights Reserved

FORM-BASED CODES AND HISTORIC PRESERVATION: RECOMMENDATIONS FOR  
COMMUNITIES CONSIDERING THE ADOPTION OF FORM-BASED CODES

by

ASHTON ELISE MULLINS

Major Professor: John C. Waters

Committee: James K. Reap  
Scott Weinberg  
Chip Wright

Electronic Version Approved:

Maureen Grasso  
Dean of the Graduate School  
The University of Georgia  
August 2010

## DEDICATION

To my mom, for her infinite wisdom and courage, who always taught me to think positively to have faith. To my dad, who has always offered his unconditional support and guidance. And to Brett, for loving me always.

## ACKNOWLEDGEMENTS

Thank you to Professor Waters for his direction and encouragement. Thank you to my thesis committee, James K. Reap, Scott Weinberg and Chip Wright for taking the time to be a part of my thesis defense.

I also want to say thank you to the many people who aided in my research in Montgomery, Savannah and Charleston. Thank you to Sarah Ward, with the Metropolitan Planning Commission in Savannah, Winslow Hasty with the Historic Charleston Foundation, and Ken Groves and Christy Anderson in Montgomery. Another big thank you to Brandon Brazil, who was a tremendous help and took the time to give me “the nickel tour” of Montgomery’s historic districts and the Alley. Thank you to Robert Gurley of the Preservation Society of Charleston, who introduced me to this topic and encouraged and aided in my research as well. Without the support of so many, this thesis would not have been possible.

## TABLE OF CONTENTS

	Page
ACKNOWLEDGEMENTS .....	v
LIST OF FIGURES .....	viii
CHAPTER	
1 Introduction.....	1
2 History of Zoning in the United States .....	4
Introduction.....	4
Modern Zoning .....	5
Zoning Authority .....	6
Sprawl.....	10
3 New Urbanism Movement in the United States .....	12
Introduction.....	12
Alternatives to Euclidean Zoning .....	13
Criticisms of New Urbanism .....	15
New Urbanism and Historic Preservation.....	17
4 What Are Form-Based Codes? .....	19
The Basics .....	20
Elements of Form-Based Codes.....	21
Process .....	25
The SmartCode .....	33

	Form-Based Codes in Cities Today .....	35
5	Case Studies .....	39
	Montgomery, Alabama .....	39
	Savannah, Georgia .....	48
	Charleston, South Carolina .....	53
	Conclusions from the Case Studies.....	60
6	Conclusions and Recommendations .....	62
	Conclusions.....	62
	Recommendations.....	66
	REFERENCES .....	68
	APPENDICES	
A	List of Cities that Have Adopted a Form-Based Code.....	71
B	List of Cities that Have Adopted the SmartCode.....	76

## LIST OF FIGURES

	Page
Figure 4-1: Cities in North America that have adopted the SmartCode .....	34
Figure 4-2: Cities in North American in the process of adopting the SmartCode .....	34
Figure 4-3: Cities that have adopted Form-Based Codes .....	36
Figure 4-4: Cities in the Southeastern United States that have adopted Form-Based Code .....	37
Figure 5-1: Downtown Montgomery SmartCode Transect Map .....	40
Figure 5-2: Project Area, Five Points, Montgomery, Alabama .....	43
Figure 5-3: Dreamland BBQ sign at the entrance of the Alley .....	46
Figure 5-4: Close-up photo of Dreamland neon sign .....	46
Figure 5-5: House fire in Cottage Hill Historic District .....	47
Figure 5-6: Savannah Historic District Boundaries .....	49
Figure 5-7: Historic District Height Map .....	51
Figure 5-8: Calhoun Street-East/Cooper River Waterfront Plan .....	53
Figure 5-9: Frontage-based Code for the area plan .....	56

## CHAPTER 1

### INTRODUCTION

If Form-Based Codes are the revolution to lead us out of our “Suburban Nation,”<sup>1</sup> then how can it benefit historic towns and neighborhoods that were developed to be pedestrian friendly and community oriented? If Form-Based Codes are “a new tool for the making and remaking of the built environment,” than what does it have to offer to those communities that have already been made, are well-established, and have been designated as an area of historic value, either nationally or locally? The purpose of this thesis is to explore Form-Based Codes, and how they can be used to benefit our cities and towns with historic neighborhoods and buildings. While Form-Based Codes have most often been used since their inception to build “traditional communities,” there have been cities in the United States that have adopted Form-Based Codes to better protect and enhance their already existing traditional cities.

I became interested in this topic while working for the Historic Preservation Society of Charleston, in Charleston, South Carolina. During my summer internship, the city was considering adopting a Form-Based Code for a portion of their downtown historic district, and local preservationists fell on either side of the issue. Some, like the Historic Charleston Foundation, were in full support of the adoption of the Code, while others, such as the Preservation Society of Charleston, my employer, had serious apprehensions regarding the effect

---

<sup>1</sup> Andres Duany, and Elizabeth Plater-Zyberk, and Jeff Speck, *Suburban Nation: The Rise of Sprawl and the Decline of the American Dream* [New York: North Point Press, 2000].

of the Code on the historic resources of the area. The debate showed a lack of resources for communities with historic preservation objectives and a desire for Form-Base Codes.

My research began with Form-Based Codes in general, and the history of zoning in the United States. I wanted to understand how we had turned away from our traditional towns and cities, the ones that we consider “historic” today. To research the current trends and effects of Form-Based Codes I chose three communities. The information gained through the study of these three cities was the basis for the recommendations I developed for the thesis. Charleston, South Carolina was the first case study chosen, where I learned the different opinions each of the preservation groups held, and the arguments they each created for and against Form-Based Codes. Since I had decided to study Charleston, when choosing my second case study, I looked for a city with historic resources and districts similar to Charleston, and which had already adopted a Form-Based Code. I also wanted a city that had a similar historic background and attitude towards preservation, where preservation of historic resources is considered important and vital to the success of the city. The second city chosen was Savannah, Georgia. This case study explores a hybrid system of a Form-Based Code and traditional zoning in the historic district. This allowed me to explore another option besides having a Form-Based Code, or not having a Form-Based Code, but instead a hybrid option, where a modified code was adopted. For my third case study I wanted a city that had similar resources and historic districts like Charleston and Savannah, but that had adopted a true Form-Based Code. I looked for a city that was similar in size and also located in the Southeast. Additionally, my third city chosen had to value historic preservation as a part of the overall city plan. I considered cities such as Gulfport and Pass Christian, Mississippi, but decided that those cities represented another type of zoning dilemma – the adoption of Form-Based Codes after a natural disaster. In a later chapter I address

the adoption of Form-Based Codes in areas with historic resources that have also been severely damaged by a natural disaster, such as in Gulfport and Pass Christian where Hurricane Katrina had detrimental effects on the built environment. After much research I decided on Montgomery, Alabama for my third and final case study. It is a medium-sized, Southern city with several historic districts. Montgomery adopted a mandatory SmartCode in 2007. The SmartCode is a Form-Based Code template, which can be customized to any particular location, and is discussed in a later chapter. The three case studies allowed me to look at three different cities and their approach to Form-Based Codes, and to assess how preservationists and planners approached changing the zoning for their community in places it would affect the historic districts within the zoning map. Finally, the case studies allowed me to establish a set of recommendations for communities with historic resources and historic districts that are considering the adoption of Form-Based Codes. It is also important to note that in this thesis, including the case studies, the term historic districts refers to any historic district recognized by the National Register of Historic Places, or any state or locally designated district.

In both historic districts and communities regulated by Form-Based Code it is the physical forms, the buildings, streets, sidewalks, and parks that create a “sense of place.” A community with a sense of place, streets that people want to walk down, parks that parents feel their children are safe playing in, and buildings that do not deter, but rather encourage civic interaction is a community that people want to live in. So how did we get away from these types of communities? How did it become illegal to build places like this? The story of zoning in America is not one filled with bad intentions, but good intentions gone wrong.

## CHAPTER 2

### HISTORY OF ZONING IN THE UNITED STATES

#### **Introduction**

Land use controls in the United States have been enacted since the first settlers arrived on its shores. Early cities such as Savannah, Philadelphia, and St. Augustine were laid out in such a way as to promote healthy and prosperous towns and to encourage future growth. These cities designated areas for living, commerce, green space, and agriculture in patterns and designs appropriate to the uses and functions of those spaces. Land-owners most often relied on informal agreements and implicit understandings between involved parties to exercise land use controls. When informal arrangements failed to provide necessary protection, property owners began to consider easements, covenants or nuisance laws to regulate land use. As the country grew in size and population, and development was fostered, problems arose that nuisance laws were unable to solve. In some cases what was deemed a “nuisance” was too questionable, and in others the courts were reluctant to prohibit development through regulating a land use.<sup>2</sup> As the United States grew in population, land use controls became more common, although for most of the life of the United States, land use regulation was usually only a private matter to resolve issues of nuisance or restrictive covenants.<sup>3</sup> In the late 19th century, land use regulation and nuisance laws were used as a way to discriminate against minority groups. Land use laws were passed as

---

<sup>2</sup> Lolita Buckner Inniss, “Back to the Future: Is Form-Based Code An Efficacious Tool For Shaping Modern Civic Life? 11 U. Pa. J.L. & Soc. Change 75 [2007-2008]. HeinOnline. University of Georgia Libraries, 82-83.

<sup>3</sup> Michael Goldberg and Peter Horwood, *Zoning: Its Costs and Relevance for the 1980s*. [Vancouver, British Columbia: The Fraser Institute, 1980], 11.

a cover for discriminatory laws that otherwise would have been illegal. In California, laws were passed barring public laundry services from being performed in certain areas. This land use control was a way to discriminate against Chinese workers and keep them from living or operating a business near the general population, forcing them to live in “Chinatown” enclaves where they were allowed to live and operate their businesses.<sup>4</sup> In New York, land use controls were enacted restricting the garment industry, and the poor lower class workers who supported it, from invading wealthy Fifth Avenue.<sup>5</sup> Merchants claimed the thousands of immigrant workers who filled the streets each day at lunch-time affected the value of the property of the owners. Nuisance laws were unable to remedy the situation for the merchants and they looked to the city to solve their problems through other means.<sup>6</sup>

### **Modern Zoning**

Towards the end of the 19<sup>th</sup> century, and into the early twentieth, the health conditions in the urban core became increasingly dire, and wealthier citizens moved away from the cities. With greater transportation opportunities through electric streetcars and automobiles, neighborhoods outside of the city began to grow, creating the first suburbs. While the new suburbs appeared to be the solution, away from the noxious environment of the city, their citizens soon realized that they were not immune from the same plights that plagued their urban neighbors.

The need for zoning in the new suburbs, “the division of a local government area into districts which are subject to different regulations regarding the use of land and the height and bulk of buildings that are permitted,” came from the desire to protect their neighborhoods from

---

<sup>4</sup> Ibid.

<sup>5</sup> Ibid., 12.

<sup>6</sup> Inniss, 83.

the same unsanitary and noisy conditions in the cities.<sup>7</sup> Zoning became the solution, as an extension of nuisance laws with the use of the police power behind them. Police powers are those given to a municipality by the legislature to protect the health, safety and welfare of the general public.<sup>8</sup> It is through police powers that cities have the right to issue land use controls to protect the public. Nuisance laws are also enacted under the auspices of the police power, and are laws that say a “property may not be used in such a way that the external effects of that use harm or annoy the neighbors.”<sup>9</sup> Over time, the police power was expanded by the judiciary as the term “welfare” grew to include good town planning, including a functional physical layout and pleasing appearance.<sup>10</sup> Municipalities were given even greater authority to regulate land through the expansion of this power, and in the early 20<sup>th</sup> century, zoning became the premier way to exercise this authority. Zoning became the most accepted solution to the problems of land use control that arose from “limits to traditional law, combined with the widespread socioeconomic transformation seen at the beginning of the twentieth century.”<sup>11</sup>

### **Zoning Authority**

#### *The New York City Zoning Ordinance of 1916*

The first zoning ordinance in the United States was the New York City Zoning City Ordinance of 1916. It was the result of two factors, immigration and technology. During the late 19<sup>th</sup> century and into the 20<sup>th</sup> century the population of the United States rose by over 42 million people. Immigrants from all countries poured into cities totally unprepared to meet the basic

---

<sup>7</sup> Barry Cullingworth, *Planning in the USA: Policies, Issues and Processes*, [New York: Routledge, 1997], 56.

<sup>8</sup> Goldberg and Horwood, 14.

<sup>9</sup> Robert S. Cook, Jr., *Zoning for Downtown Urban Design: How cities control development*, [Lexington, Massachusetts: Lexington, 1980], 17.

<sup>10</sup> Ibid.

<sup>11</sup> Inniss, 83.

needs of its new citizens.<sup>12</sup> In New York, the growth was to an even greater extreme. From 1880 to 1920, the population of the city grew from 1,478,000 to 5,620,000. In addition to the sheer number of the immigrants, these new citizens were regarded as an even greater threat to health and morals by the middle and upper classes, as they were “more foreign” than the immigrants of decades past. The newest generation of immigrants was mostly from Italy, Poland, Russia, and Eastern Europe, and was mostly Catholic or Jewish.<sup>13</sup> On Fifth Avenue, encroachment by the garment industry, and the immigrants who were employed by it, caused property values to fall by 50% between 1911 and 1916.<sup>14</sup> The upper classes felt their morals, health, and economic prosperity were threatened, and the class divide grew.

As the population was booming, so was something else – technology. Three technological advances during the Industrial Revolution allowed for one of the greatest factors in the decline of the health of the city, the Tall Building. The invention of the steel frame, fireproofing of buildings, and elevators allowed buildings over five stories to be built for the first time. Tall buildings, and later skyscrapers, were able to house more people, adding to the congestion and overcrowding of the streets and impacting upon basic resources, like clean water. In addition, the tall buildings blocked sunlight and suffocated the streets below them.

In 1913, a Commission on Heights of Buildings submitted a report that “recommended that height, area, and use should be regulated in the interests of public health and safety” and that these regulations be adapted to the different needs in each district. Personalizing the regulations to the needs of the district was a radical idea at the time.<sup>15</sup> The city and the state legislature approved the “districting provisions” and amended the city charter to reflect the changes. New

---

<sup>12</sup> Cullingworth, 58.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid., 59.

<sup>15</sup> Ibid.

York City adopted a “comprehensive zoning code” in 1916 to affect the entire city and its urban population.<sup>16</sup> The New York Zoning Ordinance of 1916 “is usually regarded as the first comprehensive zoning ordinance in the United States.”<sup>17</sup> The ordinance regulated height, area, and use restrictions, as the 1913 Commission report had recommended, in an effort to promote better health and safety. A problem with the new ordinance, however, was that it was only able to control new construction, thus it was unable to solve the property value problems faced by the property owners on Fifth Avenue. Encroachment by the garment industry had been stopped, but could not be reversed. Today, the 1916 ordinance is viewed as a failure, as it did not contain any real planning components, and merely was enacted to protect current property values, without any solutions for future needs of the city. However, even with its inherent flaws, cities across the country were eager to adopt a similar zoning ordinance and create their own districts.<sup>18</sup> Zoning was the new way to protect property owners in the city and the suburbs from developments that might damage their property values.

#### *Euclid v. Ambler*

The Supreme Court did not review the constitutionality of zoning until 1926 with the case of *Village of Euclid v. Ambler Realty Co.* In this case, a realty company challenged the constitutionality of the comprehensive zoning plan adopted by the village of Euclid, Ohio in 1922. Ambler Realty felt that the value of a 68-acre property that it owned was being detrimentally effected by the zoning ordinance by restricting the industrial development of the site that the company had planned.<sup>19</sup> The zoning ordinance was questioned by Ambler Realty as

---

<sup>16</sup> Ibid.

<sup>17</sup> Barry Cullingworth and Roger W. Caves, *Planning in the USA: Policies, Issues and Processes*, [New York: Routledge, 2003], 67.

<sup>18</sup> Cullingworth, 60.

<sup>19</sup> Cullingworth and Caves, 72.

an illegitimate use of the police power, as it did not “pursue any rational plan, dictated by considerations of public safety, health and welfare, upon which the police power rests.”<sup>20</sup>

After careful deliberation, the Supreme Court ruled in favor of Euclid, declaring the zoning ordinance constitutional. The Court declared the finding of reports on zoning as a factor in their decision:

These reports, which bear every evidence of pains-taking consideration, concur 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.<sup>21</sup>

### *The Standard State Zoning Enabling Act*

With its constitutionality clearly established, zoning became the dominant land use control practiced in the United States. To better protect zoning, the Standard State Zoning Enabling Act (SSZEA) was published in 1924 by the U.S. Department of Commerce. The act was a hit with state legislatures who were given carefully designed standards for each community that protected them from litigation. The act helped to increase the use of zoning, and within a year of the act’s publishing, “nearly a quarter of the states had passed enabling acts which were modeled substantially on the Standard Act.” The SSZEA also listed seven purposes of zoning:

---

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

1. to lessen congestion in the streets
2. to secure safety from fire, panic, and other dangers
3. to promote health and the general welfare
4. to provide adequate light and air
5. to prevent the overcrowding of land
6. to avoid undue concentration of population
7. to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.<sup>22</sup>

To date, almost every city in the United States now uses some sort of zoning ordinance to regulate land use. It has been the most successful land use control ever enacted, as it has been used to clearly accomplish its goals. However, zoning brought unforeseen consequences.

## **Sprawl**

The biggest criticism of Euclidean zoning is the major part it played in creating sprawl. Just the word “sprawl” can evoke images of a smog blanketed skyline, motorists riding in their cars crawling along the interstate ringing their hands, and “big box” stores lining the roads, each store an island in a lake of asphalt parking places. It is a word that has come to be as dirty as the environment it creates. Form-based communities claim to be the solution to sprawl, as it solves one of the problems that creates it, traditional zoning.

Sprawl began after World War II, as the population boomed, home ownership rose to a level never seen before, and the automobile became cheaper every year. Sprawl has been one of the greatest factors, in addition to transportation demands, and safety, in pushing communities towards non-traditional planning tools. Because the problems caused by sprawl have affected so

---

<sup>22</sup> Ibid., 71.

many communities, “local government land planners have begun efforts to inculcate New Urbanism concepts within their zoning ordinances.”<sup>23</sup> Although Form-Based Codes are the jewel in the crown of New Urbanism planning tools, there are other alternatives to Euclidean zoning, including bonus, or incentive zoning, transfer of development rights, and planned unit development.

---

<sup>23</sup> Eric M. Braun, “Growth Management and New Urbanism: Legal Implications,” 21 Urb. Law. 817 [1999], HeinOnline, UGA Libraries, 817.

## CHAPTER 3

### THE NEW URBANISM MOVEMENT IN THE UNITED STATES

#### **Introduction**

New Urbanism is a planning method “so named because it is intended to reflect development techniques popular prior to World War II.”<sup>24</sup> Before World War II, cities and towns developed organically, homes grouping around retail and offices so that people could live where they also worked and had access to the goods and services necessary for daily living. Today, New Urbanism attempts to create densely populated, “pedestrian friendly, mixed use communities that incorporate housing opportunities within walking distance of retail shopping, employment centers, and mass transit nodes.”<sup>25</sup> Housing is a mix of single-family homes, apartments, and townhouses to meet the needs of a variety of people with different incomes, such as young families, retirees, and students. A grid pattern of streets is encouraged, as opposed to closed-off neighborhoods with many cul-de-sacs. Walking is encouraged through abundant sidewalks, narrower streets, to slow cars and create a safer walking environment, and trees and vegetation to provide shade.<sup>26</sup> Recreation centers such as parks, fountains, and community art are also encouraged under this planning method. The ideas of New Urbanism are spreading and have had positive effects on a broad spectrum of communities in the United States, including Denver, Colorado, Greenville, South Carolina, Miami, Florida, and Greensboro, North Carolina. One of the main incentives for the creation of new planning principles was the desire to counter

---

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Inniss, 76.

suburban sprawl that has taken over in every state, in every region of the country, and even internationally. Founded in 1981, the first community planned completely with New Urbanism principles, was the town of Sea Side, Florida. Since that time, New Urbanism and Form-Based Code have shown lasting power.

## **Alternatives to Euclidean Zoning**

### *Cluster Development*

In cluster developments, “houses are built at higher densities in certain areas so that other areas can be preserved as open space.”<sup>27</sup> Houses are usually built in a similar style within each cluster group, but without the exercise of some skill in planning the cluster, the neighborhood can become simply “an ugly bunching of dwellings.”<sup>28</sup> As New Urbanism principles have begun to infiltrate communities, many developers have moved away from cluster developments in favor of Planned Unit Developments.<sup>29</sup>

### *Planned Unit Development*

Planned Unit Development (PUD) is another key planning concept. In PUDs, houses are built on smaller lots and closer together to preserve green space and increase density; however other New Urbanism concepts are incorporated. Neighborhoods are designed with grid street patterns, uniform lots, and town centers to create more livable communities. Another difference between cluster development and PUDs, is that where the former is a design concept, the latter is actually a legal zoning classification.

---

<sup>27</sup> Richard B. Peiser, with Dean Schwanke, *Professional Real Estate Development: The ULI Guide to Business*, [Washington, DC: Urban Land Institute, 1992], 81.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

### *Bonus or Incentive Zoning*

Bonus or incentive zoning allows developers to receive awards in exchange for certain amenities desired by a city, such as parks, plazas, open space, or low income housing.<sup>30</sup> For example, a developer may be allowed to build a subdivision at a higher density if he provides for more open space and a certain number of low-income, subsidized housing units. Some have accused bonus or incentive zoning as undermining the zoning power by allowing for exceptions.

### *Transfer of Development Rights*

A favorite of historic preservationists, transfer of development rights (TDRs) is a regulatory device often used with office development, especially in highly urbanized areas. This tool allows property owners and developers to sell their development rights to another owner or developer. If one person has a five-story building, but is allowed to build ten stories, they may sell the rights to develop those extra five stories to someone else.<sup>31</sup> This tool has been especially useful in historic areas, where properties are taxed on maximum use, as a way to encourage owners of historic properties to keep their historic buildings that are not as tall as they are legally allowed to build. In this way, owners of historic buildings are taxed upon actual use and compensated monetarily for their loss of development rights.<sup>32</sup> In other markets, however, TDRs have not been as successful as planners had hoped. Critics of TDRs believe that they may allow a developer to legally overbuild on a site, which can affect automobile and pedestrian congestions, as well as affect the light and air to neighboring properties. Like incentive zoning,

---

<sup>30</sup> Cullingworth and Caves, 117.

<sup>31</sup> Peiser and Schwanke, 222.

<sup>32</sup> Ibid.

TDRs allow the basic premises of traditional zoning to be violated, allowing for the type of overcrowding and over development that municipalities adopted zoning to prevent.<sup>33</sup>

### **Criticisms of New Urbanism**

New Urbanism is not free of criticism. One author suggests three critical flaws on this planning concept:

1) The meaning of “Urbanism” is vague. There is no one understood meaning of this term.<sup>34</sup> 2) Traditional building was happenstance, a response to the “economic needs, geographic positioning, and demographic characteristics” of particular places at a particular time.<sup>35</sup> The criticism of New Urbanism is that it wants to simply recreate something that was never created in the first place, it simply just formed by accident. 3) It is not clear that people really want to live the way New Urbanisms think that people want to live.<sup>36</sup>

Other critics argue that there is not enough data that shows that people want to live in more pedestrian friendly communities, with offices and shops nearby.<sup>37</sup> Or, that many people have a different idea of what makes a great community. Even Jane Jacobs believed that people living in the same area of a city could often hold completely different ideas of what made a community an “ideal” place to live.<sup>38</sup> While others feel that people are actually simply attracted to well-designed and beautiful cities, regardless of the principles used to create them. This may be true for new communities that have been built with New Urbanism principles, however

---

<sup>33</sup> Ibid.

<sup>34</sup> Inniss, 91.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Jane Jacobs, *The Death and Life of Great American Cities*, [New York: Random House, 1961].

functioning and vibrant communities that were built before World War II could show that people do want to live in places with aspects of cities that New Urbanism encourages, such as walkability and green space. For instance, the economic success of historic districts, including those of Savannah, Georgia, Charleston, South Carolina, and Montgomery, Alabama prove that these communities are successful, and bring people into these places because they want to live here, as well as work, shop and play. In all of the afore mentioned cities, the historic districts built before World War II, are mixed use communities, built on a grid street pattern, are pedestrian friendly with trees and vegetation, and all are successful by economic measures. However, there is no doubt that there is a large difference between the patina and living history that is presented with true historic buildings and districts, and the re-creation of pseudo historic buildings. Creating cities with New Urbanism principles that look or “feel” like beloved historic cities is not a replacement for those cities.

Other critics believe that New Urbanism principles have been adopted by developers who see building places with higher densities as a lucrative business model. By focusing on only the economic returns, a developer may choose to build with some principles in mind, for instance higher density, while choosing to ignore others, such as the preservation of existing fabric.

Some critics of New Urbanism and Form-Based Codes specifically, feel that they are unnecessary in historic districts that have already been formed with the Secretary of Interior’s Standards for Historic Preservation. As described by the National Parks Service:

“The Secretary of the Interior’s Standards for the Treatment of Historic Properties are common sense principles in non-technical language...developed to help protect our nation’s irreplaceable cultural resources by promoting consistent preservation practices. The Standards may be applied to all properties listed in the National Register of Historic

Places: buildings, sites, structures, objects, and districts. The Standards are a series of concepts about maintaining, repairing and replacing historic materials, as well as designing new additions or making alterations.”<sup>39</sup>

However, while the Secretary of Interior’s Standards are important to all historic districts, they are not diminished by Form-Based Codes. Form-Based Codes may help to protect historic resources further, by creating a community design based on historic preservation of historic resources, and with infill and new construction sensitive to the existing fabric of the community.

Lastly, some critics believe that the community design aspect of New Urbanism is often not a true representation of the people that make up the community being designed. Minorities, the poor, the elderly, the homeless, and other disenfranchised individuals may not be voicing their opinions, and therefore are underrepresented in the community design, potentially allowing “empowered elites not only to retain control of the planning process but to custom-tailor their own neighborhoods without concern for the needs of the broader municipality.”<sup>40</sup> If a broad spectrum of the community does not attend initial public planning meetings, then the design of the community may meet the needs of only a minority of the actual groups represented in the city.

### **New Urbanism and Historic Preservation**

“New Urbanism and historic preservation share a common vision when working with historic urban centers and older neighborhoods,” according to Christy Anderson, the Preservation Planner for the City of Montgomery, Alabama.<sup>41</sup> The basic principles of the

---

<sup>39</sup> The Secretary of the Interior’s Standards for the Treatment of Historic Properties. National Park Service. [http://www.nps.gov/history/hps/tps/standards\\_guidelines.htm](http://www.nps.gov/history/hps/tps/standards_guidelines.htm).

<sup>40</sup> Inniss, 95.

<sup>41</sup> Christy Anderson, “The ‘New Urbanism’ In Montgomery,” Alabama Heritage, [Spring 2008], 7.

Congress for the New Urbanism, as cited in the 1996 Charter of New Urbanism, include historic preservation:

“We stand for the restoration of existing urban centers and towns within coherent metropolitan regions, the reconfiguration of sprawling suburbs into communities of real neighborhoods and diverse districts, the conservation of natural environments, and the preservation of our built legacy... Urban places should be framed by architecture and landscape design that celebrate local history, climate, ecology, and building practice.”<sup>42</sup>

With shared concern and respect for the historic built environment, practitioners of New Urbanism principles and historic preservationists also look to the future with the goal of sustainability. Sustainability means meeting the needs of today, without compromising the ability of others to meet their own needs in the future. For cities, that means creating wonderful communities and places to live that do not compromise future generations’ ability to live in those cities and in other healthy environments. A common preservationist saying is “the Greenest building is the one already built,” meaning that the most environmentally-friendly, sustainable option is to save the building that has already been built, as opposed to replacing it with new construction. Creating sustainable places by retaining the building fabric that already exists, and then adapting those buildings for current needs, is only one way in which cities and towns can promote healthy growth and the retention of open space and land.

Together, advocates of New Urbanism and historic preservation can work together to achieve their mutual goals. Form-Based Code is perhaps one way in which the goals of both movements can be realized, creating a unified urban landscape with respect to the historic characters and future potential of the community.

---

<sup>42</sup> Charter of the New Urbanism, Congress for the New Urbanism, <http://www.cnu.org/charter>.

## CHAPTER 4

### WHAT ARE FORM-BASED CODES?

Simply, Form-Based Codes are “A method of regulating development to achieve a specific urban form.”<sup>43</sup> It is a way to develop land so that a predictable outcome occurs, an outcome that is formed for a community by a community, with the help of planners, architects, and policy makers. It is a tool to create places where people live, work, and play in the style of the towns and villages of our pre-WWII past. It is a sledgehammer to the ubiquitous sprawl that has consumed our resources, not met our needs, and dampened our human spirit by replacing communities with segregated, automobile centered development parks of mediocre housing and little opportunity or desire to leave the protective four walls of the house, unless by car. It is a part of the New Urbanism movement in the United States. Form-Based Codes are a lot of things, however, most importantly it is a way to solve to problems created by traditional zoning. Form-Based Codes are different from other non-traditional planning concepts in that instead of amending the zoning, or creating variances, they *replace* the Euclidean zoning with an entirely new planning method. In some communities, city planners found ways to “bend land-use zoning” to achieve some New Urbanism goals such as promoting the revitalization of older and historic neighborhoods.<sup>44</sup> However, modifications of the zoning “are typically made on a case-by-case basis or within narrowly defined special districts.” In all, Form-Based Codes are

---

<sup>43</sup> Daniel G. Parolek and Karen Parolek, and Paul C. Crawford, *Form-Based Codes: A Guide for Planners, Urban Designers, Municipalities, and Developers*, [Hoboken, New Jersey: Wiley, 2008], 4.

<sup>44</sup> Peter Katz, “Form First: The New Urbanism alternative to conventional zoning,” *Planning Magazine*, [November 2004], <http://www.formbasedcodes.org/downloads/FormFirst.pdf>.

different from traditional zoning codes “in terms of the process by which they are prepared, the substance of the standards they contain, the mechanisms by which they are implemented, and the built form they produce.”<sup>45</sup>

## **The Basics**

Unlike traditional zoning, Form-Based Codes place the importance of physical form and placement of the built environment above use. Form-Based Codes seek to design a community or area of land based on a predictable outcome designed by a community, rather than based on the separation of uses, as we traditionally zone in land use planning today. This New Urbanism approach “builds on the idea that physical form is a community’s most intrinsic and enduring characteristic.”<sup>46</sup> In this approach, Form-Based Codes are compatible with the philosophy behind designating historic districts, in that both place the greatest importance on community character through protection of the built environment, and the creation of new buildings that are pleasing to the community and based on their own ideas of how their town should look and feel. In a historic district, the emphasis on what creates a community is placed on the existing built environment, and new buildings within the district must be compatible and approved by a community designated regulating body, such as a board of architectural review. Form-Based Codes also place the emphasis of what creates a community, on the form and placement of its buildings, both private and public. The Code “addresses the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the

---

<sup>45</sup> Parolek, Parolek, and Crawford, 11.

<sup>46</sup> Katz, 1.

scale and types of streets and blocks.”<sup>47</sup> Use is also regulated, but at a secondary level after form.<sup>48</sup>

### **Elements of Form-Based Codes**

All Form-Based Codes are commonly composed of at least five basic elements, a regulating plan, public space standards, building form standards, administration, and definitions. Some Form-Based Codes also include architectural standards, landscaping standards, signage standards, environmental resource standards, and annotation.<sup>49</sup>

#### *The Regulating Plan*

The Regulating Plan component of the Code is presented in the form of a color-coded map, assigning the Code’s different standards to the appropriate locations.<sup>50</sup> Some codes may even have a separate regulating plan for each of the different sections, for example, one regulating plan for the building form standards, and another regulating plan for public space standards.<sup>51</sup> The regulating plan identifies the boundaries within which the different rules for development will apply. It will also sometimes show, through plans and drawings, those rules for development. For instance, the plan may show specific requirements for that section of the plan. Because the requirements for each zone in the Code are so specific, “the Regulating Plan typically applies the zones within a framework of streets and blocks, not just in large unrefined geographic areas like conventional zoning maps,” in order to create a more natural, fuzzy-edged transition between the zones, not a hard line between differently zoned areas that is so common

---

<sup>47</sup> “Definition of Form-Based Code,” Form-Based Code Institute, [February 17, 2009], [www.formbasedcodes.org/definition.html](http://www.formbasedcodes.org/definition.html).

<sup>48</sup> Katz, 1

<sup>49</sup> “Definition of Form-Based Code.”

<sup>50</sup> Parolek, Parolek, and Crawford, 15.

<sup>51</sup> Ibid.

in traditional zoning.<sup>52</sup> For instance, the boundary line between two different zones will sometimes occur in an alley-way, so that while the requirements for the different zones will change, it will not occur in an obvious way that would detract from the visual harmony of the areas transition. The hard line in traditional zoning is created because whole areas of land will be differentiated and regulated according to their use, so instead of having a subtle transition between building heights and scale, you have a hard line drawn between commercial buildings and single-family residences, for instance. The subtler approach created by Form-Based Codes creates greater visual harmony, making spaces more inviting.<sup>53</sup> The regulating plan is created within the context of the Code's organizing principles, discussed later in this chapter.

### *Public Space Standards*

Public Space Standards are the requirements for elements within the public realm, including thoroughfares (streets, sidewalks, travel lanes, street trees and furniture, and the interface with the buildings) and civic spaces.<sup>54</sup> Standards that are regulated include, minimum and maximum sizes, types of spaces and their locations, functional roles within the community, and landscaping.<sup>55</sup>

### *Building Form Standards*

Building Form Standards are “Regulations controlling the configuration, features, and functions of buildings that define and shape the public realm.”<sup>56</sup> The building form standards are probably what most people think of when they think of Form-Based Codes, because these

---

<sup>52</sup> Ibid., 17.

<sup>53</sup> Ibid., 18.

<sup>54</sup> Ibid., 15.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

standards define the physical creation of the built environment in each section.<sup>57</sup> This section of the Code would include standards such as setback, minimum and maximum lot width, minimum and maximum building height, parking and allowed land uses.<sup>58</sup>

### *Administration*

Simply, “requirements for the project application and review process,” this section details the planning process in administering the code and the procedures necessary for reviewing proposed development projects.<sup>59</sup> Also included are the sub-procedures necessary for different or unusual circumstances, such as historic resource review. Lastly included in this section of the code are rules for how the Code should be interpreted when a conflict arises between the requirements of the Code and other municipal code provisions, such as historic district ordinances.<sup>60</sup> This is an important part of the Code for cities with historic preservation ordinances that may have requirements in direct conflict with the Form-Based Code. There are solutions to this type of conflict, and they are discussed later in the case studies portion of this thesis.

### *Glossary*

The Glossary is for uncommon or technical terms and phrases used in the Code. The Code is a document intended to be read by everyone affected, not just planning professionals and developers, but also civic leaders and the public who may not be familiar with the planning and legal jargon that usually fills traditional zoning documents, and to a lesser extent, Form-Based Codes. Most of the Code, however, is described visually with maps, drawings, and pictures, so

---

<sup>57</sup> Ibid., 39.

<sup>58</sup> Ibid., 42-58.

<sup>59</sup> Ibid., 15, 88.

<sup>60</sup> Ibid., 88.

that all stakeholders can easily read and understand how their individual properties or neighborhoods are impacted.

### *Organizing Principles*

There are several ways in which a Form-Based Code can be organized and the regulating plan applied. The most common is a Transect-based code. A “rural-to-urban transect is a means for considering and organizing the human habitat in a continuum of intensity that ranges from the most rural condition to the most urban.”<sup>61</sup> In this approach, the transect mirrors the natural environment “by creating a sequence of habitats – or, in human terms, built environments – that achieve urbanism through a series of gradual transitions from very rural at the edge to very urban at the center.”<sup>62</sup> In each transect, different standards apply. There are six transects ordered by “the physical intensity of the built form, the relationship between nature and the built environment, and the complexity of uses within the zone.”<sup>63</sup> For every community adopting a Transect-based code, each transect “should be calibrated to local conditions and intentions, and sometimes may need to be expanded into subsets.”<sup>64</sup> For instance, in a neighborhood with historic resources from different eras or with different types of historic resources, the transect-based approach allows a gentle transition between the standards for each zone, as opposed to a harsh distinction between land uses.

Other organizing principles are Building Type-based codes, Street-based codes, and Frontage-based codes. In Building Type-based codes, “specific regulations are created for a group of building types selected during the documentation and visioning processes. Within each

---

<sup>61</sup> Ibid, 19.

<sup>62</sup> Brad Broberg, “A New Kind of Zoning,” *On Common Ground*. [Winter 2010. National Association of Realtors].

<sup>63</sup> Parolek, 18.

<sup>64</sup> Ibid., 19.

transect, different building types are allowed, with building form standards created for each type selected. Street-based codes focus on regulating based on the design and location of streets, and how each building is to address the street. In Frontage-based codes, how the buildings address the public realm is the most important aspect of the code. In this approach the character of the public realm is most regulated, while everything but the frontage is more flexible.<sup>65</sup>

## **Process**

There are three phases and one pre-phase identified when creating Form-Based Codes for a community.

Pre-Phase 1: Scoping

Phase 1: Documenting

Phase 1: Visioning

Phase 3: Assembling

In the pre-phase, scoping, choices are made at the beginning that will affect the process and content on the code. Professionals in the municipality, together with planning consultants, make decisions such as the size of the area to be coded, what changes are wanted for the community through the code, and how the code is to be implemented. The degree of change a community wants can be determined in this phase. Choosing a degree of physical change that is expected and desired for a community is an important part of the initial stage of the planning process.

The table below describes degrees of change to be chosen.<sup>66</sup>

---

<sup>65</sup> Ibid., 22-26.

<sup>66</sup> Ibid., 95-101.

## Degrees of Change

Preservation	<i>The community is satisfied with and actively want to retain the existing physical character of one or more neighborhoods, a downtown, or other area with distinct identity, historical or otherwise, and to ensure that infill and replacement development “fits in” with the established physical character of its context and does nothing to change the character</i>
Preservation and Enhancement	<i>The community wants to retain the established physical character in one or more areas, but is interested in carefully conceived and targeted enhancements to them, which could be in the form of private property developments, or changes to the public realm constructed by the city.</i>
Evolution	<i>The community is interested in seeing physical change within the planning area over time, but is willing to allow change in compliance with the city’s vision to occur primarily according to the timing needs and investment expectations of individual property owners within the planning area.</i>
Transformation	<i>The community wants to see desired physical change occur within the shortest possible time, so it wants Form-Based Coding to be as effective as possible in facilitating change, and is also willing to pursue other measures toward the same ends. These may include, for example, such development incentives as housing density bonuses, accelerated development application processing, street and streetscape (public realm) improvements undertaken by the municipality, and/or rigorous code enforcement programs.<sup>67</sup></i>

---

<sup>67</sup> Ibid.

Different cities may choose different degrees of change based on the particular needs of a community, or in some cases historic districts. A city like Savannah may choose form-based codes to help preserve their historic districts, and to offer further guidance for infill within the districts. Charleston, South Carolina, has chosen to apply a Form-Based Code to a small portion of their downtown historic district, to both preserve and enhance the area with some compatible and respectful new development. On the opposite end of the spectrum, cities with historic resources that have undergone severe damage from natural disaster may choose transformation. This degree of change would help a city that has lost much of its physical structure to quickly rebuild, while keeping infill and new design in synch with the historic character of the surviving structures. It should be noted, however, that some of the words used in the “Degrees of Change” are ambiguous and should be defined in the glossary section of the Form-Based Code. In example, for the preservation degree of change, the term “fits in” is used, but for many people, what “fits in with the established physical character of its context” can mean many different things to developers, preservationists, and other stakeholders.<sup>68</sup> Other ambiguous terms in that should be defined in the glossary are “enhancements” used in the preservation and enhancement degree of change, and “investment expectations” in the evolution degree of change.

In Phase I: Documenting, survey and documentation of a community's unique characteristics and patterns are carried out by the municipality and consultants. Basic elements considered, are neighborhoods, districts and corridors at the macro scale, and thoroughfares, buildings, parks, plazas, architectural styles, and landscaping, as minimum requirements at the micro scale.<sup>69</sup> Designing a code around the community is what makes a “place-specific” code

---

<sup>68</sup> Ibid.

<sup>69</sup> Ibid., 108-9.

stand out from traditional zoning.<sup>70</sup> By protecting and enhancing these characteristics, the community is preserved, and protected from becoming “Anywhere, USA.” This process is especially important with buildings and neighborhoods of historic significance. Often it is the older and historic buildings that give a city or town a sense of place. From the first steps of creating the Form-Based Code, it is established that the historic buildings and neighborhoods are a crucial element in giving a community character, and should be respected and protected from incompatible infill.

Phase 2: Visioning, is where the desired outcome of the code is created. To have a good Form-Based Code, there must be a good vision. Good vision is described as having three characteristics:

1) “It is a vision of a place the community really wants, after having a thorough understanding of all the implications of the design.”

2) “It is detailed to a very refined level – much more than the visioning process most communities and planners are familiar with from comprehensive or general plans.”

3) “It is implementable.”<sup>71</sup>

The key to creating a good vision for the community is to have the community involved in the visioning process from the beginning. This is done by holding a charrette, where developers, property owners, neighbors, and all others in the community can come together with the planners to give their input to the community design. Many illustrative plans and imagery are used to clearly convey the layout and street patterns of the existing area to be coded, so that everyone can easily understand the plan and the process. When the Illustrative Plan and Vision Sheets, showing the layout of the community and the macro and micro elements, are created, next the

---

<sup>70</sup> Ibid., 108.

<sup>71</sup> Ibid., 144.

charrette group creates the Regulating Plan and Regulations. Once all of these individual pieces have been created, they are brought together to make the final product, the Vision Plan. Once this product is complete, it is time for the Form-Based Code to be assembled.<sup>72</sup>

In the final phase of the planning process, Phase 3: Assembling, the actual code document is organized and formatted, and the Code is implemented. The Form-Based Code can either completely replace the existing zoning, or be created to work alongside it.<sup>73</sup> The visioning process and creation of the actual code document is reminiscent of creating Design Guidelines for a community, with a lot of input from all stakeholders in a community, and lots of illustration and graphics to clearly convey goals and expectations. The end goal of this stage is to create a product that addresses the concerns of the community, facilitates the goals established in the visioning process, and is easy to use by people other than planners. Ease of use is one of the most popular characteristics of Form-Based Codes.<sup>74</sup> In general, Form-Based Codes are “shorter, less complicated, more graphically oriented, and generally more user-friendly than conventional zoning codes.”<sup>75</sup> On the Form-Based Codes Institute website, a list of questions are provided for evaluating Form-Based Codes. Effective and easy to use codes will answer in the affirmative to the following questions:

- Is the overall format and structure of the code readily discernable so that users can easily find what is pertinent to their interest?
- Can users readily understand and execute the physical form intended by the code?
- Are the intentions of each regulation clearly described and apparent even to planning staff and citizens who did not participate in its preparation?

---

<sup>72</sup> Ibid., 152-4.

<sup>73</sup> Ibid., 168.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

- Are technical terms used in the code defined in a clear and understandable manner?
- Does the code format lend itself to convenient public distribution and use?<sup>76</sup>

The above questions further confirm the Code creators' commitment to creating land use controls that are accessible to the entire community. As one of the biggest criticisms of traditional zoning is its ubiquitous use of legal jargon and technical terms, it is important to note that Form-Based Codes strive to be different, and understandable to people of all backgrounds, not just lawyers and planners.

In identifying Form-Based Codes, the following questions should be asked, with true Form-Based Codes answering in the affirmative.<sup>77</sup>

### **Is it a Form-Based Code?**

Is it a Form-Based Code?	<ul style="list-style-type: none"> <li>• Is the code's focus primarily on regulating urban form and less on land use?</li> <li>• Is the code regulatory rather than advisory?</li> <li>• Does the code emphasize standards and parameters for form with predictable physical outcomes (build-to lines, frontage type requirements, etc.) rather than relying on numerical parameters (FAR, density, etc.) whose outcomes are impossible to predict?</li> <li>• Does the code require private buildings to shape public space through the use of building form standards with specific requirements for building placement?</li> <li>• Does the code promote and/or conserve an interconnected street network and pedestrian-scaled blocks?</li> <li>• Are regulations and standards keyed to specific locations on a regulating plans?</li> <li>• Are the diagrams in the code</li> </ul>
--------------------------	---

<sup>76</sup> "Checklist for Identifying and Evaluating Form-Based Codes," Form-Based Codes Institute, [June 27, 2006], <http://www.formbasedcodes.org/checklist.html>.

<sup>77</sup> Ibid.

	unambiguous, clearly labeled, and accurate in their presentation of spatial configurations? <sup>78</sup>
--	---

The next chart below represents the questions that should be asked in evaluating Form-Based Codes. The questions “reflect best practices of form-based coding.”<sup>79</sup> Effective codes will answer yes to the questions asked.<sup>80</sup>

---

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

## Evaluating Form-Based Codes

Is the code enforceable?	<ul style="list-style-type: none"> <li>• Does the code implement a plan that reflects specific community intentions?</li> <li>• Are the procedures for code administration clearly described?</li> <li>• Is the form-based code effectively coordinated with other applicable policies and regulations that control development on the same property?</li> <li>• Is the code designed, intended, and programmed to be regularly updated?</li> </ul>
Is the code easy to use?	<ul style="list-style-type: none"> <li>• Is the overall format and structure of the code readily discernable so that users can easily find what is pertinent to their interest?</li> <li>• Can users readily understand and execute the physical form intended by the code?</li> <li>• Are the intentions of each regulation clearly described and apparent even to planning staff and citizens who did not participate in its preparation?</li> <li>• Are technical terms used in the code defined in a clear and understandable manner?</li> <li>• Does the code format lend itself to convenient public distribution and use?</li> </ul>
Will the code produce functional and vital urbanism?	<ul style="list-style-type: none"> <li>• Will the code shape the public realm to invite pedestrian use and social interaction?</li> <li>• Will the code produce walkable, identifiable neighborhoods that provide for daily needs?</li> <li>• Is the code based on a sufficiently detailed physical plan and/or other clear community vision that directs development and aids implementation?</li> <li>• Are parking requirements compatible with pedestrian-scaled urbanism?<sup>81</sup></li> </ul>

---

<sup>81</sup> Ibid.

## The SmartCode

The SmartCode is a comprehensive, transect-based Form-Based Code template or model ordinance. It was developed by Duany Plater-Zyberk & Company (DPZ) of Miami, and has been continually updated since its original design.<sup>82</sup> Chad Emerson, author of *the SmartCode Solution to Sprawl*, describes the SmartCode as

“an actual regulatory document that can be adopted by local jurisdictions to enable the legal use of traditional planning techniques that today are advocated by the New Urbanism movement – techniques such as mixing uses; utilizing interconnected street networks; and designing compact, walkable, and environmentally sustainable communities.”<sup>83</sup>

To date, it is the most popular code template, having been adopted by almost forty cities in the United States by the end of 2009, and with fifty more cities considering its adoption.<sup>84</sup> The SmartCode can be customized to any city, but always includes “model standards and requirements for multiple scales of development by both the public and private sectors, as well as administrative procedures for development review and approval.”<sup>85</sup> Just as it must be personalized to the unique character of each city, it must also be legally calibrated to each individual city so that it is legally enforceable.<sup>86</sup>

---

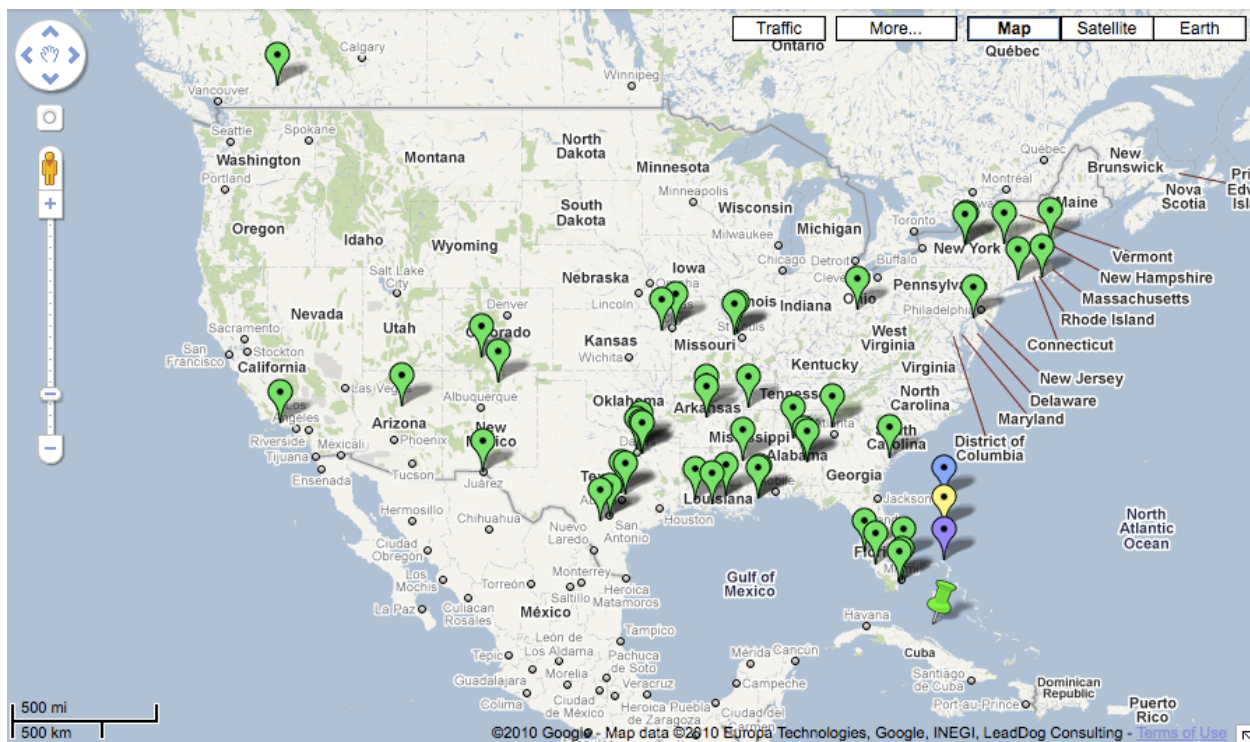
<sup>82</sup> Parolek, Parolek, and Crawford, 105.

<sup>83</sup> Chad Emerson, *The SmartCode Solution to Sprawl*, [Washington, DC: Environmental Law Institute, 2007], 3.

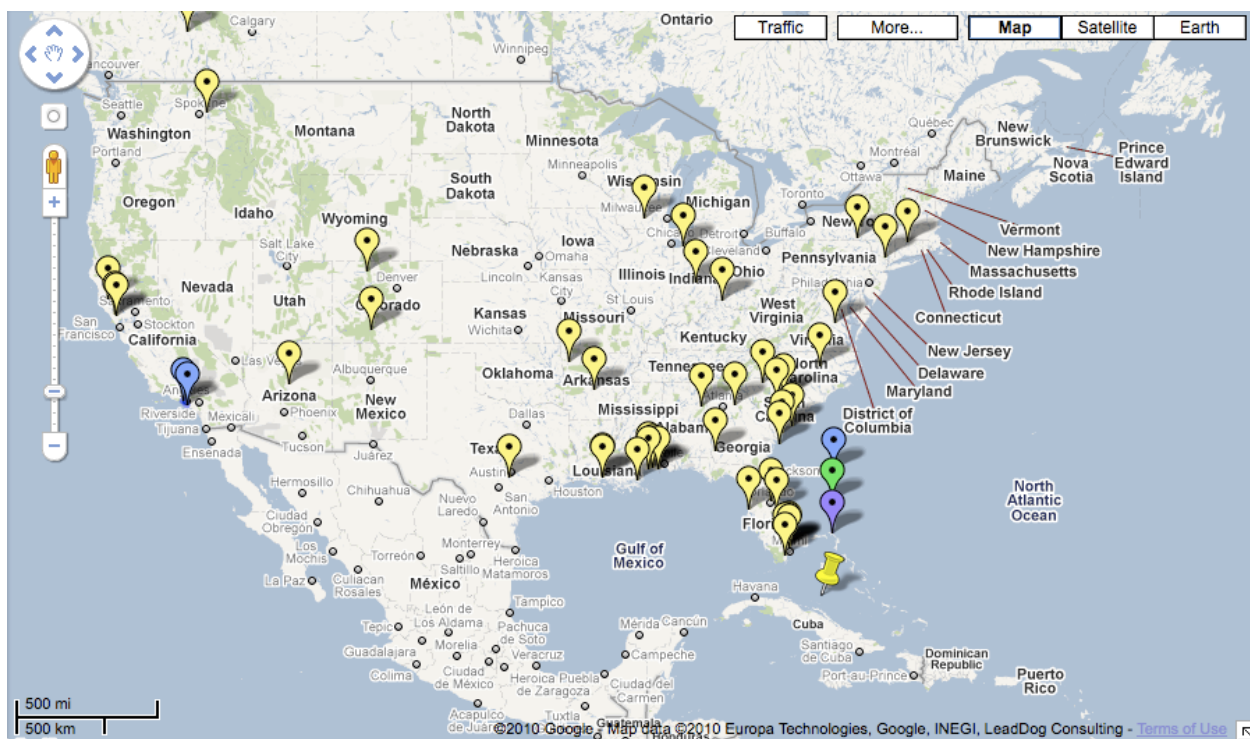
<sup>84</sup> Quindal C. Evans, “Understanding a Modern Zoning Trend,” *The SmartCode*, DRI, [October 2009], 22, [www.dri.org](http://www.dri.org).

<sup>85</sup> Parolek, Parolek, and Crawford, 105.

<sup>86</sup> Emerson, 51.



**Figure 4- 1: Cities in North America that have adopted the SmartCode.**  
Source: Google Maps



**Figure 4- 2: Cities in North America in the process of adopting the SmartCode.**  
Source: Google Maps.

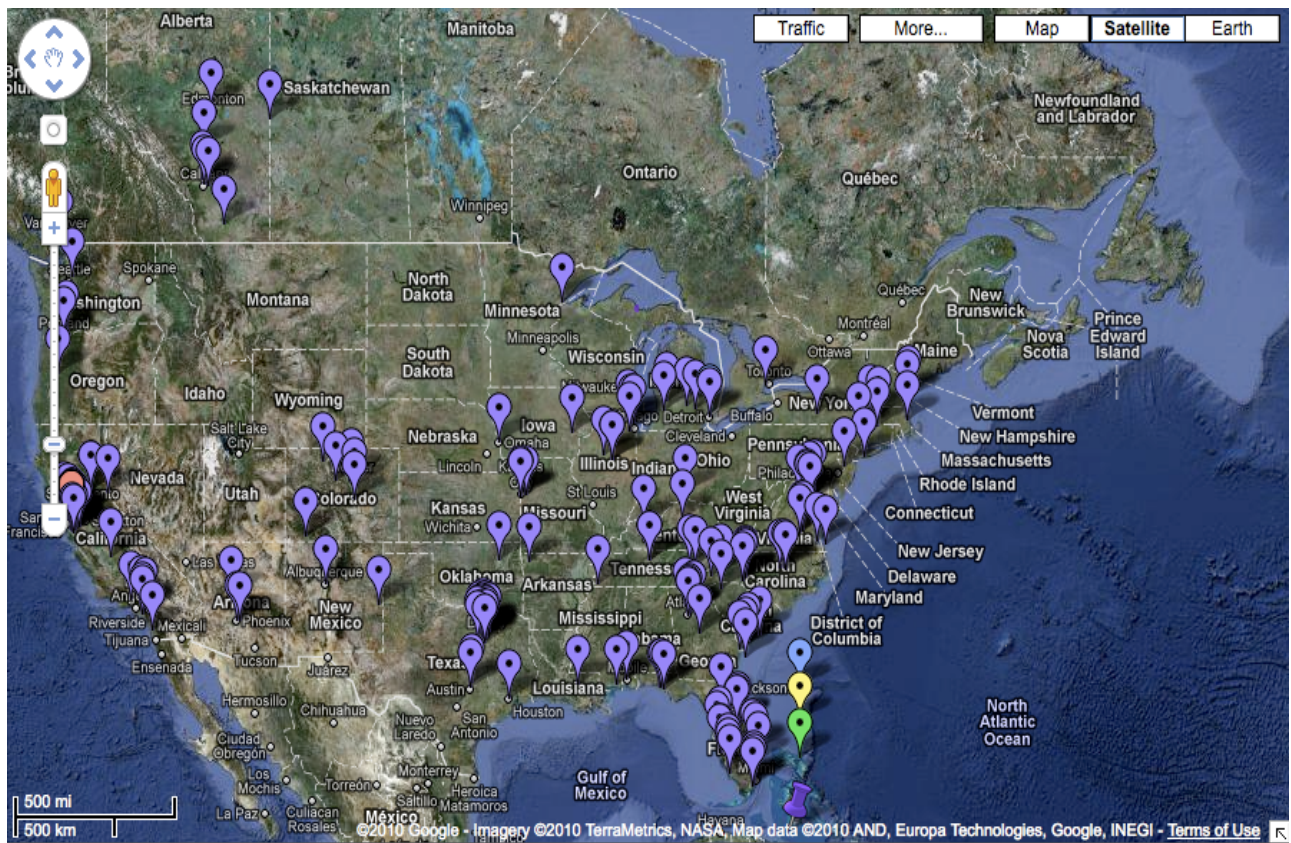
## Form-Based Codes in Cities Today

While there is no data available on the number of cities that have adopted form-based codes for their historic districts, the cities that have adopted some sort of form-based code in addition to, or to replace their traditional zoning spans all types of different communities. The map below illustrates cities that have adopted Form-Based Code, excluding the SmartCode. Each city that has adopted Form-Based Code is noted by the purple flag. It should be noted, that in regards to this map, in each city marked, the criteria to be considered “Form-Based Code” has not been evaluated by the Form-Based Code Institute (FBCI). FBCI was founded in 2004 by Peter Katz, Carol Wyant, and 15 other New Urbanism and Form-Based Code practitioners to “define Form-Based Coding, to establish best practice standards, and to advances the practice or Form-Based Codes as a means of providing a regulatory framework for sustainable development.”<sup>87</sup> Even though this map does not establish clear definition for what are considered Form-Based Codes by FBCI, it still offers a good illustrative account of the national progress of the adoption of this type of land regulatory tools to achieve specific community planning goals. According to the map, there are about 160 cities in the US, reporting the use of Form-Based Codes.<sup>88</sup>

---

<sup>87</sup> Parolek, Parolek, and Crawford, 10.

<sup>88</sup> “Form-Based Codes,” Google Maps. <http://maps.google.com/maps?hl=en&q=%22form-based%20codes%22&um=1&ie=UTF-8&sa=N&tab=wl>.



**Figure 4- 3: Cities that have adopted Form-Based Code.**

**Source: Google Maps**



**Figure 4- 4: Cities in the Southeastern United States that have adopted Form-based Code.**  
**Source: Google Maps.**

### *Disaster Recovery Areas*

In August 2005 the deadliest hurricane since 1928 rattled the Gulf shores of the United States. The loss of life and the loss of the built heritage in the coastal cities of Louisiana, Mississippi, and Alabama were great, as towns, families, and lives were destroyed by the incessant hurricane winds, rains, and flooding. When the skies cleared, rebuilding began. In coastal Mississippi, SmartCode became a rebuilding tool chosen in the “Mississippi Renewal”

planning process, and was a part of implementing vision plans.<sup>89</sup> The SmartCode streamlined the development process by providing specific guidelines and rules for designers and builders. As opposed to every new project in the historic district going through a multi-step review process, those designs that followed the Code were immediately approved, expediting the building process. Being able to build buildings quickly is an important improvement to the effected city when it needs to bring people and services back once it is safe to do so. The alternative approach was accepted by the residents in Pass Christian, most of whom “had never heard of form-based codes” but “were familiar with the kind of community the codes are designed to produce,” with concepts like mixed-use and walkability, “because that’s how the town functioned as recently as the 1950s.”<sup>90</sup>

The greatest advantage to using Form-based code in disaster recovery areas is the speed in which new construction can begin. Without the tiring and drawn-out process of getting zoning variances approved, new buildings can be built quicker, bringing people and services back to the city as soon as possible. The Form-Based Codes created will respect the historic look and feel of the town, even if much of the historic fabric has been lost. Infill and new construction can be compatible with the historic fabric that remains after the disaster. During recovery, speed in rebuilding is crucial, and something that Form-Based Codes are known to provide.

---

<sup>89</sup> Parolek, Parolek, and Crawford, 105.

<sup>90</sup> Broberg, 40.

## CHAPTER 5

### CASE STUDIES

While there are a variety of communities around the country choosing to adopt Form-based Code, the three case studies chosen all share common links. Each of the cities are located in the Southeast region of the United States, each have a population between 100,000 and 200,000 people, and all three contain multiple historic districts, either at the national, state or local level. The cities also have all chosen to integrate form-based codes into their city zoning ordinances. Montgomery, Alabama adopted the SmartCode in 2007, Savannah, Georgia, has chosen to use form-based codes in tandem with traditional zoning, and Charleston, South Carolina recently adopted a Form-Based Code for a portion of their downtown historic district.

#### **Montgomery, Alabama**

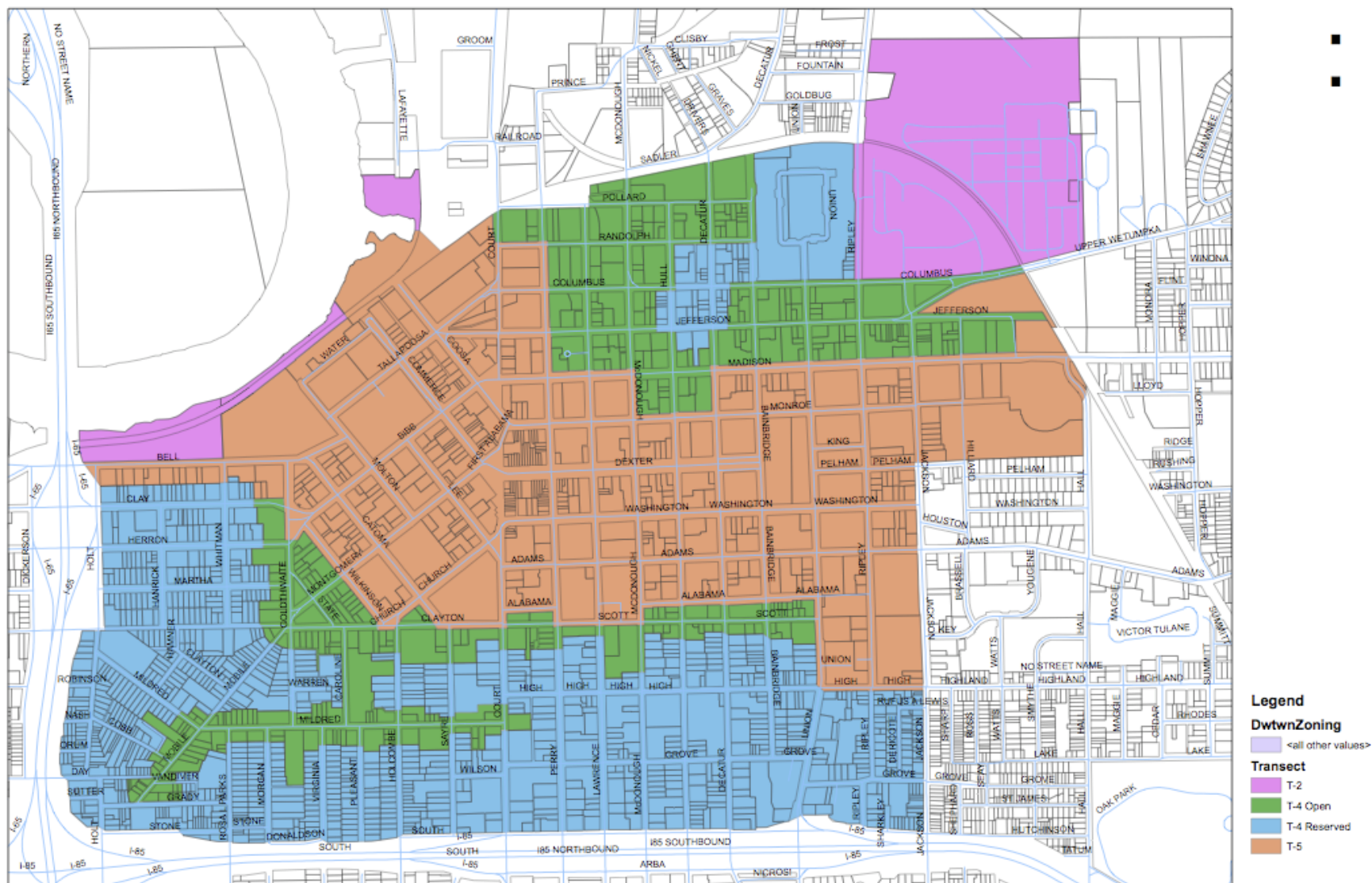
Montgomery, Alabama officially adopted a mandatory SmartCode for downtown in May 2007. Like many southern cities, Montgomery was full of great urban design that fell victim to sprawl.<sup>91</sup> As people left the city center, downtown experienced “neglect, demolition, and incompatible infill.”<sup>92</sup> Today, “the city is now on its way to reestablishing this high-quality urban environment and establishing more sustainable development patterns” through Form-Based Codes, “first, through the adoption of an optional SmartCode to allow and encourage New Urbanism development on Greenfield sites, and subsequently through the adoption of a mandatory SmartCode for downtown Montgomery.”<sup>93</sup>

---

<sup>91</sup> Parolek, Parolek, and Crawford, 302.

<sup>92</sup> Anderson, 8.

<sup>93</sup> Parolek, Parolek, and Crawford, 302.



**Figure 5- 1: Downtown Montgomery SmartCode Transect Map.**  
**Source: City of Montgomery.** <<http://www.montgomeryal.gov/index.aspx?page=71>>

### *How It Happened*

Montgomery's adoption of the SmartCode began in September 2006, when the city hosted a week-long collaborative design meeting, also called a charrette, featuring the planning firm Dover, Kohl & Partners of Coral Gables, Florida. The mission of the meeting was to create a new Master Plan for downtown Montgomery.<sup>94</sup> The plan created was truly a collaborative effort, with over 850 citizens attending the charrette and contributing to the final design.<sup>95</sup> The Master Plan adopted called for the revitalizations of an under-utilized downtown, and to create a vibrant place for people to work, live, shop and play. For Montgomery, the key principles in the revitalization efforts, and in the Master Plan, were "to plan, preserve, restore, and reuse historic buildings and addresses" as well as, "foster an improved environment for private investment and development; mixed land uses, building types and housing options; expand Downtown's green and civic spaces; and to promote a better balance of transportation options and designs."<sup>96</sup> As a part of the Master Plan, the SmartCode was adopted as a way to better implement the principles and ideas in the Master Plan.

### *How It Works*

On May 1, 2007, the city council unanimously adopted the mandatory SmartCode and Master Plan together for the downtown. Previously, the town had operated on an optional SmartCode in conjunction with the regular zoning. Since the adoption of the mandatory code to replace the zoning, the plan has been very successful, even within a short time frame.<sup>97</sup> Ken Groves, current planning director for the city, pointed to this rapid achievement, noting "Since

---

<sup>94</sup> Anderson, 8.

<sup>95</sup> Downtown Master Plan, Montgomery, Alabama, 1, <http://www.google.com/search?q=montgomery+al+master+plan&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a>.

<sup>96</sup> Ibid, 1.

<sup>97</sup> Parolek, Parolek, and Crawford, 304.

the adoption of the SmartCode, every major development submitted to the city has used to SmartCode in lieu of conventional zoning.”<sup>98</sup> The newly adopted mandatory Code “uses the original optional SmartCode framework and simply makes amendments as necessary to implement the detailed Master Plan completed by Dover, Kohl & Partners.”<sup>99</sup> The Code is administered by city staff, who were a part of the SmartCode process from the very first charrettes, in order to make sure that everyone had a clear understanding of the changes.<sup>100</sup>

The downtown is divided into four transects, with each transect contain its own rules of design and limitations, in relation to the “characteristic building height, materials, and [wall] setbacks (step-like recessions in walls) in each transect.”<sup>101</sup> In each transect, the existing built environment is to be respected and preserved. In addition, areas where buildings have been lost are to be built with compatible infill “by sharing similar scale, proportion, fenestration...and relationship to the street.”<sup>102</sup>

There is also an historic district ordinance for downtown Montgomery and sixteen historic districts, a mix of National Register and local register districts. The ordinance and the Code work together. The ordinance created a Historic Preservation Commission and an Architectural Board of Review. Because the downtown Master Plan and SmartCode identify historic preservation as a top city-wide goal, they work together with the historic preservation ordinance. While the Master Plan and SmartCode are newly adopted, city planners, developers, architects and the historic preservation commission have had to learn to work together to preserve and create the new Montgomery.

---

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid., 305.

<sup>101</sup> Anderson, 8.

<sup>102</sup> Ibid.

### *The Charrette*

To stay current with the application of the SmartCode as a regulatory tool, and to stay involved with current planning needs of the city, city staff regularly attends SmartCode workshops and charrettes in Montgomery. One such charrette took place in downtown Montgomery to plan a two-block section of the city called “Five Points”. The author attended the “24 Hour Service Project Charrette” in Montgomery, Alabama on May 17<sup>th</sup>, 2010 through May 18<sup>th</sup>, 2010.



**Figure 5-2: Project Area, Five Points, Montgomery, Alabama.**  
Source: <http://www.cnu.org/cnu18/urbanlabs>

The unique character of the area is well established, as it is located on the historic Civil Rights Trail that runs from Selma, Alabama through Montgomery. The particular two-block section being considered for the redesign and development was mostly vacant, with a few historic homes.

For a concentrated twenty-four hours, experts such as Rick Hall, of Hall Planning and Engineering, and Jason King and James Dougherty of Dover, Kohl and Partners of Coral Gables, Florida attended the event giving their expert advice free of charge. Director of City Planning Ken Groves, a leading advocate for SmartCode in Montgomery, and local law Professor and SmartCode advocate Chad Emerson hosted the event, and were able to facilitate the meeting while offering their own expert advice and experience.

The Charrette offered an up-close look at how the SmartCode is applied in real life situations. The flexibility of uses for the area offered by the SmartCode was apparent. During the initial visioning stages, everyone attending the event was allowed to offer their ideas on how to transform the two block space into a useable, pedestrian-friendly, mixed-use community center where people would actually want to live, work, and play. Everything from bike paths, community gardens, and housing above commercial space was offered as an idea for improvement. Preservation of existing buildings was a priority, as was retention of the historical significance of the location of the area on the Civil Rights Freedom Trail.

### *Lessons Learned*

The first opportunity to test the new mandatory SmartCode and the historic preservation ordinance came in the fall of 2007. Montgomery's South Perry Street Historic District had been in major decline and was even listed as one of Alabama's "Places in Peril." The district fell under the jurisdiction of the SmartCode and the historic preservation ordinance. A parking deck

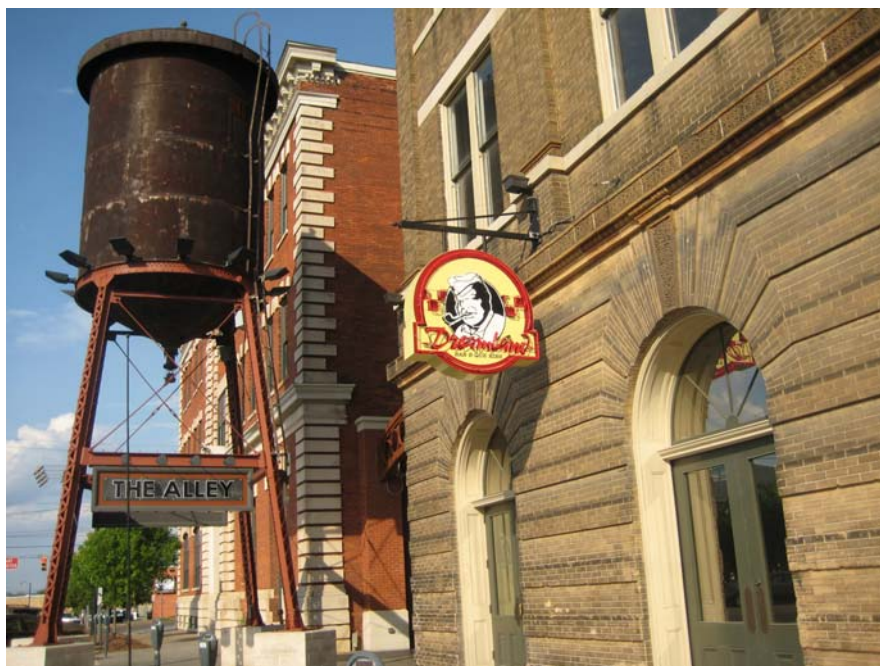
project threatened the demolition of three historic buildings dating from the 1840s to the 1900s. The city had to find a parking solution that also met the goals in the new Master Plan. Luckily, with creative thinking, the city was able to resolve the problem in a way that provided parking and protected the historic structures. The parking deck was built behind the buildings, which were then sold to buyers who signed rehabilitation agreements.<sup>103</sup> In this case, the city followed the Master Plan, and met city needs while also preserving historic buildings.

Another learning opportunity presented itself when Dreamland BBQ applied for a permit for their classic neon entrance sign. Dreamland BBQ's downtown location is located at The Alley, a hip section of town with restaurants and nightlife in historic buildings. Under the SmartCode, Dreamland was not allowed an exterior neon sign. However, Dreamland's location also fell under the historic preservation ordinance. Dreamland was able to go before the Board of Architectural Review, where their sign was approved. It now hangs prominently outside the entrance, beckoning passerby's to delicious barbeque and cold local brews. In this case, the local historic preservation ordinance provided an opportunity for Dreamland to have signage in the historic district that may not have been allowed simply under the rules of the SmartCode. The preservation ordinance proved that it too can be accommodating, and was a win-win for the business and the city.<sup>104</sup>

---

<sup>103</sup> Anderson, 8.

<sup>104</sup> Brandon Brazil, Cultural Resource Specialist at Alabama Department of Transportation. Personal interview with Author, [May 18, 2010].



**Figure 5- 3: Dreamland BBQ sign at the beginning of the Alley.**  
Source: photo by Author



**Figure 5- 4: Close-up photo of Dreamland neon sign.**  
Source: photo by Author.

A third learning opportunity was after a house fire in the Cottage Hill Historic District, also subject to the historic preservation ordinance and the Downtown Master Plan and SmartCode.



**Figure 5- 5: House fire in Cottage Hill Historic District.**  
**Source: photo by Author.**

The fire completely destroyed the house, located in the middle of a street of beautifully restored and renovated 19<sup>th</sup> century and early 20<sup>th</sup> century bungalows. Under the old zoning for the city, when this house was demolished, the new house built would have been built much further from the sidewalk than this house presently stands. Even in this historic district, the zoning would not have allowed the new home to have been built at the same setback, creating a “gap tooth” effect in the look of the street. Fortunately, the SmartCode will allow the new house to be built on the exact same footprint and setback, allowing the new infill to blend seamlessly with the rest of the historic neighborhood. In this case, the SmartCode offered flexibility of design and use that

traditional zoning does not.<sup>105</sup> In historic districts, this flexibility, to be able to accommodate infill to a specific neighborhood with homes and buildings of particular eras and styles, is a wonderful tool and creates more attractive streets with better historical integrity.

## **Savannah, Georgia**

### *How it Happened*

Savannah, Georgia employs a hybrid code, using a form-based approach for new development in zoning districts. With a new unified zoning ordinance in 2005, the city combined parts of traditional zoning and Form-Based Codes. Sarah Ward, a Preservation Planner with the Chatham County-Savannah Metropolitan Planning Community described this form-based approach currently used in the famous downtown National Landmark Historic District.<sup>106</sup>

---

<sup>105</sup> Brazil, Brandon. Cultural Resource Specialist at Alabama Department of Transportation. Personal interview with Author. May 18, 2010.

<sup>106</sup> Sarah Ward, Preservation Planner, Historic Preservation Department, Chatham County-Savannah Metropolitan Planning Department, Phone interview by author, [March 16, 2010].



floor heights are close to historic floor heights. For instance, commercial space minimum floor height is fourteen feet. Designers are also able to give raised basements to residential buildings, or decorative features above the stories. Overall, the standard in stories instead of feet gives a more varied roof line, fitting in with the historic look and feel of the district.<sup>107</sup>

In December 2009, the Historic Preservation Ordinance was updated. In the ordinance, there are now more specific standards, providing “teeth” for the Board of Architectural Review. With the new standards, the Board has something to back up their reasoning and rulings, thus removing some of the discretion from the Board, and providing less room for appeal. The standards came in 1997 after Savannah found that design guidelines were ineffective. With standards, people must build in the way the standards set out, as opposed to guidelines where they are merely suggestive. The Board helped to write the standards, and so far have found them effective. Even if people simply meet the minimum standards, building designs are still very compatible.<sup>108</sup>

---

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.



**Figure 5 - 7: Historic District Height Map.**  
**Source: Savannah Metropolitan Planning Commission**  
<http://www.thempc.org/Opening%20Page.htm>.

## *Lessons Learned*

In the Savannah historic district ordinance, Section 8 – 30303, part (e) describes the relationship between the historic district and the zoning districts:

“The historic district regulations are intended to preserve and protect historic or architecturally worthy buildings, structures, sites, monuments, streetscapes, squares, and neighborhoods of the historic district. In all zoning districts within the boundaries of the historic district, the regulations for both the zoning district and the historic district shall apply. **Whenever there is conflict between the regulations of the zoning district and the regulations of the historic district, the regulations of the historic district shall apply.**”<sup>109</sup>

The establishment of this relationship is very important, and places the preservation of the district at the forefront of city priorities. Savannah’s approach shows that a city can retain its traditional zoning, but use a form-based approach for new development. This can offer the flexibility of use provided by Form-Based Codes, without changing the zoning already in place in the city. Creating standards that are specific to small areas, such as streets and neighborhoods, are very important for historic districts, as showed in the Montgomery case study, because it allows for more creative solutions to the unique problems presented with historic streets, neighborhoods, and districts with homes and buildings of different historic styles and eras. Especially with infill in historic neighborhoods, it is important to provide design standards and a form-based approach to all new construction. By placing the emphasis on *form* for all new construction, as opposed to use, as it would be in a district that is simply zoned, there is a greater

---

<sup>109</sup> Savannah Master Plan, Historic District Ordinance, Section 8-3030, Historic District. [December 3, 2010], Sent to author via email by Christian B. Sottile, Sottile & Sottile, Savannah, Georgia.

emphasis placed on the buildings already existing in that area. By creating standards based on the existing fabric of the district, the infill is even more compatible, while still allowing for creativity of design in construction.

## **Charleston, South Carolina**

### *How it Happened*

On February 9, 2010, Charleston City Council adopted a re-development plan for the Calhoun Street-East/Cooper River Waterfront area of the historic downtown district.



**Figure 5 - 8: Calhoun Street-East/Cooper River Waterfront Plan.**

**Source: City of Charleston**

**<http://www.charlestoncity.info/dept/content.aspx?nid=194&cid=10482>**

As described in the Executive Summary of the Plan:

“The Cooper River waterfront is Charleston’s next opportunity to create a mixed-use neighborhood worthy of a city well known for its high standards for livability, beauty, and charm. The former industrial areas along the riverfront east of East Bay Street can, and should, be redeveloped over time with a vibrant mix of hotel, office and mixed-income residential uses supported by ground level and waterfront retail. The Calhoun Street corridor leading to the riverfront will serve as the primary gateway from King and Meeting Street to the Cooper River, and should be aesthetically improved to be more like Charleston’s renowned streets, like Broad and King [Streets]. The Cooper River corridor can become an economic engine that strengthens the lower peninsula’s competitive position...”<sup>110</sup>

The Plan was first submitted to the planning commission in June 2009. After a series of revisions, local design charrettes, and two public hearings in October and December 2009, the plan was finally adopted.<sup>111</sup>

#### *How it Works*

The Plan calls for three development guidelines for the area:

1. *Expand the accommodations overlay zone.* In Charleston, an accommodations overlay zone is placed over the historic district to control the number and size of hotels allowed.
2. *Revise the height map and control by stories.* Height restrictions in the rest of the historic district are measured by feet, not stories.

---

<sup>110</sup> Special Area Plan, Calhoun Street-East/Cooper River Waterfront, [Prepared by CKS Architecture and Design, February 8, 2010], <http://www.charlestoncity.info/dept/content.aspx?nid=194&cid=10482>.

<sup>111</sup> City of Charleston, Department of Planning and Neighborhoods, Calhoun Street Corridor Study, <http://www.charlestoncity.info/dept/content.aspx?nid=194&cid=10482>.

3. *Develop a new form-based overlay zone to control building form.*<sup>112</sup>

The development guidelines note that the last two recommendations are in accordance with the 2008 Preservation Plan.<sup>113</sup>

The form-based code overlay zone would work together with the current zoning and historic preservation ordinance. The Plan clearly states:

“This coding of form should not, however, replace the discretionary review by design and historic preservation professionals, but rather should be used to improve the initial submissions received from developers. This concept is recommended in the City’s recently adopted and award winning preservation plan – ‘Vision/Community/Heritage – A Preservation Plan for Charleston, SC.’”<sup>114</sup>

The Plan also states that unlike most Form-Based Codes, the Board of Architectural Review will still play an integral part in reviewing all projects in the Calhoun Street-East/Cooper River Waterfront area, as it is in the rest of the historic district.<sup>115</sup> The BAR would retain all of its responsibilities and authority, while working with developers on issues such as “preferred quantities for windows and doors, limits on blank walls, and entrance spacing,” that the Code will already address.<sup>116</sup> Additionally, the BAR would retain its involvement in other design issues such as “building materials, architectural style, and many of the detailed issues of the ‘look and feel’ of the building.”<sup>117</sup>

---

<sup>112</sup> Special Area Plan, Calhoun Street-East/Cooper River Waterfront, 62.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid, 66.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

The Form-Based Code is frontage based, with five frontages planned for specific street segments. Each frontage has its own design standards in relation to the character of that specific segment of the area.<sup>118</sup>



**Figure 5 - 9: Frontage-based Code for the area plan.**

**Source: Special Area Plan: Calhoun Street-East/Cooper River Waterfront . 67.**  
**<http://www.charlestoncity.info/dept/content.aspx?nid=194&cid=10482>**

<sup>118</sup> Ibid.

The five frontage areas, Shopfront-A, General-A, Mixed-Residential, Shopfront-V, and General-V, will have design standards to help maintain the character of the area and make sure that all infill is compatible. Elements controlled will be height, siting, architectural elements, and finally, use.<sup>119</sup>

### *Lessons Learned*

The special area plan document is 109 pages long, but very easy to read and understand. Color images, maps and graphics allow all stakeholders to easily understand purpose of the Plan and how it will be used. The Plan also states that regardless of the new form-based approach, the BAR will retain all of its rights and duties, even in matters the code addresses on its own.<sup>120</sup> Even with the assurance that the BAR will not be replaced, or its influence reduced, not all preservationists are happy with the Special Area Plan.

Robert Gurley, current Assistant Director of the Preservation Society of Charleston, expressed many of the concerns held by the Preservation Society over the form-based approach in the special area plan. The main concern is that the Form-Based Code is still fairly new, and there has not been much documentation of its use in areas with such high levels of historic integrity, like the historic district of Charleston. Without much experience to prove its success in sensitive historic areas, the Preservation Society feels a form-based approach is too risky a venture. While the Society feels that single use zoning is not ideal, they believe there are other solutions available that would protect the historic character of the area, while providing for creative ideas from builders and designers. One such solution offered by Gurley is *Area Character Appraisals*, which would be similar to design guidelines in that they would offer guidance to development. They carry a lighter approach than design guidelines, which require

---

<sup>119</sup> Ibid., 68.

<sup>120</sup> Ibid., 66.

another ordinance. Currently, Charleston has no design guidelines. The Area Character Appraisals are a part of New Urbanism ideas, and would be custom fit to each neighborhood in the historic district. At the very least, suggests Gurley, Area Character Appraisals for each neighborhood should proceed the Form-Based Code.

Part of the idea behind the above solution, is the concern that Form-based Codes do not have enough concern for the surrounding neighborhoods. The Society believes that while the Code may address concerns in the specific area in which they are applied, it does not consider what may be compatible with the neighboring areas.

Gurley offers the idea that a form-based approach might be better suited for the rural John's Island, South Carolina. Here, he suggests, the Code could be used experimentally before being tried for the first time in downtown Charleston. Gurley feels that Form-Based code is better suited for areas with less character and individuality, such as a rural area looking for New Urbanism type development.

Another great concern for the Preservation Society is the degree of public involvement with Form-Based Codes. Gurley notes that with Form-Based Codes, the public involvement is at the beginning, where public input is requested at design meetings, charrettes, and public hearings. Once the Code is developed, the public is not required to participate any longer. Oppositely, when simply dealing with a historic preservation ordinance, the public is invited to attend all matters brought before the BAR and allowed to express their opinions and viewpoints. Gurley fears that with the form-based approach, the public will have less opportunity to speak up with their concerns once the Code is in place, because of the lack of public hearings and meetings about individual projects. With the speed with which projects are allowed to begin, as long as they are in line with the Code, there is less need for review before the BAR, thus fewer

public meetings. For preservationists, the idea of a decrease in the public vigilance over new projects in the historic district can be especially disturbing. For many, public involvement is critical to any historic district, especially one as sensitive as Charleston. Design review that is mostly staff driven, as opposed to public driven, is a scary thought for Gurley and the Preservation Society.

For Gurley, the thought of the decreased influence of the public and BAR is the greatest concern. While Form-Based Codes might bring the efficiency and logic that developers and city planners are looking for, there are issues such as traditional buildings forms, and architectural sensitivity that should be at the forefront in an historic district, especially one as important as Charleston.<sup>121</sup>

Other preservationists in Charleston do not share the same concerns as Gurley and the Preservation Society; rather, they see a form-based code approach as an exciting new tool for an area of the historic district in desperate need of redevelopment.<sup>122</sup> Winslow Hasty, Director of Preservation and Museums at the Historic Charleston Foundation, spoke of the newly adopted Special Area Plan with enthusiasm. Historic Charleston Foundation co-sponsored the award-winning 2008 Preservation Plan with the city. The Preservation Plan called for re-development of the Calhoun Street-East/Cooper River Waterfront area, designating it as a “transitional zone” and “an opportunity to create or strengthen character through strategic redevelopment.”<sup>123</sup> Hasty cites the transitional nature of this area as the perfect place to try out something new, specifically a form-based approach to create a neighborhood feel with hotels, retail and offices for the

---

<sup>121</sup> Robert Gurley, Assistant Director, Preservation Society of Charleston, Personal interview by author, [March 9, 2010].

<sup>122</sup> Winslow Hasty, Director of Preservation and Museums, Historic Charleston Foundation, Personal interview by author, [March 10, 2010].

<sup>123</sup> Winslow Hasty, Position Statement, Historic Charleston Foundation, [January 26, 2010], 1.

corridor. The Special Area Plan will attempt to bring cohesion to an area that is very disjointed and lagging in development. Although Historic Charleston Foundation outlined a few concerns with the plan during its initial stages, by January 2010, they were “particularly pleased with the city’s responses to our concerns.”<sup>124</sup> Hasty also feels that the Form-Based Code will provide greater support of the BAR, rather than threaten their power, by giving them the opportunity for greater reasoning behind their decisions. The main reason behind Historic Charleston Foundation’s support for the form-based code is because of their support and pride in the entire Special Area Plan for the area.<sup>125</sup>

### **Conclusions from the Case Studies**

There were many lessons learned from the Montgomery, Savannah and Charleston case studies. Montgomery showed that accommodating the existing built environments in historic neighborhoods is key in protecting their integrity, and may not be offered with traditional zoning. The BAR in Montgomery as retained its jurisdiction, and the historic preservation ordinance is still effective, and perhaps strengthened by the SmartCode. The SmartCode may not be an approach that all cities should take, but can be a useful tool for large communities that want a complete overhaul of their zoning ordinance.

In Savannah, a form-based approach was adopted alongside the traditional zoning. This approach may be a good option for cities that are very comfortable with their historic preservation ordinances, but want greater design standards and control for infill and new construction within historic districts.

---

<sup>124</sup> Ibid.

<sup>125</sup> Hasty, Personal interview by author.

Charleston illustrated the contention that introducing a brand new idea into an old city can create. Preservationists fall on either side of the issue, some with full support for Form-Based Codes, and others fearing such a large change. In Charleston, preservationists will now have to take a “wait and see” approach, as the Special Area Plan has now been adopted and new projects will soon be developed for the area. How Charleston handles issues that arise between the Form-Based Code and the preservation of the historic districts will be a model for other cities across the nation.

## CHAPTER 6

### CONCLUSIONS AND RECOMMENDATIONS

#### **Conclusions**

##### *Advantages to Form-Based Codes (FBCs)*

The Form-Based Code Institute President Peter Katz, lists eight advantages to Form-Based Codes on the Institute's website, written below:

1. Because they are prescriptive (they state what you want), rather than proscriptive (what you don't want), form-based codes achieve a more predictable physical result. The elements controlled by FBCs are those that are most important to the shaping of a high quality built environment.
2. FBCs encourage public participation because they allow citizens to see what will happen where – leading to a higher comfort level about greater density, for instance.
3. Because they can regulate development at the scale of an individual building or lot, FBCs encourage independent development by multiple property owners. This obviates the need for large land assemblies and the megaprojects that are frequently proposed for such parcels.
4. The built results of FBCs often reflect a diversity of architecture, materials, uses, and ownership that can only come from the actions of many independent players operating within a community agreed-upon vision and legal framework.
5. FBCs work well in established communities because they effectively define and codify a neighborhood's existing 'DNA.' Vernacular building types can be easily replicated, promoting infill that is compatible with surrounding structures.

6. Non-professionals find FBCs easier to use than conventional zoning documents because they are much shorter, more concise, and organized for visual access and readability. This feature makes it easier for non-planners to determine whether compliance has been achieved.”
7. FBCs obviate the need for design guidelines, which are difficult to apply consistently, offer too much room for subjective interpretation, especially in the absence of effective guidelines, and can be difficult to enforce. They also require less oversight by discretionary review bodies, fostering a less politicized planning process that could deliver huge savings in time and money and reduce the risk of takings challenges
8. FBCs may prove to be more enforceable than design guidelines. The stated purpose of FBCs is the shaping of a high quality public realm, a presumed public good that promotes healthy civic interaction. For that reason compliance with codes can be enforced, not on the basis of aesthetics but because of a failure to comply would diminish the good that is sought. While enforceability of development regulations has not been a problem in new growth areas controlled by private covenants, such matters can be problematic in already-urbanized areas due to legal conflicts with first-amendment rights.<sup>126</sup>

Some of the eight advantages to Form-Based Codes described by Katz, are applicable to communities with historic resources. Of the list, advantages numbered one, five, six, and eight are positive aspects of Form-Based Codes and detail how they offer greater protection to neighborhoods and communities from incompatible infill. However, advantage number seven is controversial. The author does not believe that Form-Based Codes should lead to less oversight

---

<sup>126</sup> Peter Katz, “Eight Advantages to Form-Based Codes,” Form-Based Codes Institute, <http://www.formbasedcodes.org/advantages.html>.

by “discretionary review bodies,” but rather, support those reviews bodies, such as a historic preservation commission or board of architectural review.

In historic districts, the greatest advantage to Form-Based Codes is that they offer flexibility that is not reached through traditional zoning. This flexibility allows new construction and infill to be tailored to an individual neighborhood or street, and allows for a greater range of uses. By creating a Code that is tailored to small areas, the Code creators allow for different design standards to be applied to many different types of neighborhoods, some with historic resources in different styles and eras. As illustrated by the Cottage Hill house fire case in the Montgomery, Alabama case study, the SmartCode, and other form-based code approaches, allows for the determination of architectural and design standards which will respect the styles and eras represented in the historic district or neighborhood. For communities not supportive of design guidelines, which require the passage of another ordinance on top of the preservation ordinance, Form-based Codes can offer design standards that are more enforceable and with a greater applicability than guidelines.

Another advantage of Form-based Codes specific to cities with historic districts is that through the strict design standards, the BAR is given more “teeth.” With standards to back up their decisions, the rulings from the BAR seem less arbitrary in their decision making based upon the strict design standards provided through a code.

In addition, for areas that are looking to re-build, or develop quickly, Form-Based Codes provide a faster process for designers and developers. In a traditionally zoned historic district, every new project must come before the BAR, sometimes several times, for approval before construction can begin. With Form-Based Codes, as long as projects adhere to the standards, the project is approved. BAR approval may have to come for more specific architectural aspects of

the design, but at least the developer or architect is provided with a base of standards that are required to build in that area from which to begin their design.

### *Disadvantages to Form-Based Codes in Historic Districts*

The case studies have illuminated potential disadvantages to Form-Based Code in historic districts. The Code is controversial regarding its degree of public involvement. It is indisputable that public involvement is necessary and key to protecting historic districts and resources. Some feel that the up-front approach to the public participation in developing the code through hearings and charrettes, leads to too little public participation in future projects. However, others feel that greater community involvement is achieved through the process of large design meetings, as opposed to smaller meetings throughout the year.

Other concerns with the Code include the degree of power and responsibility held by the BAR or historic preservation commission. Some preservationists fear that Form-Based Codes reduce the authority held by the community staffed BAR, while placing more responsibility on city staff who may not necessarily be trained to deal with sensitive historic resources. Other disadvantages with Form-Based Codes, are that they are very area specific, and may not have enough concern for surrounding neighborhoods. In areas where there are several different styles and eras of homes and buildings present, it may be difficult to create a code that keeps infill compatible with the look and feel of the entire neighborhood. In addition, with very sensitive and important historic resources, the Form-Based Code may not address these buildings or sites in enough of a sensitive nature, or create design standards for infill that respect the complicated needs of protecting the surrounding areas of those types of resources.

Overall, there are many aspects of design control offered by Form-Based Codes, which may be of advantage or disadvantage to cities with historic districts. For historic cities, there are many things to consider when considering challenging the traditional zoning land use controls, and steps which should be taken before a form-based approach can be taken.

## **Recommendations**

The following is a list of recommendations for cities and towns with historic districts considering the adoption of Form-Based Codes or the SmartCode:

1. Have a preservation plan and historic preservation ordinance in place before the adoption of the code. The Preservation Commission, and/or Board of Architectural Review should also be in place before the adoption of the code.
2. Have an up to date survey of the cities historic resources, which should be updated every five years. It is important to note all of the extremely significant historic resources.
3. Design Standards should reflect all categories of historic structures, regardless of the level of significance.
4. Public participation and input are crucial in creating any design standards. Have all public hearings and charrettes marketed well and early to ensure the largest and most diverse representation from the affected neighborhoods. Public meetings should start at the very beginning of the Form-Based Code creation process.
5. Any Code documents created should specifically address the authority of the BAR and assure the community that the authority and responsibilities of the historic preservation ordinance and BAR shall not be infringed upon, but rather strengthened, by the Form-Based Code.

6. For areas of great historic significance, such as Savannah or Charleston, a hybrid approach of traditional zoning and a form-based approach may be more appropriate.
7. In areas looking for faster re-development, such as disaster recovery areas, Form-Based Codes and the SmartCode may offer an excellent solution to have buildings and services brought back to the city quickly, but with respect for the surviving historic resources, and the historic look and feel of the city that existed prior to the disaster. In addition, Form-Based Codes may be used to bring back the traditional urban feel of the city that may have been lost previous to the disaster, through sprawl, demolition and incompatible infill.
8. The Historic Preservation Commission and BAR should have roles in developing the Code, and offer their expert opinions on design standards created.

## REFERENCES

- Anderson, Christy. 2008. The 'New Urbanism' In Montgomery. *Alabama Heritage*. Spring.
- Braun, Eric M. 1999. Growth Management and New Urbanism: Legal Implications. 21 Urb. Law. 817. HeinOnline. UGA Libraries.
- Brazil, Brandon. 2010. Cultural Resource Specialist at Alabama Department of Transportation. Personal interview by author. May 18.
- Broberg, Brad. 2010 [Winter]. A New Kind of Zoning. *On Common Ground*. National Association of Realtors.
- Charter of the New Urbanism. Congress for the New Urbanism. <http://www.cnu.org/charter>.
- "Checklist for Identifying and Evaluating Form-Based Codes." 2006. Form-Based Codes Institute. June 27. <http://www.formbasedcodes.org/checklist.html>.
- City of Charleston, Department of Planning and Neighborhoods. Calhoun Street Corridor Study. <http://www.charlestoncity.info/dept/content.aspx?nid=194&cid=10482>.
- Cook, Robert S., Jr. 1980. *Zoning for Downtown Urban Design: How cities control development*. Lexington, Massachusetts: Lexington.
- Cullingworth, Barry. 1997. *Planning in the USA: Policies, Issues and Processes*. New York: Routledge.
- Cullingworth, Barry, and Roger W. Caves. 2003. *Planning in the USA: Policies, Issues and Processes*. New York: Routledge.
- "Definition of a Form-Based Code." 2009. Form-Based Code Institute. February 17. <http://www.formbasedcodes.org/definition.html>.
- Downtown Master Plan. 2007. Montgomery, Alabama. <http://www.google.com/search?q=montgomery+al+master+plan&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a>.
- Duany, Andres, and Elizabeth Plater-Zyberk, and Jeff Speck. 2000. *Suburban Nation: The Rise of Sprawl and the Decline of the American Dream*. New York: North Point Press.

- Emerson, Chad. 2007. *The SmartCode Solution to Sprawl*. Washington, DC: Environmental Law Institute.
- Evans, Quindal C. Understanding a Modern Zoning Trend. The SmartCode. DRI. October 2009. [www.dri.org](http://www.dri.org).
- “Form-Based Codes Map.” GoogleMaps. 2010. <http://maps.google.com/maps?q=%22form-based%20codes%22&oe=utf-8&rls=org.mozilla:en-US:official&client=firefox-a&um=1&ie=UTF-8&sa=N&hl=en&tab=wl>.
- Goldberg, Michael and Peter Horwood. 1980. *Zoning: Its Costs and Relevance for the 1980s*. Vancouver, British Columbia: The Fraser Institute.
- Gurley, Robert. 2010. Assistant Director, Preservation Society of Charleston. Personal interview by author. March 9.
- Hasty, Winslow. 2010. Director of Preservation and Museums, Historic Charleston Foundation. Personal interview by author. March 10.
- Hasty, Winslow. 2010. Position Statement. Historic Charleston Foundation. January 26.
- Inniss, Lolita Buckner. 2007-2008. Back to the Future: Is Form-Based Code An Efficacious Tool For Shaping Modern Civic Life? 11 U. Pa. J.L. & Soc. Change 75. HeinOnline. University of Georgia Libraries.
- Jacobs, Jane. 1961. *The Death and Life of Great American Cities*. New York: Random House.
- Katz, Peter. Eight Advantages to Form-Based Codes. Form-Based Codes Institute. <http://www.formbasedcodes.org/advantages.html>.
- Katz, Peter. 2004. Form First: The New Urbanism alternative to conventional zoning. *Planning Magazine*. November. <http://www.formbasedcodes.org/downloads/FormFirst.pdf>
- Kelly, Eric Damian and Barbara Becker. 2000. *Community Planning: An Introduction to the Comprehensive Plan*. Washington, DC: Island Press.
- Langdon, Philip. 2006. The Not-So-Secret Code. American Planning Association. January. [http://www.gatewayplanning.com/APA/The%not\\_so\\_secret%20code.pdf](http://www.gatewayplanning.com/APA/The%not_so_secret%20code.pdf).
- Parolek, Daniel G., and Karen Parolek, and Paul C. Crawford. 2008. *Form-Based Codes: A Guide for Planners, Urban Designers, Municipalities, and Developers*. Hoboken, New Jersey: Wiley.
- Peiser, Richard B. with Dean Schwanke. 1992. *Professional Real Estate Development: The ULI Guide to Business*. Washington, DC: Urban Land Institute.

Savannah Historic District Boundary Map. Savannah Metropolitan Planning Commission. <<http://www.thempc.org/HistoricPreservation/BoardOfReview.htm>>

Savannah Historic District Height Map. 1997, 2003. Savannah Metropolitan Planning Commission. February 27, 1997, amended October 2, 2003.  
<http://www.thempc.org/HistoricPreservation/BoardOfReview.htm>

Savannah Master Plan, Historic District Ordinance, Section 8-3030, Historic District. December 3, 2010. Sent to author via email by Christian B. Sottile, Sottile & Sottile, Savannah, Georgia.

SmartCodes Adopted Map. 2010. GoogleMaps.  
<http://maps.google.com/maps/ms?ie=UTF&msa=0&msid=118391098176215503421.0004462129034d7b59666>.

SmartCodes in Progress Map. 2010. GoogleMaps.  
<http://maps.google.com/maps/ms?ie=UTF&msa=0&msid=118391098176215503421.00044622563aeea805152>.

Special Area Plan. 2010. Calhoun Street-East/Cooper River Waterfront. February 9. Prepared by CKS Architecture and Design.  
<<http://www.charlestoncity.info/dept/content.aspx?nid=194&cid=10482>>

Talen, Emily. 2009. Design by the Rules: The Historical Underpinnings of Form-Based Codes. *Journal of the American Planning Association*. Vol. 25, No. 2, [Spring].

The Secretary of the Interior's Standards for the Treatment of Historic Properties. National Park Service. [http://www.nps.gov/history/hps/tps/standards\\_guidelines.htm](http://www.nps.gov/history/hps/tps/standards_guidelines.htm).

Walters, David. 2007. *Designing Community: Charrettes, Masterplans and Form-based Codes*. Amsterdam: Architectural Press.

Ward, Sarah. 2010. Preservation Planner. Historic Preservation Department. Chatham County-Savannah Metropolitan Planning Department. Phone interview by author. March 16.

## APPENDIX A

### LIST OF CITIES THAT HAVE ADOPTED FORM-BASED CODES<sup>127</sup>

- Addison, TX
- Albuquerque, NM
- Alexandria, VA
- Allegan, MI
- Alys Beach, FL
- Atlanta, GA
- Austin, TX
- Azusa, CA
- Baldwin Park, Orlando, FL
- Baltimore, MD
- Baton Rouge, LA
- Belmont, NC
- Beall's Hill, GA
- Benicia, CA
- Black Mountain, NC
- Bloomington, IL
- Blue Springs, MO
- Bluffton, SC
- Bothell, WA
- Boundary Street, Beaufort, SC
- Burleson, TX
- Calhoun Street, Charleston, SC
- Cape Coral, FL
- Carrollton, TX
- Castle Rock, CO
- Chesterfield County, VA
- Chestermere, AB, Canada
- Cincinnati, OH
- Clark County, WA
- Colorado Springs, CO

---

<sup>127</sup> "Form-Based Codes Map." GoogleMaps. 2010. <http://maps.google.com/maps?q=%22form-based%20codes%22&oe=utf8&rls=org.mozilla:enUS:official&client=firefox-a&um=1&ie=UTF-8&sa=N&hl=en&tab=wl>.

It should be noted, that in regards to this list, the criteria to be considered "Form-Based Code" has not been evaluated by the Form-Based Code Institute (FBCI).

- Columbia, MD
- Columbia Pike, Arlington, VA
- Contra Costa, CA
- Cornelius, NC
- Cotati, CA
- Crewkerne, Somerset, UK
- Dallas, TX
- Daufuskie Island, SC
- Davidson, NC
- Del Mar, CA
- Denver, CO
- Des Plaines, IL
- Dillion, CO
- Doral, FL
- Dover, NH
- Duluth, MN
- Duncanville, TX
- Durango, CO
- East Lansing, MI
- East Village, AB, Canada
- Emory University Village, Atlanta, GA
- Eugene, OR
- Evanston, IL
- Farmers Branch, TX
- Fayetteville, AK
- Fort, Myers Beach, FL
- Fort Worth, TX
- Freeport, NY
- Fremont, CA
- Garden City, GA
- Grand Rapids, MI
- Grass Valley, CA
- Greenville, SC
- Hapeville, GA
- Henrico County, VA
- Hercules, CA
- Houston, TX
- Howell, MI
- Huntersville, NC
- Iowa City, IA
- Ithaca Collegetown, NY
- Kendall, FL
- Knightdale, NC
- Knoxville, TN

- Lake Tahoe, NV
- Lake Zurich, IL
- Lancaster, TX
- Lawrenceville, GA
- Leesburg, VA
- Lemont, IL
- Lemoore, CA
- Lethbridge, AB, Canada
- Little Elm, TX
- Livermore, CA
- Lloydminster, AB, Canada
- Loma Rica Ranch, CA
- Marquette, MI
- Memphis, TN
- Mesa, AZ
- Mission, KS
- Mississauga, ON, Canada
- Montclair, CA
- Mountain View, CA
- Naples, FL
- Naranja, FL
- Nashville, TN
- National City, CA
- Newhall Avenue, CA
- New Westminister, BC, Canada
- North Richland Hills, TX
- Northampton, MA
- Normal, IL
- Oak Ridge, TN
- Ocean Springs, MS
- Omaha, NE
- Overland Parks, KS
- Owensboro, KY
- Palo Alto, CA
- Panama City Beach, FL
- Parramore Heritage District, FL
- Peoria, IL
- Phoenix, AZ
- Pittsfield, MA
- Placentia, CA
- Portales, NM
- Portland, OR
- Portsmouth, VA
- Poughkeepsie, NY

- Prescott, AZ
- Prince George's, MD
- Raleigh Arena, Raleigh, NC
- Redwood City, CA
- Richmond, CA
- Richmond, VA
- Roanoke, TX
- Rocky View, AB, Canada
- Round Rock, TX
- Rowlett, TX
- Saint Albert, AB, Canada
- San Diego, CA
- San Marcos, CA
- Santa Ana, CA
- Sarasota, FL
- Seaside, FL
- Seminole Heights, FL
- Simsbury Center, CT
- Sonoma County, CA
- Spring Hill, Mobile, AL
- St. Lucie, FL
- St. Petersburg, FL
- South Weymouth Naval Air Station, MA
- Steamboat Springs, CO
- Stratham, NH
- Stuart, FL
- Sylvan Lake, AB, Canada
- Tulsa, OK
- Venice, FL
- University Heights, FL
- Virginia Beach, VA
- Waynesville, NC
- Wendell, NC
- West Palm Beach, FL
- Windsor, ON, Canada
- Winter Springs, FL
- Woodford, KY
- Woodstock, GA

## APPENDIX B

### LIST OF CITIES THAT HAVE ADOPTED THE SMARTCODE<sup>128</sup>

- Abbeville, LA
- Bryant, AR
- Cherokee County, GA
- Conway, AR
- Dammam, Saudi Arabia
- Dardenne Prairie, MO
- Dover, NH
- El Paso, TX
- Flagstaff, AZ
- Flowood, MS
- Fort Myers, FL
- Germantown, TN
- Gulfport, MS
- Hamden, CT
- Hutto, TX
- Jamestown, RI
- Jefferson County, AL
- Kelowna, BC, Canada
- Kona, HI
- Lake Charles, LA
- Lawrence, KS
- Leander, TX
- Liberty, MO
- Mesquite, TX
- Miami, FL
- Montgomery, AL
- New Castle County, DE
- Pass Christian, MS
- Petaluma, CA
- Pike Road, AL
- Ridgeland, SC

---

<sup>128</sup> “SmartCodes Adopted Map.” GoogleMaps. 2010.

<http://maps.google.com/maps/ms?ie=UTF&msa=0&msid=118391098176215503421.0004462129034d7b59666>.

- San Antonio, TX
- Sarasota, FL
- Saint Charles, MO
- South Fork, CO
- Taos, NM
- Ventura, CA
- Baton Rouge, LA
- Columbus, OH
- Farmers Branch, TX
- Jupiter, FL
- Kendall, FL
- McKinney, TX
- Onondaga County, NY
- Sarasota Springs, NY
- Syracuse, NY