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No Parking Anytime: The Legality and Wisdom of Maximum Parking and Minimum Density Requirements

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I. INTRODUCTION

Much has been written about the role of government regulation in facilitating automobile-oriented sprawl. Zoning codes that segregated housing from commerce, artificially reduced population density, and required businesses to build seas of parking have made Americans more dependent on automobiles.[1] The Supreme Court upheld such regulations as early as 1926, when it wrote: "[N]o serious difference of opinion [exists] in respect of the validity of laws and regulations fixing the height of buildings within reasonable limits . . . [and preventing] the evils of over-crowding, and the like."[2]

As a result of these rules, cities and suburbs have become ever more auto-oriented over the past century, leading to pollution caused by auto emissions, including water pollution caused by suburban development and carbon dioxide emissions that have contributed to climate change.[3] Researchers have found that auto-oriented low-density development—often referred to as "sprawl"—also makes jobs less accessible to poor people without cars and increases public spending on infrastructure as roads and sewers extend further and further away

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1. *See generally* MICHAEL LEWYN, A LIBERTARIAN SMART GROWTH AGENDA 16–33 (2012).
2. Vill. of Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926).
3. *See* John A.T. Canale, *Putting the Pieces Together: How Using Cooperative Federalism Can Help Solve the Climate Change Puzzle*, 39 B.C. ENVTL. AFF. L. REV. 391, 399 (2012) (explaining relationship between sprawl and climate change); Michael Byrne, *Greening Runoff: The Unsolved Nonpoint Source Pollution Problem, And Green Buildings As A Solution*, 11 N.Y.U.J. LEGIS. & PUB POLICY 145, 168–71(2007–08) (explaining relationship between sprawl and water pollution); William Buzbee, *Urban Sprawl, Federalism, and the Problem of Institutional Complexity*, FORDHAM L. REV. 57, 59 (1999) (stating that sprawl "contributes to transportation-caused air pollution and the deterioration of river water quality").

from regional cores.[4]

Sprawl critics favor more compact, pedestrian-oriented development—often referred to as "smart growth." According to one study, such compact development could reduce vehicle miles traveled by 20–40 percent relative to sprawl, which in turn would reduce total transportation-related carbon dioxide emissions by 7–10 percent by 2050.[5]

These goals can be achieved through deregulation of land use as well as through more regulatory means. The purpose of this paper is to examine the more regulation-oriented path, and to discuss the possible negative and positive impacts of prescriptive smart growth regulations. In particular, this article focuses on two aspects of smart growth policy that have thus far received little attention: maximum parking and minimum density requirements.

To ascertain the frequency of such regulations, we examine the zoning regulations of twenty-four mid-sized cities, defined as those with populations between 500,000 and one million residents. We chose this sample because it is large enough to reflect the policies of a diverse number of cities and to give a sense of the application of these policies across the nation.

Because these regulations have received very little scholarly attention, it is too early to draw any firm conclusions about their effect. In theory, these regulations could have both positive and negative effects. We posit that, on one hand, these regulations could make cities more pedestrian-friendly, thus reducing driving and pollution. On the other hand, such regulations could make cities more difficult and expensive places to live in and conduct business, thus driving developers and residents to less restrictive jurisdictions.

II. PARKING

A. The Status Quo

Since the 1940s, local governments have generally required owners of commercial and multifamily structures to build off-street parking for customers and visitors.[6] One major purpose of these regulations is to prevent "cruising"—that is, drivers creating congestion and pollution while searching for scarce parking spaces.[7] These regulations may also prevent "spillover parking"—the risk that if a business's customers are not accommodated by a parking lot, those customers and their vehicles may "spill over" into adjacent residential neighborhoods, thus antagonizing those areas' residents.[8]

4. Robert W. Burchell et al., *The Costs of Sprawl–Revisited* 6–7 (defining sprawl), 18–20, 23 (discussing costs of sprawl), *available at* http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_39-a.pdf.

5. Reid Ewing et al., *Growing Cooler: The Evidence on Urban Development and Climate Change* 9, *available at* http://www.smartgrowthamerica.org/documents/growingcoolerCH1.pdf.

6. *See* DONALD C. SHOUP, THE HIGH COST OF FREE PARKING 22, 25 (2005).

7. *See* Stroud v. City of Aspen, 532 P.2d 720, 723 (Colo. 1975) (justifying requirements on this basis).

8. Michael Lewyn, *What Would Coase Do? (About Parking Regulation)*, 22 FORDHAM ENVTL. L. REV. 89, 94 (2010).

Some planning scholars criticize such regulations, pointing out that minimum parking requirements have a wide variety of impacts:

(1) Minimum parking regulations force landowners to subsidize driving by requiring them to spend thousands of dollars on parking spaces.[9] These costs are usually not passed on to drivers because minimum parking requirements artificially increase the supply of parking, thus reducing the market price of parking, usually to zero.[10] Instead, they are passed on to society as a whole, forcing all of society to subsidize parking and thus subsidize driving. And by encouraging driving, parking requirements increase the traffic congestion and pollution that they were designed to prevent.

(2) Because developers pass the cost of parking on to tenants and homebuyers, parking requirements for housing increase the cost of housing—according to one study, by $85,000 per unit.[11]

(3) Minimum parking requirements reduce population density, because land used for parking cannot be used for housing, shops, or offices. For example, a city that requires one parking space per one-bedroom apartment reduces the number of apartments per acre by about 30 percent, essentially mandating lower, auto-dependent densities.[12]

(4) Minimum parking requirements reduce economic activity, at least in highly urbanized places. In suburbs where land is cheap, a landowner can build what it wants and comply with the law by purchasing additional land for parking. But in a city where land is scarce and expensive, parking requirements can make redevelopment financially impossible.[13] Recognizing this, some cities have reformed parking laws to encourage redevelopment. When Los Angeles enacted an "adaptive re-use" ordinance exempting downtown historic buildings from minimum parking requirements,[14] there was a significant increase in development. Between the enactment of the ordinance in 1999 and 2008, developers built 7300 housing units covered by the ordinance—more

9. *See* SHOUP, *supra* note 6, at 185–92 (discussing subsidization of parking caused by minimum parking requirements); Lewyn, *supra* note 8, at 97 n. 44 (costs range from $2000 per parking space to $20,000 per space; costs are generally higher in urban locations).

10. Lewyn, *supra* note 8, at 97 ("[N]inety-nine percent of American driving trips end at a destination with free parking.").

11. *Id.* at 98. Many regions have mitigated this effect by building highways to open up more suburban land for development, thus arguably driving down land costs. However, such policies impose significant transportation costs on their intended beneficiaries by shifting development beyond the reach of public transit, thus effectively forcing most of the region's workers to own cars. *Cf.* Dan Zack, *Do we need affordable housing or affordable living*?, *available at* http://bettercities.net/news-opinion/blogs/dan-zack/21076/do-we-need-affordable-housing-or-affordable-living (admitting that housing costs are sometimes lower in car-dependent suburbs, but adding that as "housing gets cheaper toward the metropolitan fringe, transportation costs increase, often erasing the benefit of the lower-cost housing").

12. Lewyn, *supra* note 8, at 101; SHOUP, *supra* note 6, at 143–44 (discussing impact on density); *infra* note 75 and accompanying text.

13. *See* Michael Manville, *Parking requirements as a barrier to housing development: regulation and reform in Los Angeles* 3, 6–7, *available at* http://www.its.ucla.edu/research/rpubs/Manville_ARO_DEC_2010.pdf (describing examples of reduced housing supply due to minimum parking requirements).

14. *Id.* at 4 (describing details of ordinance).

than had been built in all of downtown over the preceding thirty years.[15] Even if those developers would have built downtown housing without the ordinance, they might not have been able to reuse historic buildings unless those buildings had on-site parking. Instead, they would either have (a) built in parts of downtown without historic buildings, thus leaving the buildings vacant forever, or (b) razed the buildings and built entirely new structures in order to create additional space for parking—structures which presumably would have been more expensive.[16]

(5) Minimum parking requirements can degrade pedestrian environments by encouraging landowners to construct parking lots in front of buildings. The proliferation of vast stretches of parking increases distances between uses, makes walking uncomfortable,[17] and increases the risk of automobile collisions with pedestrians.[18] While parking can sometimes be accommodated at the rear of buildings, zoning laws often require setbacks that virtually mandate that parking be placed between streets and buildings.[19]

Even assuming that there is some value in parking minimums generally, existing regulations may require excessive amounts of parking. Planners typically base such requirements upon parking during peak periods at sites with free parking.[20] But requiring enough parking to meet peak demand is like defining the demand for food as the quantity consumed at a free buffet—an inappropriate measure, because eaters at free buffets are insensitive to cost.

B. Parking Maximums as an Alternative

While almost every American municipality has minimum parking requirements for many neighborhoods, parking maximums are far less common.[21] Of the twenty-four cities surveyed, fifteen have parking maximums

15. *Id.* at 12, 23–26.

16. *Id.* at 24. I note that urban parking tends to be more expensive than suburban parking, especially if it is underground. *See* Transp. Res. Bd., *Economic Impact Analysis of Transit Investments: Guidebook for Practitioners* 9-17, 9-23 (1998), *available at* http:// onlinepubs.trb.org/onlinepubs/tcrp/tcrp_rpt_35.pdf (comparing urban parking costs with suburban parking costs, and noting that underground parking costs between $38,800 and $99,300 per stall, while surface lots cost less than half that much).

17. *See* Douglas G. French, *Cities Without Soul: Standards for Architectural Controls with Growth Management Objectives*, 71 U. DET. MERCY L. REV. 267, 280 (1994) (suggesting that pedestrians find places where shops are in front of sidewalks to be more aesthetically appealing because "small setbacks and shopfront windows provide more interesting scenery for pedestrians, and create a feeling of connection between the buildings and the public spaces bordering them" compared to places where pedestrians must walk through parking lots to reach shops).

18. *Cf.* Jil McIntosh, It's No Cakewalk Being a Pedestrian, TORONTO STAR, July 18, 2009, at W02, *available at* 2009 WL 13724302 (calling parking lots "dangerous" because drivers are "busy looking for spots or avoiding cars backing out, making pedestrians vulnerable").

19. In addition, customers may find it more convenient to park in front of stores—so if a landowner has to spend money on parking, it may be better off placing the parking in front regardless of setback rules. *See* Lewyn, *supra* note 8, at 104.

20. *See* SHOUP, *supra* note 6, at 32; Jeffrey Tumlin & Adam Millard-Ball, *The Mythology of Parking*, *available at* http://www.houstonarchitecture.com/haif/topic/964-the-mythology-of-parking/.

21. For a comparison of various cities' minimum parking requirements, see *Graphing Parking*, at www.graphingparking.com (charting minimums for various land uses). However, a few cities have abolished minimum parking requirements for downtown neighborhoods or neighborhoods especially well-served by

of some type. These fifteen cities follow one or more of three strategies: (1) maximum parking requirements for nearly all uses, (2) maximums for specified uses, and (3) maximums for specified parts of the city.

1. Universal Rules

Only three of the cities we surveyed impose maximum parking requirements for all or nearly all land uses: Fort Worth, Texas; San Francisco, California; and Louisville, Kentucky. These three cities differ significantly: San Francisco is a compact city with high levels of transit ridership,[22] while Fort Worth and Louisville are sprawling cities with minimal transit use.[23]

Fort Worth imposes a wide variety of minimum parking requirements, and adds that the "maximum number of parking spaces shall not exceed 125 percent of the minimum parking requirement."[24] For example, the city requires one parking space per bedroom for multifamily housing,[25] which means the maximum parking requirement is 1.25 spaces per bedroom. Because the difference between Fort Worth's minimum and maximum parking requirements is so small, it appears that in that city, almost all parking that is not prohibited is compulsory.

San Francisco also consistently caps parking, but gives landowners more discretion than Fort Worth. As a general rule, San Francisco's city code caps parking at:

> [T]hree spaces where one space is required by this Code; four spaces where two spaces are required by this Code; 150 percent of the required number of spaces where three or more spaces are required by this Code; and, in all districts other than [neighborhood commercial], 15 spaces or seven percent of the total gross floor area of the structure or development, whichever is greater, or in [such] Districts, three spaces, where no off-street parking spaces are required by this Code.[26]

In addition, the city imposes a variety of stricter requirements for some individual zoning districts.[27]

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public transit. *See* Lewyn, *supra* note 8, at 112–13.

22. *See City Data, San Francisco, California*, *available at* http://www.city-data.com/city/San-Francisco-California.html (stating that San Francisco has over 800,000 residents and just over 17,000 people per square mile, and most of its residents do not drive to work); United Status Census Bureau, American Factfinder, tbl.S0801, *available at* http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml (stating that 32.4 percent of San Francisco residents used public transit to get to work, and 9.9 percent walked to work).

23. *See City Data, Louisville, Kentucky*, *available at* http://www.city-data.com/city/Louisville-Kentucky.html (stating that Louisville has 4230 people per square mile); *City Data, Fort Worth, Texas*, *available at* http://www.city-data.com/city/Fort-Worth-Texas.html (stating that Fort Worth has just over 2600 people per square mile); Jorge Diaz, *Public Transportation Challenges in America: What can we Learn from Mid-Sized Cities in Latin America?*, tbl.7, *available at* http://www.trforum.org/forum/downloads/2012_5_Public_Transport_Challenge_Latin_America.pdf (noting that only 2.7 percent of Fort Worth residents used public transit or walked to work, while in Louisville, 6.3 percent did so).

24. *See* FORT WORTH, TEX., CODE, § 6.201(B)(2).

25. *Id.* at § 6.201(B). In addition, the city requires one parking space per 250 square feet of common areas, offices, and recreation. *Id.*

26. S.F., CAL. CODE, § 204.5(C).

27. *See* SEC. 151.1(b) (in certain specified parts of the city, maximum parking allowed is between 50 and

Louisville lists both minimum and maximum requirements for almost every conceivable land use.[28] Generally, its maximums are about twice its minimums. For example, the city requires a minimum of 1.5 parking spaces per dwelling unit in most districts and a maximum of three spaces per dwelling unit. For most offices, the city requires a minimum of between two and 2.8 spaces—depending on the zoning district—per 1000 square feet, and a maximum of five spaces.[29]

2. Maximums for a Few Uses

Seven of the twenty-four surveyed cities impose maximum parking requirements for some or all commercial uses but not for residential uses. For example, El Paso, Texas imposes both minimums and maximums for businesses, but only imposes minimum parking requirements for apartments and other housing. Its maximums tend to be only slightly higher than its minimums; for example, an office must supply a minimum of one space per 480 square feet (or 2.1 per 1000) and a maximum of one space per 400 square feet (or 2.5 per 1000).[30]

Portland, Oregon's rules are similar: the city imposes no maximum parking requirements for most residential uses, but imposes both minimums and maximums for most commercial uses.[31] However, Portland's maximums tend to be a bit more generous than those of El Paso. For office uses, Portland typically requires about the same minimum number of parking spaces as El Paso (two per 1000 square feet) but sets forth a higher maximum (one per 294 square feet, or about 3.4 per 1000). In addition, the city imposes a variety of requirements for individual neighborhoods. For example, in areas near light rail stations, a nonresidential land user may not create more than 150 percent of the minimum number of parking spaces required for most zones.[32]

The Seattle, Washington code similarly sets forth a maximum in its commercial zones, providing that in most commercial zones, businesses may provide no more than 145 spaces per parking lot.[33] In addition, businesses in multifamily zones may provide no more than ten parking spaces per establishment.[34]

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100 percent of what would otherwise be minimum amount required, depending on district).

28. *See* LOUISVILLE, KY., LAND DEV. CODE, tbl.9.1.2A: *Minimum and Maximum Motor Vehicle Parking Based on Use*.

29. *Id.*

30. *See* EL PASO, TEX. CODE, § 20.14.040, app. C, tbl.4.09.

31. *See generally* PORTLAND, OR. ZONING CODE, tbls.266-1 & 266-2.

32. *Id.* § 33.450.420(B); *see also id.* tbls.510-6, 510-10, 510-16, 536-1, §§ 33.532.110(C)(2), 33.536.290(C), 33.555.280(B) (setting forth special rules for certain neighborhoods).

33. *See* SEATTLE, WASH. CODE, § 23.54.015(C)(2) (applying rule to "all commercial zones, except C2 zones outside of urban villages").

34. *Id.* § (C)(3). In addition, Seattle creates special requirements for certain zones. *Id.* § 23.48.032 (B) (special rules for mixed use zone); *Id.* § 23.54.015 (C)(1) (setting forth special rules for overlay zone near stadium); *Id.* § 23.71.016, tbl.A (special rules for Northgate Overlay District); *Id.* § 23.75.180 (setting forth special rules for Yesler Terrace community).

Jacksonville, Florida imposes parking maximums for most businesses, providing that offices and businesses—other than those such as restaurants with specified parking requirements of their own—must have a minimum of three parking spaces per 1000 square feet of floor area, and a maximum of six per 1000 square feet.[35] In addition, other uses—excluding single-family housing—are subject to a maximum parking requirement of 10 percent more than the minimum required, or 20 percent for parking lots with under 100 spaces.[36]

Columbus, Ohio follows a similar strategy: it imposes minimum parking requirements only for residential, industrial, and institutional uses, but both minimum and maximum requirements for offices, retail shops, and restaurants. Columbus tends to expect somewhat less parking than Jacksonville: for example, Columbus' minimum requirement for offices is one parking space per 450 square feet (or just over two per 1000 square feet) and its maximum requirement is one space per 250 square feet (or four per 1000).[37]

Milwaukee, Wisconsin imposes maximum parking requirements only for a few uses: retail establishments are subject to a maximum of 3.5 parking spaces per 1000 square feet, and single-family homes and duplexes are limited to four parking spaces per dwelling unit.[38]

San Jose, California regulates commercial parking much more narrowly. As in Columbus, its parking minimums are virtually universal; however, it imposes maximums only for printing and warehouses.[39]

3. Maximums for a Few Districts

Another common policy is to impose parking maximums, but only in certain parts of a city. For example:

- Austin, Texas imposes parking maximums for two downtown zoning districts, the Central Business District and Downtown Mixed Use districts.[40] In these districts, the maximum parking allowed is 60 percent of the minimum parking requirement in a non-downtown neighborhood.[41]
- Boston, Massachusetts limits residential parking in one downtown zone to 0.75 spaces per unit.[42]
- San Jose, California creates a "pedestrian-oriented district" overlay zone. In that zone, multifamily dwellings may create a minimum of

35. JACKSONVILLE CODE, §§ 656.604(e)(1) and (f)(1).
36. *Id.* § 656.604.
37. *See* COLUMBUS, OHIO CODE § 3312.49, tbl.2.
38. *See* MILWAUKEE, WIS. CODE, tbl.295-403-2-a.
39. *See* SAN JOSE, CAL. CODE, tbl.20-190 (following § 20.90.060).
40. *See* AUSTIN, TEX. CODE, §§ 25-2-100 & 101 (describing districts).
41. *Id.* § 25-6-591(B)(3). I note that a landowner may apply to build a higher number of spaces. *Id.* § (C). In addition, the minimum parking requirements is one-third of the maximum. *Id.* § (B)(2)(a)(i).
42. *See* BOS. ZONING CODE, § 27D-8(6)(b)(2).

1.25 spaces per dwelling unit and a maximum of two spaces.[43]

- Denver, Colorado limits parking, but only within one-quarter mile of light rail stations.[44] In these areas, surface parking may not exceed 110 percent of minimum parking requirements.[45]
- Albuquerque, New Mexico has created an "East Gateway Development Plan" for one part of the city.[46] In this area, the maximum parking allowed is the minimum parking requirement plus 10 percent.[47]

C. Possible Side Effects (In Theory)

Courts generally uphold zoning laws as long as they are not "arbitrary and unreasonable."[48] It appears that a rational basis exists for maximum parking requirements, especially where, such as in Denver, such requirements are limited to surface parking. As noted above, surface parking makes walking less convenient;[49] where pedestrians must walk through a sea of parking to reach a destination, walking becomes more monotonous, more time-consuming, and less safe. It follows that, where large surface parking lots separate shops and housing from streets and sidewalks, some people who might otherwise walk to those destinations will instead drive. And to the extent drivers are aware that their destinations will have ample parking, they are more likely to drive to those destinations, thus creating an increase in overall driving which in turn increases traffic congestion and pollution.[50]

Because maximum parking requirements are generally quite new in the United States, there is little known about their practical effects.[51] However, it

43. *Id.* tbl. 20-211. Memphis has a similar rule that is essentially voluntary because it only applies to landowners who choose to have their property zoned for a "sustainable subdivision." *See* MEMPHIS AND SHELBY CNTY. UNIFIED DEV. CODE, § 3.8.6 (A)(6) (stating that only 20 percent of surface may be used for surface parking). However, other Memphis developments are governed by conventional minimum parking requirements. *Id.* § 4.6.3.

44. *See* DENVER ZONING CODE, § 10.4.3.2(B)(1)(a).

45. *Id.* § 10.4.3.2(B)(2). However, underground or aboveground spaces are not affected by the parking maximum; thus, a landowner may choose to build an infinite number of such spaces. *Id.* § 10.4.3.2(B)(2)(b).

46. *See generally* CITY OF ALBUQUERQUE, *East Gateway Sector Development Plan*, at http://www.cabq.gov/planning/documents/EastGatewayFINwFAs08092012.pdf.

47. *Id.* § 5.6.2(A)(2).

48. Vill. of Euclid v. Ambler Realty Co., 272 U.S.365, 395 (1926); *see also* Stroud v. City of Aspen, 532 P.2d 720, 722 (Colo. 1975) (applying this rule to minimum parking requirements).

49. *See supra* notes 17–19 and accompanying text.

50. It could be argued that in an unregulated world, landowners are unlikely to provide more surface parking lots than customers actually demand, because motorists are likely to avoid visually unappealing parking lots. This claim assumes, however, that drivers strongly prefer underground parking to ugly but cheap and convenient surface parking. It is unclear whether this is in fact the case. Moreover, one argument for maximum parking requirements may be that even if a free market in parking gives motorists as much parking as they want, such parking should be limited because an ample parking supply may increase driving and thus increase pollution and congestion.

51. *See* DONALD ELLIOTT, A BETTER WAY TO ZONE 180 (2008) (stating that "relatively few" cities use parking caps, and those that do so "generally limit them to downtown or special focus areas."). But as will be shown in Part I-D *infra*, the evidence from cities we have contacted shows that the caps have been applied flexibly and therefore have had minimal impacts. In addition, one study shows that maximum parking requirements in London, England have had little effect, because developers typically build far less than the

can be predicted that reducing the amount of allowed parking will have the same effect as any other reduction in supply of any good—that is, it will raise prices. One potential risk of such a policy is that tenants and customers may shift business to places where parking is plentiful and cheap, such as the suburbs.[52] If a maximum parking requirement actually did reduce parking below what customers demanded at a given price, urban housing and businesses might become less desirable.

On the other hand, cities with scarce parking do not seem to be any less desirable than cities with plentiful parking. The five cities with the highest downtown daily parking rates are Honolulu, Chicago, New York, Boston, and San Francisco[53]—a group of cities with growing, prosperous downtowns.[54]

Despite this general rule, there is some empirical evidence that people and businesses value parking in making location decisions. One British study surveyed 152 businesses, asking them to state "key influences" on locational choice. Fifteen percent of respondents stated that staff parking was a "key influence" (more than any other factor but "road links") and 11 percent listed customer or visitor parking as a "key influence".[55] Another survey showed that when residents of southeast London were given a hypothetical choice between a garage and more living space, 83 percent chose the garage.[56]

In sum, it is theoretically possible that maximum parking requirements will raise the cost of parking enough to make the city a less appealing place to live and work. However, such laws may have little immediate effect. Because zoning ordinances generally do not require elimination of existing uses,[57] such as existing parking spaces, new maximums would take years to significantly affect parking supply. And as noted above, many cities both impose maximums and minimums,[58] ensuring that the supply will not deviate much from what has historically been required.

But in the long run, any attempt to establishing the "right" amount of

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maximum number of spaces. *Cf.* Fei Li & Zhan Guo, *Do Parking Standards Matter*? 11, 16, *available at* http://www.embarq.org/research/publication/do-parking-standards-matter (discussing impact of abolition of minimum parking standards, and imposition of maximum parking standards, in London; finding that new developments typically "provide parking well below the standard level" and in fact "60% of the post-reform developments in Inner London are car-free.").

52. *See* Georgina Stylianou & Liz McDonald, *Parking Squeeze in CBD Worries Developers*, PRESS, Mar. 10, 2013, *available at* http://www.stuff.co.nz/the-press/news/transport/9237288/Parking-squeeze-in-CBD-worries-developers. (discussing developer's complaints about maximum parking requirements in Christchurch, New Zealand).

53. *See* John Kuo, *Worst Cities for Parking Your Car*, *available at* http://www.nerdwallet.com/blog/insurance/2014/03/24/worst-cities-parking-car/ (listing city parking rates).

54. *See* Eugenie L. Birch, *Who Lives Downtown*, *available at* http://www.brookings.edu/~/media/research/files/reports/2005/11/downtownredevelopment%20birch/20051115_birch.pdf (noting long-term population growth in downtowns of Chicago, New York, Boston, and San Francisco; no figures for Honolulu); *City Data, 96813 Zip Code Detailed Profile*, *available at* http://www.city-data.com/zips/96813.html (downtown Honolulu zip code gained population during 2000s and is wealthier than statewide average).

55. *See* Greg Marsden, *The Evidence for Parking Polices—A Review* 9, *available at* http://eprints.whiterose.ac.uk/2023/2/ITS15_The_evidence_base_for_parking_policies_UPLOADABLE.pdf.

56. *Id.* at 16.

57. *See* Alice Kaswan, *Distributive Justice and the Environment*, 81 N.C. L. REV. 1031, 1111–12 (2003).

58. *See* Part I-B-2, *supra*.

parking by bureaucratic mandate, rather than through the market, creates a risk of absurd results. As noted above, parking regulations often require the maximum amount of parking that drivers might ever want[59]—a policy comparable to setting the menu for a dinner party based on the preferences of the most gluttonous eaters. Using this analogy, parking maximums that are unusually low may be somewhat akin to defining the demand for food based on the diet of anorexics. By contrast, deregulating parking by eliminating minimums as well as maximums could ensure that Americans have as much parking as they are willing to pay for—no more and no less.

D. Case Studies

This section details the (admittedly sparse and anecdotal) evidence about the results of parking maximums in a number of cities.

Fort Worth's requirements, enacted in 2004,[60] are more lenient than they seem at first glance. Developers may add more parking than the maximum, as long as they plant more trees to offset the additional pavement created.[61] Because of the tree mitigation option, developers have not needed variances from the requirement.[62] Thus, it appears that Fort Worth's regulations have not been controversial.

Jacksonville's ordinances, enacted in 2007[63] in order to reduce the number of underutilized parking spaces,[64] have also generally been supported by developers.[65] Although a few developers have sought variances, Jacksonville has reduced the number of variance requests by refusing to apply parking caps to pre-2007 parking spaces.[66]

Seattle's ordinances have been enacted more gradually: the city began limiting parking downtown in 1985 in order to prevent downtown from being choked with cars, and enacted citywide commercial parking caps in 2006 in order to limit stormwater runoff from parking lots.[67] Although some developers were opposed to parking caps, the city's regulations have not been particularly controversial after their enactment, and few developers have requested variances.[68]

In sum, it appears, based on anecdotal evidence, that in practice existing requirements have been flexible enough to avoid creating significant difficulty.

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59. *See* Tumlin & Millard-Ball *supra* note 20.
60. FORT WORTH, TEX., Ordinance 15,911 (Mar. 11, 2004).
61. *See* FORT WORTH, TEX. Ordinance 17,024 (Mar. 11, 2004).
62. E-mail from Jocelyn Murphy, Planning Manager, Fort Worth Texas (July 2, 2014, 17:13:55 CST) (on file with author).
63. JACKSONVILLE, FLA., Ordinance 2007-588-E (June 12, 2007).
64. E-mail from Sean Kelly, Zoning Adm'r (July 17, 2014, 16:45:37 CST) (on file with author).
65. *Id.*
66. *Id.*
67. E-mail from Gordon Clowers, Senior Planning and Dev, Specialist, City of Seattle (July 24, 2014, 10:06:37 CST) (on file with author).
68. *Id.*

III. DENSITY

A. The Status Quo

As early as the 1920s, the Standard Zoning Enabling Act (SZEA), a model state zoning statute prepared by the federal Department of Commerce, authorized municipalities to limit density in their zoning codes.[69] As noted above, the Supreme Court suggested that such limits were constitutional not long after the preparation of SZEA.[70]

Since these early decisions, local laws establishing maximum densities have become nearly ubiquitous in the United States.[71] As early as 1971, 80 percent of the vacant land within fifty miles of Times Square in New York City was restricted to lots of half an acre or more.[72] Since then, zoning has become even more restrictive.[73] Moreover, low-density zoning is not limited to low-density suburbs; even in the most dense parts of New York City, zoning limits density to some extent.[74]

These density restrictions reduce the public's ability to walk and to access public transit. If only a few houses can be built on a block near public transit, only a few houses can access such transit.[75] Similarly, if only a few houses can be built near a commercial street, only a few people can live within walking distance of stores.

There is substantial evidence that the regulation of density in fact prohibits compact, walkable development. A study conducted for the Urban Land Institute asked developers about the impact of zoning on "alternatives to

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69. *See* A STANDARD ZONING ENABLING ACT, § 1 (empowering cities to regulate "the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, [and] the *density of population*") (emphasis added), *available at* http://www.tnlanduse.com/SSZEA.htm. Most states have adopted statutes modeled upon this law. *Id.*

70. *See* Vill. of Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926); *see also* Agins v. City of Tiburon, 447 U.S. 255 (1980) (directly upholding such limits).

71. *See* 3 EDWARD H. ZIEGLER, ARDEN H. RATHKOPF, & DAREN A. RATHKOPF, RATHKOPF'S THE LAW OF ZONING AND PLANNING, § 51.10 (2011 ed.) (stating that "minimum lot size" requirements are common); NORMAN WILLIAMS JR. & JOHN M. TAYLOR, AMERICAN LAND PLANNING LAW, § 39.1 (describing minimum lot size requirements as "most common form of density control").

72. *See* Note, *Exclusionary Zoning and Equal Protection*, 84 HARV. L. REV. 1645, 1645 (1971).

73. Williams & Taylor, *supra* note 71, at § 35.23 ("Municipal zoning ordinances have increasingly been adopting requirements for widespread or almost-universal very low density."); William Fischel, *The Evolution of Homeownership*, 77 U. CHI. L. REV. 1503, 1515 (2010) (In order to keep out lower classes while avoiding 1970s civil rights litigation, suburbs avoided discrimination claims by downzoning all land, rather than merely excluding only housing catering to the truly poor).

74. *See* City of New York, *Zoning Data Tables, Residence Districts*, *available at* http://www.nyc.gov/html/dcp/pdf/zone/zoning_handbook/zoning_data_tables.pdf#page=1 (listing density limits for various zoning districts).

75. *See* Joanna D. Malaczynski & Timothy P. Duane, *Reducing Greenhouse Gas Emissions from Vehicle Miles Traveled: Integrating the California Environmental Quality Act with the California Global Warming Solutions Act*, 36 ECOLOGY L.Q. 71, 80 n.44 (2009) (raising average density to nine units per acre could reduce vehicle miles traveled by 30 percent nationwide); Robert H. Freilich, *The Land Use Implications of Transit-Oriented Development: Controlling the Demand Side of Transportation Congestion and Urban Sprawl*, 30 URB. LAW. 547, 552 n.18 (2009) (stating that neighborhood must have at least seven units per acre to support regular transit service); ANTHONY DOWNS, STILL STUCK IN TRAFFIC: COPING WITH PEAK-HOUR TRAFFIC CONGESTION 210 (2004) (stating that seven units per acre supports bus service once every half-hour).

conventional, low-density, automobile-oriented, suburban development."[76] More than 78 percent of developers identified government regulation as a significant barrier to such development.[77] Density restrictions are thus partly responsible for the low densities of the majority of American neighborhoods, which average two to seven dwelling units per acre,[78] and therefore create American automobile dependence.[79]

B. Minimum Density Requirements: Rare But Not Unknown

It is clear that most American land is affected by anti-density restrictions.[80] Laws that mandate a minimum density are in contrast exceedingly rare; only two U.S. cities among the twenty-four we have studied, San Jose and Portland, have widespread minimum density regulations. Critics often accuse advocates of smart growth of forcing Americans into higher-density housing,[81] but even these two cities have districts that restrict maximum density for every residential zone, including multifamily zones.[82]

San Jose, California has minimum density requirements even for its low-density zones. The city requires a minimum density of one unit per acre, and permits densities up to eight units per acre in its R-1 (single-family residential) zone.[83] One unit per acre could hardly be seen as a particularly stringent anti-sprawl density standard, as most commentators suggest that a neighborhood must have at least seven to fifteen dwelling units per acre in order to support significant public transit ridership.[84]

Portland, Oregon also maintains minimum density requirements. Its maximum and minimum densities are set out in the subdivision element of its zoning code. For subdivisions in the city's low-density single-family zones, maximum densities range between one house per two acres and one house per

76. *See* JONATHAN LEVINE, ZONED OUT: REGULATION, MARKETS, AND CHOICES IN TRANSPORTATION AND METROPOLITAN LAND-USE 126 (2006).

77. *Id.* at 129.

78. *See* Malaczynski & Duane, *supra* note 75 (estimating current average density at 7.6 units per acre); Mark Fina & Leonard Shabman, *Some Unconventional Thoughts on Sprawl*, 23 WM. & MARY ENVTL. L. & POL'Y REV. 739, 741 (1999) ("two units per acre typical of present development").

79. *See supra* note 75.

80. *See* LEVINE *supra* note 76; Malaczynski & Duane *supra* note 75; Fina & Shabman *supra* note 78.

81. *See* Kurt Paulsen, *Sprawl, Residential Density, and Exclusionary Zoning*, 20 PROBATE AND PROPERTY 23, 27 (2006) (to some, smart growth proposals are an "attempt by government bureaucrats to force people to live in higher-density [housing]"); Jim Wooten, *Our Opinion: Suburbs Evil? Evidence Thin*, ATLANTA JOURNAL-CONSTITUTION, June 6, 2004 at E6 (accusing smart growth advocates of "using transportation funding to force high-density development [and] drive people into urban clusters"). Of course, residents of existing low-density development may see nearby development as "forcing" them into high-density environments—but this claim seems to be based on a confused view of property rights. When one buys a house, one buys the house- not necessarily the right to force every dwelling to look like that house (unless, of course, one has contracted with nearby property owners to create that right through a restrictive covenant).

82. *See* PORTLAND, OR. ZONING CODE, Ch. 33.610, tbls.610-1 & 610-2; § 33.611.200(B), Ch. 33.612, tbl.612-1; SAN JOSE, CAL. CODE, § 20.30.200, tbl.20-60 (imposing minimum lot sizes for a wide range of districts, including multifamily districts).

83. SAN JOSE, CAL. CODE, § 20.30.010(C)(1).

84. *See* PAMELA BLAIS, PERVERSE CITIES: HIDDEN SUBSIDIES, WONKY POLICY, AND URBAN SPRAWL 60–61 (2010) (citing numerous studies).

5000 square feet,[85] and minimum densities are usually about two-thirds that amount.[86] Similar maximum/minimum ratios govern the city's higher-density zones.[87] In the multifamily R3 zone, the maximum density is one dwelling unit per 3000 square feet (or roughly fourteen units per acre), while the minimum density is one unit per 3750 square feet (or roughly eleven units per acre).[88]

A few cities, including Boston, Jacksonville, Columbus, and Memphis, allow developers to request that their properties be rezoned as a special pedestrian or transit-oriented zone such as an overlay zone, and these zones typically include minimum densities.[89] Because these zones are voluntary or optional districts, these rules can hardly be called mandatory minimum densities. However, they may affect future rights or the rights of an entire district, including landowners not involved with the original request. In this way, such districts are much like covenants within a subdivision. Buying a house in the subdivision is optional, but once the house is built, future owners must comply with the covenants (or in this case, code provisions).[90]

C. Rationale for Minimum Density Requirements

It may seem hard to believe that both density minimums and maximums have a sound, rational basis; however, that is likely what the courts will find. Just as a skyscraper would be inappropriate in a rural setting, a vacant lot or five-acre farm might be inappropriate in a dense urban setting such as midtown

85. *See* PORTLAND, OR. ZONING CODE, Ch. 33.610, tbl.610.1.

86. *See* PORTLAND, OR. ZONING CODE, § 33.610.100(D). We note that for purposes of calculating the minimum density, the code excludes land "within an environmental overlay zone, potential landslide hazard area, or special flood hazard area." *Id.* In addition, where a subdivider does not choose to build any streets, the minimum density is 80 percent of the maximum density. *Id.* § 33.610.100(C)(2).

87. *See, e.g.*, *id.* § 33.611.100(C) & (D) (stating that in R2.5 zone, maximum density is one lot per 2500 square feet, and minimum density is 68 percent of that amount where streets are present, 80 percent otherwise).

88. *Id.* § 33.120.205, tbl.120-3 (listing minimum and maximum density regulations for other zones as well). In addition, the city has established specialized density requirements for individual neighborhoods. *See id.* § 33.505.200 (requiring one dwelling per 2250 square feet in the North Lombard Street area, and one per 2000 feet in the Albina district abutting Martin Luther King Boulevard); *Id.* § 33.561.240 (requiring similar densities in the North Interstate zone). We note that it is not clear how difficult it is for developers to work around these requirements; for example, we have found no media coverage of developer requests for variances. Because the city has a wide variety of zones, we suspect that a developer who wishes to build less densely than its current zone allows can ask to be rezoned into a lower-density district.

89. *See* BOSTON ZONING CODE, §§ 87-3, 87-7 (allowing a landowner to ask the city to create "Smart Growth Overlay District"; as part of rezoning, the city will establish minimum and maximum densities); JACKSONVILLE CODE § 656.1402-1404 (creating "transit-oriented development" zone for areas near bus stops if developers request such zoning and comply with criteria); COLUMBUS OHIO CODE §§ 3320.13, 3320.19 (landowner can ask to have land rezoned to "traditional neighborhood" district with minimum densities; not directly suggesting maximum lot sizes, but proposing appropriate lot width and depth); MEMPHIS AND SHELBY CNTY. UNIFIED DEV. CODE, § 3.8.6(A)(5) (requiring minimum density of seven units per acre for optional "sustainable subdivision"). In addition, Seattle recently enacted minimum floor area ratios for buildings, but only in certain pedestrian-oriented areas. *See* Seattle Dep't of Planning and Dev't, *Minimum Density*, *available at* http://www.seattle.gov/dpd/codesrules/changestocode/minimumdensity/whatwhy/default.htm (describing new rules in more detail, and explaining that floor area ratio is "amount of floor space developed on a parcel compared to the size of the property"; for example, "a lot of 10,000 square feet with a minimum [ratio] of 2 would require a building size of at least 20,000 square feet").

90. *See* Susan F. French, *Toward A Modern Law of Servitudes: Reweaving the Ancient Strands*, 55 S. CAL. L. REV. 1261, 1270–1300 (1982) (describing in detail when such covenants bind future homebuyers).

Manhattan. Certainly, it seems rational that density minimums could encourage development that is more pedestrian- and transit-friendly, and therefore meet the public goals of reducing automobile congestion, pollution, and greenhouse gas emissions. Such laws might be further justified on the grounds that they support a city's investment in public services, such as public transit.[91]

In addition, requiring density might make compact development more politically feasible in the long run. Although a city may grow by replacing lower density uses with higher ones, the construction of low-density structures may make it politically difficult for neighborhoods to densify, because neighborhood residents might argue that more dense development is incompatible with existing development. The City of Ashland, Oregon cites this argument in a brochure on its proposed minimum density requirements, stating that "residents of low-density developments often oppose . . . infill."[92] Furthermore, despite the apparent novelty of minimum density requirements, zoning laws prescribing minimums are nothing new. For example, minimum setbacks and lot sizes are ubiquitous.[93]

Even if minimums are upheld by a court, such regulations may lead to unintended consequences. One argument against minimum density requirements is that they might interfere with consumer preferences for lower density. The question of whether minimum density requirements can force people to live in higher density settings than they might otherwise choose has been examined by Jonathan Levine, who wrote that "the ostensible threat of forcing people to live in ways they do not want [is] chimerical."[94] He claims, that, because developers have alternative investment opportunities, "regulations are incapable of forcing land-development markets to develop at above-market densities."[95] Therefore, he argues, "the choice to develop in a zone that is subject to minimum-density or other requirements is evidence that profits expected from such development are at least the equal of those associated with the best alternative site."[96]

Simply put, if the required densities are above profitable levels, the site will sit vacant or simply continue in its previous use. To illustrate this point, imagine that the 100-person city of Iowopolis, in rural Iowa desires to become a large megalopolis with multiple skyscrapers. It zones one hundred acres of farmland on the edge of the town for a minimum of fifty stories. Surprisingly, buildings do not materialize and instead local farmers continue to plant grain.

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91. *See supra* note 75 (showing how low density reduces transit ridership).

92. City of Ashland, OR, *Questions and Answers for the proposed Minimum Density Ordinance amendments to R-2 and R-3 Zones*, *available at* http://ashland.or.us/Files/Minimum_Density_Q-A.pdf.

93. *See supra* notes 71–74 and accompanying text; WILLIAM B. STOEBUCK & DALE A. WHITMAN, THE LAW OF PROPERTY § 9.18, at 597–98 (3d ed. 2000) (noting that most zoning ordinances control density through minimum lot-size requirements and minimum setback requirements, among other rules).

94. Levine, *supra* note 76, at 19.

95. *Id.*

96. *Id.*

Clearly, no government can compel a grain farmer to put up a multi-million dollar building. But the same is true of any increment in density.

In theory, it is conceivable that minimum density requirements could deter development. If a municipality requires density above a profitable threshold, it might leave properties underutilized relative to their market potential. Sites in a zone that do not warrant investment in a building of the size and height required might remain as surface parking or vacant lots. However, it seems highly unlikely this would occur, because a city would be hard pressed to not modify its laws to permit development under a certain required minimum, particularly if investment was declining.

The two cities that have widespread minimum density requirements, Portland and San Jose, have been growing considerably in recent decades,[97] and have housing values higher than the statewide average, suggesting there is ample demand for housing in their central cities.[98] In fact, it seems likely that only growing cities would even attempt to pass such rules—because only in a growing city could planners be confident that developers will be able to meet the required minimums. In the unlikely case that minimum density requirements actually deter development, it is conceivable that they could increase regional sprawl, because developers could choose to build in less-strictly regulated locations.

A regional governance approach could solve the latter problem by requiring minimums appropriate to the location throughout the region, as is now being attempted in Ontario, Canada.[99] That province's Places to Grow Act does not set site-specific minimums, but rather sets density targets for municipalities.[100] In particular, Ontario law sets out specific density targets in twenty-five regional downtowns, which are required to be met by 2031 through implementation of plans and zoning by-laws.[101] The highest density target is

97. *See* U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2012 at 35 (showing that Portland's population increased from 368,000 to 584,000; San Jose's population increased from 629,000 to 946,000).

98. *See City Data, San Jose, California*, *available at* http://www.city-data.com/city/San-Jose-California.html (showing that San Jose's median housing value is $537,400, while statewide median is just under $350,000); *City Data, Portland, Oregon*, *available at* http://www.city-data.com/city/Portland-Oregon.html (showing that Portland's median value is $268,800, while the statewide median is just under $224,000).

99. Oregon law has also sought to establish regional density regulations, by requiring some Portland suburbs to enact minimum density requirements. However, these laws have not always been fully enforced. *See* Jennifer H. Logan, *"Otherwise Unavailable": How Oregon Revised Statutes Section 197.309 Violates The Fair Housing Amendments Act*, 22 J. AFFORDABLE HOUSING AND COMMUNITY DEV. L. 213, 228 (2014) (claiming that Lake Oswego, Or. violates state regulations requiring minimum density of ten dwelling units per acre).

100. *See generally* Ontario, Canada, S.O. 2005, Ch. 13; *see also Places to Grow*, *available at* www.placestogrow.ca. Places to Grow also uses a variety of other techniques. For example, the law requires that a minimum of 40 percent of all new development occur in built-up areas of "[u]pper and single tier municipalities." *See* Ontario Ministry of Pub. Infrastructure Renewal, *Technical Backgrounder, Intensification and Density Targets*, *available at https://www.placestogrow.ca/content/ggh/tb_density_targets/Backgrounder_Density_Targets_English.pdf*. This requirement is a watered-down version of Oregon's urban growth boundary system. *See infra* Part II-D.

101. *See Places to Grow*, *supra* note 100, at 4.

four hundred people and jobs per hectare (or roughly 160 per acre) in Toronto's major business districts, while the law sets a target of two hundred people and jobs per hectare (or roughly eighty per acre) for downtowns in mid-size cities, and smaller cities have a target of 150 people and jobs per hectare (or roughly sixty per acre).[102]

The side effects of these targets are unclear—partially because many municipalities are not yet complying with them. While Toronto's major business districts have either met their targets or significantly increased density—as did downtown Hamilton[103]—several small-city downtowns have actually become less dense by losing residents and/or jobs. For example, downtown Brampton's density target is two-hundred people and jobs per hectare—yet its concentration of people and jobs actually decreased between 2006 and 2011 from sixty-eight per hectare to fifty-nine because it lost several thousand jobs.[104] Thus, it appears that a density target for an entire urban district is unlikely to succeed, perhaps because a municipality has little direct control over where people live and work.[105]

D. A Note or Two on Urban Growth Boundaries and Housing Prices

Some governments encourage urban density through policies designed to limit the growth of new suburbs; these policies, when effective, indirectly increase urban density by forcing development into already-settled areas. The most restrictive of such policies in the United States is Oregon's growth management system.[106] Oregon law requires municipalities to adopt urban growth boundaries and to prohibit development outside that boundary, and has also created a regional government to supervise an intermunicipal growth boundary in the Portland suburbs. Oregon law classifies land into three types:

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102. *Id.* *See also* Ontario Ministry of Municipal Affairs and Housing, Technical Report on Preliminary Performance Indicators for the Growth Plan for the Greater Golden Horseshoe, 2006 *available at* https://www.placestogrow.ca/images/pdfs/perf_ind/performance-indicators-technical-report.pdf (listing targets for various areas) (hereinafter "Technical Report"). One hectare is 2.47 acres. *See Hectacres to Acres Conversion*, ASKNUMBERS.COM, *available at* http://www.asknumbers.com/HectaresToAcresConversion.aspx.

103. *See* Technical Report, *supra* note 102, at 13 (noting that the North York and Yonge-Eglinton districts already have more than four-hundred people and jobs per square hectare).

104. *Id.* Similar decreases were recorded in downtown Brantford, Burlington, Cambridge, Guelph, Newmarket Centre, Peterborough, and St. Catherines. *Id.* Several other urban growth centers experienced some growth, but not enough to reach the Places to Grow target. *Id.* (noting such increases occurred in downtown Barrie, the Etobicoke district in Toronto, downtown Kitchener, Markham in suburban Toronto, downtown Milton and Mississauga, midtown Oakville district, downtown Oshawa and Pickering, Richmond Hill, downtown Toronto, Toronto's Scarborough Centre district, and Toronto's Vaughan Corporate Centre district, and Waterloo's Uptown district).

105. Places to Grow also set a density target of fifty people and jobs per hectare (or twenty per acre) for undeveloped areas. This target, however, has been widely ignored. *See* Neptis, *Implementing the Growth Plan for the Greater Golden Horseshoe*, *available at* http://www.neptis.org/publications/implementing-growth-plan-greater-golden-horseshoe (some towns have treated minimums as maximums, while others have ignored Places to Grow and set lower targets); York Region, *York Region Residential Area Analysis—Preliminary Report* 7 (describing some examples).

106. *See* JOHN NOLON & PATRICIA E. SALKIN, LAND USE AND SUSTAINABLE DEVELOPMENT LAW: CASES AND MATERIALS 692–93 (8th ed. 2012) (describing both the Oregon system and the less restrictive growth management policies adopted elsewhere).

rural, urbanizable, and urban. Rural land is agricultural, forest, or otherwise unsuitable for dense human settlement. Urban areas are within or adjacent to existing cities. Urbanizable lands are within the growth boundary, and may be used for urban uses in the future.[107]

Opponents of the Oregon system argue that the growth boundary has increased housing prices by limiting the supply of land; other commentators, by contrast, point out that Portland's housing prices are lower than those of some other Western cities.[108] Between 1991 and 2000, Portland-area housing prices increased by 110 percent—a slower increase than Denver (117 percent) but a more significant increase than Salt Lake City (98 percent) and Seattle (69 percent).[109] Between 2004 and 2014, there was again little difference between Portland prices and those of other comparable western cities: in both Portland and Salt Lake City, prices increased by 47 percent, while prices increased by 37 percent and 23 percent in Seattle and Denver respectively.[110] Portland's average housing price ($301,000) is higher than that of Denver and Salt Lake City, but lower than that of Seattle ($465,000).[111]

It seems unlikely that growth boundaries will increase density in a way that supersedes market forces. Those forces densify cities when they become larger and demand grows. Hence, San Francisco, without growth boundaries,[112] has four times the population density of Portland.[113] Minimum density requirements, or simply more flexible maximums, can work in tandem with growth boundaries to shift development from suburban sites toward more central locations, thereby allowing demand to be met in such locations. However, whether growth boundaries actually raise the price of housing or not,

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107. *Id.* at 693.

108. *See* Michael Lewyn, *Sprawl, Growth Boundaries and the Rehnquist Court*, 2002 UTAH L. REV. 1, 35–42 (2002) (discussing debate); Robert Liberty, *Abolishing Exclusionary Zoning: A Natural Policy Alliance for Environmentalists and Affordable Housing Advocates*, 30 B.C. ENVTL. AFF. L. REV. 581, 598 (2003); Randal O'Toole, *The Folly of "Smart Growth,"* REGULATION, Fall 2001, 20, 23 *available at* http://object.cato.org/sites/cato.org/files/serials/files/regulation/2001/10/otoole.pdf (asserting that Oregon policies raise housing prices).

109. *See* Lewyn, *supra* note 108, at 25 n. 186 (explaining why these regions are most comparable to Portland; they are in the West, of comparable size, and have grown at comparable rates); *Id.* at 36 (showing housing price statistics).

110. *See* ZILLOW, www.zillow.com (offering a service enabling users to search for any house within city limits and find charts showing the evolution of housing prices for both neighborhoods and city as a whole).

111. *Id.* I note that these statistics are for individual cities as opposed to entire metropolitan regions. However, region-wide housing prices show similar patterns: metro Portland's median home price (just over $271,000) is higher than that of Salt Lake City (just over $233,000), but lower than that of Denver (just over $288,000) and Seattle (almost $340,000). National Association of Realtors, *Median Sales Price of Existing Single-Family Homes for Metro Areas*, *available at* http://www.realtor.org/sites/default/files/reports/2014/embargoes/2014-q1-metro-home-prices/metro-home-prices-q1-2014-single-family-2014-05-12.pdf. I note that since 2011, all four regions have experienced roughly comparable price increases, ranging from 19 percent in Seattle to 29 percent in Salt Lake City.

112. *See* Stephen Chan, *Drawing the Line: The Effect of Urban Growth Boundaries on Housing Prices in the San Francisco Bay Area* 44, *available at* https://publicpolicy.stanford.edu/publications/drawing-line-effect-urban-growth-boundaries-housing-prices-san-francisco-bay-area (listing San Francisco-area suburbs with growth boundaries; San Francisco is not on the list, and only nineteen of ninety-seven cities in the region had such boundaries).

113. *See City Data San Francisco*, *supra* note 22; *City Data Portland*, *supra* note 98 (publicizing the densities of San Francisco and Portland in their respective profiles).

there is no reason to believe that minimum density requirements would have similar results. In fact, if minimum density requirements succeed in increasing housing supply, such regulations may hold down housing prices rather than raising them.

IV. CONCLUSION

Historically, low-density sprawl has been effectively mandated by law. Land use regulations such as those prescribing density maximums and parking minimums have helped to create the auto-dominated low-density landscape that pervades North America. Recently, some municipalities have recognized the negative side effects of such sprawl; a few cities have even sought to mandate more pedestrian-oriented environments through laws such as density minimums and parking maximums. And, despite the apparent conflict between justifying both maximums and minimums, it is likely that courts will hold both types of regulation to be valid under the rational basis standard.

Minimum density requirements and maximum parking requirements might create a more walkable, environmentally-friendly built environment. However, cities should also consider the possibility that such rules might push development toward less restrictive jurisdictions. Government regulation designed to require smarter, more environmentally-friendly growth may be subject to a difficult trade-off: if regulations are only slightly more restrictive than what an unregulated market might produce, they might not do very much good. But if regulations are significantly more restrictive, they might encourage development to shift to less regulated jurisdictions.

Perhaps the debate going forward will not be between deregulation and more regulation, but rather choosing amongst the right regulations—those that consider regional needs, global environmental impacts, and local interests together. In addition to discussing the advantages of government intervention and reliance upon the market, we should begin to think about how regulation and markets can work together to mitigate social harms while building more walkable and environmentally-friendly cities.