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### National League of Cities speech on zoning

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## NATIONAL LEAGUE OF CITIES ZONING SPEECH Mike Lewyn

Once upon a time, children of all social classes could walk to school. Once upon a time, their parents could take a trolley to work instead of sitting in traffic for hours. Once upon a time, CITY and URBAN were not dirty words in America.

But in the second half of the 20<sup>th</sup> century, American cities were transformed by (and sometimes ruined by) “suburban sprawl” - the movement of people and jobs away from older urban cores to newer, more thinly populated, more auto-dependent areas known as suburbs (whether they were within city limits or not). In the last decade, the continued acceleration of sprawl has met with public resistance. Environmentalists complain that sprawl means more driving and the destruction of rural wetlands and wildlife; residents of cities and older suburbs complain that sprawl turns their communities into wastelands.

When I first got involved in sprawl related issues in the Rust Belt, sprawl was a nonpartisan issue, so it was easy for me to both be a Republican city committeeman and chair of the Sierra Club’s sprawl cte. But here in Atlanta, conservatives tend to respond to public concerns about sprawl by acting like President Clinton did when he was confronted by rumors about his extramarital relationships: deny, deny, deny. Deny that sprawl is a problem, deny that concerns about sprawl are anything more than part of the vast left wing conspiracy to regulate us to death. Similarly, Virginia Postrel wrote in Reason, “The anti-sprawl campaign is about telling Americans how they should live and work, about sacrificing individuals’ values to the values of their politically powerful betters.” The conventional conservative wisdom, as of mid 2001, seems to be that sprawl is the result of the free market at work.

The purpose of this speech is to show that this assumption is incorrect: to show that sprawl is in part caused by Big Brother’s land use and zoning policies. Through building highways to the hinterlands and through a variety of other policies, government at all levels has encouraged the migration of the middle class from city to suburb.

But what I’d like to do in this speech is to talk about a slightly different issue: how government policy has also affected the design of those suburbs, making them far more automobile-dependent than they might be in a truly free market. In the absence of government regulation, many American suburbs might look like Arlington or Bethesda: communities that tolerated the automobile without being enslaved by it. But instead, the majority of American suburbs look like most of Howard and Fairfax Counties: communities where non-automotive transportation is an ordeal. How’d this happen? One word: zoning.

The federal govt. encouraged state and local govts. to create zoning codes through the Standard Zoning Enabling Act, a model statute enacted in the 1920s. Sec. 2 of SZE states: “Regulations shall be uniform for each class or kind of buildings throughout each district.” Thus, SZE defines zones as parcels where all lots have the same minimum lot sizes, thus effectively mandating single use zoning which keeps stores out of residential zones and vice versa, keeps rental property out of zones reserved for single family homes. And SZE encourages those minimum lot sizes to be large: Sec. 3 of this Act provides that zoning

legislation should be designed “to avoid the undue concentration of population.” Most states quickly adopted zoning enabling acts based on SZEAs, and local govts. adopted local ordinances based on these principles.

These local ordinances typically divide suburbs and cities into zones dominated by one category of land use: commercial zones must be exclusively commercial, homeowner zones must be exclusively for homeowners, and so forth. According to Prof. Daniel Mandelker’s treatise on land use law, a typical American zoning ordinance creates separate zones for single-family large lot, single-family medium lot, single-family standard, multi-family low density, general office, neighborhood commercial, community commercial, service commercial, central business district, limited industrial and heavy industrial. Because of separation of uses, you can’t live over a shop anymore, or even anywhere near your job, in some American cities and suburbs.

If these zones were small and close to each other, it might still be possible for people to go from one zone to another w/o driving. But thanks to zoning, this is not the case. Zoning ordinances typically mandate minimum lot sizes of as much as one acre per home (the standard in most Atlanta suburbs). Atlanta is not unique: for example, in 1970 more than 99% of vacant land in NJ was zoned to exclude multifamily housing, and in Connecticut’s Fairfield County 89% of the land was subject to minimum lot requirements of one acre or more. And where densities are as low as one or two homes per acre, very few homes will be within walking distance of stores, and public transit will be economically infeasible because if you only have one home to an acre, very few people will live close enough to a bus stop to be able to walk to one.

The practical consequence of SZEAs and its progeny are that absent a zoning variance, walkable traditional neighborhoods are outlawed in many American suburbs, because every activity demands a separate zone of its own: people can’t live within walking distance of shopping and offices can’t be within walking distance of either.

In the words of James Howard Kunstler, ““We have separated housing from every other human activity. The result is the familiar pattern we see today in edge-city suburbs: commercial offices in one parking pod, commercial retail in another, light industrial in another, and housing on cul-de-sacs, completely isolated from everything. Housing subdivisions consequently have no corner stores and nothing much else within walking distance, except more housing.””

As a practical matter, zoning codes don’t even allow all the things they seem to allow. To quote Prof. Douglas Laycock of the Univ. of Texas law school, zoning ““is administered through highly discretionary and individualized processes that leave ample room for deliberate but hidden discrimination.”” So even if some enterprising landowner tries to build something pedestrian-friendly, some neighbor of the proposed development will complain to the zoning board or the city council, because many of them are afraid any change will make things worse.

And the zoning board will typically decide that even though property rights may be OK for developers out in the country, but in the suburbs people's property rights are subject to the veto power of the people who already live there — or more accurately, of the loudest neighbor, thus creating a kind of heckler's veto over new development. One could profitably spend days talking about the absurdities of existing zoning law, but a couple of recent excesses come to mind. Recently Andres Duany proposed building a large mixed-use multifamily structure in Tysons Corner, one of Washington's largest suburban business districts so that people who worked in Tysons Corner could live there without driving to work. If anyplace could handle high density housing, one would think it would be a major business district. But the neighbors vetoed it because it could cause traffic congestion: so in the world of zoning, if you're making it possible for people to get around without driving, you're creating congestion. Now this kind of argument might make sense in a quiet suburb like Garret Park, but Tysons Corner? Gimme A Break!

In Ramapo, N.Y., a Orthodox Jewish rabbi sought to create a mini-synagogue in his home, so that a few dozen worshippers could walk to synagogue (as those of who followed the adventures of Sen. Lieberman closely know, observant Orthodox Jews walk to synagogue, because they believe that the Bible forbids them to light a fire on the Sabbath, and they also believe that use of internal combustion engines constitute such fire, whether in autos or in public transit). Clearly, there was no issue of traffic congestion in the conventional sense — nevertheless, the neighborhood prohibited the synagogue by incorporating as a village and then rewriting its zoning code to state that home offices and similar activities are not allowed if they “detract from the residential character of the neighborhood.” The city council then held that worship services did exactly that. Although the U.S. Court of Appeals for the Second Circuit threw out the council's decision on First Amendment grounds, pious pedestrians in the 9th Circuit (which includes Calif.) have not been so lucky — so your right to walk to church or synagogue still depends on where you live.

Zoning law is not the only obstacles that local governments use to force suburbanites into their cars. Local governments frequently force businesses, apartment buildings, and developers to provide parking. Nearly all building codes, for example, require apt. bldgs to provide at least one parking space per apt. and sometimes more. For example, Schamburg, IL demands that developers provide 1.5 spaces per one bedroom rental unit, thereby ensuring that apartment buildings actually have more parking spaces than people. This unfunded mandate creates significant costs for developers, thus forcing up the prices of apts and offices. For example, in LA free parking requirements increase the cost of office space by 27%, and nationally parking mandates increase the cost of housing by 12.5%.

But more importantly for my purposes, mandatory parking mandates force pedestrians to walk through a sea of off street parking to get to apts and stores, thus making

nonautomotive transportation inconvenient if not downright unsafe. Moreover, by forcing businesses to provide more parking than a free market would dictate, govt. creates a glut of parking, thus lowering the price of parking and essentially subsidizing driving.

Traffic engineers also make streets unfriendly to pedestrians by making them extremely wide. For example, most of Main St in Buffalo, NY is six lanes wide—even though Buffalo is one of America's least congested cities, and Main St borders some census tracts where a majority of people don't even own cars! What's going on? The traffic engineers decided that the welfare of the poor pedestrians of main street is less important than helping suburbanites get out of the city a few minutes more quickly — and now the state DOT is thinking about widening the street even more in some areas! Why does street width matter? Because as anyone who's tried to walk in a suburb with six or eight lane roads knows, the wider the street, the more dangerous it is to walk down that street. Herbert Spencer, the 19th century libertarian philosopher, once wrote a book, *Man vs. the State*. Today someone should write a book, *The Pedestrian vs. The State*.

Defenders of the status quo claim that sprawl is a result of consumer choice. But that consumer choice is in large part created by government policies. So what are we going to do about it?

The answer is politically difficult, but easy in principle: dismantle the government policies that cause the problem. Dismantle the zoning laws, dismantle the parking requirements, dismantle the whole bureaucratic empire of sprawl. Now you may say, that's too radical. At a minimum, I would suggest a state Pedestrian's Bill of Rights, a statute outlawing local governments' most anti-pedestrian regulations. Specifically, I would propose that states limit or outlaw the following:

1. Government restrictions that make houses or lots bigger than they would be in an unregulated market place. That means no minimum lot sizes, no minimum yard sizes, no laws saying how far something should be set back from the street.
2. Government restrictions on residential developments in commercial zones. If you want to build an apartment building in Tysons Corner, you should be able to.
3. States should require zoning laws to allow at least a minimum of commerce in residential areas. I realize that most homeowners can't be expected to live next to a steel mill. But to say, as Georgia's Dekalb County recently did, that you shouldn't be allowed to teach piano lessons in a residential neighborhood, is just ridiculous. Zoning laws should allow commercial development in residential zones up to a minimum of a subdivisions' square footage (say, 10%) so people could walk to amenities without having their neighborhoods completely transformed. Home offices should be permitted if they don't involve show windows or similar advertising.
4. Municipalities should not be allowed to afflict the public with a blight of parking lots – that

means no minimum parking requirements.