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# American Cities, Urban Planning, and Place Based Crime Prevention

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# AMERICAN CITIES, URBAN PLANNING, AND PLACE BASED CRIME PREVENTION

By

Edward H. Ziegler<sup>1</sup>

We have become strangers sharing the largest collective habitats in human history. Because of the size and density of our newly evolving urban megalopolis, we have become more dependent on each other and more vulnerable to aberrant behavior than we have ever been before . . .

. . . The form of buildings and their arrangement can either discourage or encourage people to take an active part in policing while they go about their daily business. "Policing" is not intended to evoke a paranoid vision but refers to the oldest concept in the Western political tradition: the responsibility of each citizen to ensure the functioning of the *polis*.

Oscar Newman, *Defensible Space* (1973)<sup>2</sup>

## I. Introduction

Nearly a generation after Oscar Newman first wrote about the issues of place-based crime prevention and defensible space, cities large and small throughout the world are showing interest in what is now generally known as the field of "Crime Prevention Through Environmental Design" (CPTED).<sup>3</sup> This field of

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<sup>2</sup> OSCAR NEWMAN, *DEFENSIBLE SPACE* 1, 3 (1973); see also ROBERT PARK, ET AL., *THE CITY* (1925) (suggesting a link between architecture, social interaction, and crime rates in American cities in an earlier work).

research is influencing the physical design of projects in the revitalization and redevelopment of both central cities and older suburban areas.<sup>4</sup> In the United States and elsewhere throughout the world, preventing crime and reducing the fear of crime<sup>5</sup> continue to be high priorities of citizens and city officials.<sup>6</sup> CPTED principles are increasingly viewed as important tools to enhance the physical safety of citizens and to protect the public and private economic investment in new development projects, particularly, large urban mixed use residential-

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<sup>3</sup> See generally C. RAY JEFFERY, *CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN* (1977); Peter Olasky, *Crime Impact Statements*, 37 COLUM. J. L. & SOC. PROBS. 329 (2004) (discussing the potential for requiring crime impact analysis in government development review proceedings). Olasky states:

Architecture, ranging from the design of one building to the layout of an entire city, can limit the opportunities or increase the perceived risk of committing a crime. Over the past forty years, a handful of architects, criminologists, and social theorists have demonstrated the truth of this premise, often deemed "Crime Prevention through Environmental Design" . . .

*Id.* at 330.

<sup>4</sup> See NEWMAN, *supra* note 2, at 207 ("Architecture operates more in the area of "influence" than control. It can create a setting conducive to realizing the potential of mutual concern. It does not and cannot manipulate people toward these feelings, but rather allows mutually benefiting attitudes to surface.")

<sup>5</sup> In the United States, despite the fact that actual crime rates generally have been falling, the fear of crime is still an important public issue in citizen surveys. Ted Kitchen & Richard H. Schneider, *Crime and the Design of the Built Environment: Anglo American Comparisons of Policy and Practice*, in *HABITUS: A SENSE OF PLACE* 241, 251 (Jean Hillier & Emma Rooksby eds., 2002). "Crime and the fear of crime- particularly violent crime-consistently score very heavily in local quality of life studies, and there can be little argument that there are significant environmental components that influence- for good or ill- both the opportunity for crime and people's fear that crime is likely to be committed." *Id.* at 241.

<sup>6</sup> See generally Kitchen, *supra* note 5; see also Kim Dovey, *The Silent Complicity of Architecture* in *HABITUS: A SENSE OF PLACE* 267 (Jean Hillier & Emma Rooksby eds., 2002). Dovey notes:

The task of design is an inherently social practice of negotiating socio-spatial structures, space allocations, boundaries and formal expressions of identity. If social responsibilities were taken more seriously by the profession then it would gain legitimacy for the production of both symbolic and social capital. Architects inevitably manipulate modes of spatial encounter – the issue is not whether but how they may do so.

*Id.* at 276.

commercial-entertainment centers and in new urban and suburban large housing developments.<sup>7</sup>

The goals of CPTED are to increase public safety and promote a sense of physical security through the physical design and planning of the built environment.<sup>8</sup> CPTED principles attempt to reduce the opportunities for crime by making crime more difficult, more risky, or less rewarding.<sup>9</sup> Generally, CPTED principles address four different aspects of crime prevention: (1) increasing physical security through various “target hardening” measures, largely related to controlling access to particular places, and may involve the treatment and securing of doors, windows, and alarms, etc.<sup>10</sup>; (2) increasing physical security at the larger site-design level through the planning of physical movements, interactions, and surveillance opportunities, etc.;<sup>11</sup> (3) increasing physical security through the design and planning of effective community control and policing opportunities, both public and private, and through plans and activities related to the use, physical upkeep, and appearance of buildings and nearby

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<sup>7</sup> See generally Neal Kumar Katyal, *Architecture And Crime Control*, 111 YALE L. J. 1039 (2002); RICHARD GARDINER, *DESIGN FOR SAFE NEIGHBORHOODS* (1978); SCHLOMO ANGEL, *DISCOURAGING CRIME THROUGH CITY PLANNING* (Ctr. For Planning & Dev. Research, Univ. of Cal., Berkeley, Working Paper No. 75, 1968).

<sup>8</sup> See JEFFERY, *supra* note 3, at 223-224 (“[t]he interaction of man and the environment is basic to such an approach. This implies planning with man in mind, or as Sommer has stated, planners and designers should have some notion of the animal for which they design.”).

<sup>9</sup> See Olasky, *supra* note 3, at 322 (“[i]f crime results partly from opportunities presented by the physical environment, it should be possible to alter the environment so that crime is less likely to occur. Less than half of all criminal offenses are reported to police and only a small percentage of those are ever solved. Therefore, reducing the occurrence of crime accomplishes much that the criminal justice system does not.”)

<sup>10</sup> Katyal, *supra* note 7, at 1067.

<sup>11</sup> NEWMAN, *supra* note 2, at 2-3:

site;<sup>12</sup> and (4) increasing physical security through neighborhood social planning and educational programs related to crime awareness and prevention.<sup>13</sup>

In the early years of the twentieth century, cities in the United States began to show some interest in urban planning and design beyond simply “city beautiful” projects related to public buildings, plazas, parks, and boulevards.<sup>14</sup> American cities began to adopt building codes and zoning regulations controlling land use and development to protect public health and safety and to protect the character of residential neighborhoods. Some American cities at this time used zoning regulation of land uses to regulate the location of certain “disfavored” land uses, such as billard parlors, dance halls, cabarets, saloons, and houses of prostitution that were thought to be the locus of criminal activity.<sup>15</sup> Many cities in the United States still have these types of location regulations, especially with respect to

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<sup>12</sup> Katyal, *supra* note 7, at 1050; NEWMAN, *supra* note 2, at 2-3.

<sup>13</sup> See RALPH B. TAYLOR & ADELE V. HARREL, PHYSICAL ENVIRONMENT AND CRIME 11-12 (1996) (Nat'l Inst. Of Justice Research Report) (emphasizing the need for community involvement); J. D. FEINS, ET AL., SOLVING CRIME PROBLEMS IN RESIDENTIAL NEIGHBORHOODS: COMPREHENSIVE CHANGES IN DESIGN, MANAGEMENT, AND USE (1997) (Nat'l Inst. Of Justice Research Report). Feins states:

The most effective place-based crime prevention strategies are those that take into account the geographic, cultural, economic, and social characteristics of the target community. Thus, the selection of place-based crime prevention strategies and tactics should be made in close collaboration with the community, after sustained observation of its current patterns of use.

*Id.* at xi.

<sup>14</sup> EDWARD H. ZIEGLER, RATHKOPH'S THE LAW OF ZONING AND PLANNING VOL. 2 § 1:2 (4<sup>th</sup> ed., 2006) (discussing the influence of the city beautiful movement on American cities and early zoning laws).

<sup>15</sup> *Id.*; see Edward H. Ziegler, *Trouble In Outer Gallactica: The Police Power, Zoning, And Coin-operated Video Games*, 34 SYRACUSE L. REV. 453, 474-483 (1983) (discussing the early use of city police power to combat the perceived evils of gambling, billiards, prostitution, the drinking of alcohol, loitering, etc.).

sexually explicit commercial entertainments.<sup>16</sup> In the later part of the twentieth century, American cities took a new interest in managing urban planning and design of the built environment with the hope of utilizing place-based crime prevention principles to reduce urban crime generally and, in particular, to deal with the high level of criminal activity at low-income public housing projects<sup>17</sup> and its disproportionate impact on the poor and less affluent.<sup>18</sup> This article provides a brief overview of the literature related to CPTED principles and programs and of the local governmental legal mechanisms and regulatory devices used in the implementation of CPTED principles and programs by American cities.<sup>19</sup>

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<sup>16</sup> VOL. 2 ZIEGLER, *supra* note 14, at 24:2.

<sup>17</sup> See generally NEWMAN, *supra* note 2; CRIME PREVENTION THROUGH HOUSING DESIGN (Paul Stollard ed., 1991); Katyal, *supra* note 7; see also OSCAR NEWMAN, CREATING DEFENSIBLE SPACE 25 (1996) (U. S. Dept. of Housing and Urban Dev. Research Report.) (discussing place-based crime prevention design for multiunit public housing and urban neighborhoods). Newman notes, in regard to the relationship between crime rates and the design of public housing:

The relationship between the socioeconomic characteristics of residents and a project's crime rate had long been suspected. The most fascinating finding to come out of the data analysis presented in *Defensible Space* (1972) was, therefore, the influence of building height and number of units per entry in predicting crime rate. Regardless of the social characteristics of inhabitants, the physical form of housing was shown to play an important role in reducing crime and in assisting residents in controlling behavior in their housing environments.

In addition to the fact that buildings with a large number of families sharing an entry experience higher crime rates than those with few families per entry, they are also vulnerable to additional types of criminal activity. Most of the crimes experienced by residents of single-family dwellings is burglary, committed when members of the family are either away from home or asleep. By contrast the of large, multifamily dwellings experience both burglaries and robberies. The higher crime rate experienced by residents in large multifamily dwellings is mostly attributable to the occurrence of robberies in the interior common-circulation areas of multifamily buildings: lobbies, hallways, stairs, and elevators. (NEED TO KNOW THE PAGE WHERE THIS QUOTE IS FOUND)

<sup>18</sup> As a number of reports point out, perhaps the greatest potential gains to be had from place-based crime prevention and other initiatives to reduce crime are in the some of the poorest and less affluent urban areas. See Kitchen, *supra* note 5, at 261; NEWMAN, *supra* note 2, at 3-4.

<sup>19</sup> Two of the most detailed and comprehensive works on this topic in the English language are: NATIONAL GUIDELINES FOR CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN IN NEW ZEALAND, PART I: SEVEN QUALITIES OF SAFER PLACES (2005) (New Zealand Ministry of Just.) [hereinafter NATIONAL GUIDELINES FOR NEW ZEALAND PART I]; NATIONAL GUIDELINES FOR CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN IN NEW ZEALAND, PART II, IMPLEMENTATION GUIDE (2005) (New Zealand Ministry of Just.) [hereinafter NATIONAL GUIDELINES FOR NEW ZEALAND PART II]; see also

## II. Urban Planning and Design and the Principles and Programs of Place-Based Crime Prevention

An increasing body of literature available in the United States focuses on urban planning and design to promote place-based crime prevention.<sup>20</sup> There is an increasing realization among architects, city planning, and zoning officials that the design of the built environment may influence the level of criminal activity at a particular building or location.<sup>21</sup> It is now well understood that some areas are the location for a disproportionate number of crimes.<sup>22</sup> CPTED principles involve the study of crime prevention techniques at particular types of sites and locations. Urban redevelopment or new development projects are now often considered with respect to the potential to reduce criminal opportunities and incentives through site planning and design of the proposed buildings and site operations. As a recent report by the American Planning Association observed:

Planning and design that neglect human behavior and basic needs result in neighborhoods that fail to provide the ingredients for positive interaction and community building. Future development, redevelopment, and revitalization must take into consideration the inter-relationships between people and the built environment that are essential to positive

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AL ZELINKA & DEAN BRENNAN, *SAFESCAPE* (2001) (Am. Plan. Ass.) (discussing place-based crime prevention urban planning techniques utilized in American cities).

<sup>20</sup> See Katyal, *supra* note 7; Dovey, *supra* note 6, at 276 (“[a]rchitects also necessarily shape a representational world wherein certain forms of identity and place are stabilized and authorized through built form. Architecture engages in imaginative play with our dreams of status, sexuality, security, and immortality; our fears of violence, death, and difference. While we may articulate theories of fluidity, transparency, vitality and ephemerality, architecture has great inertia – it inevitably ‘fixes’ a great deal of economic capital into built form....Again the issue is not ‘whether’ but ‘how’ it does so”).

<sup>21</sup> See Katyal, *supra* note 7.

<sup>22</sup> See John Eck, *Preventing Crimes At Places* in *EVIDENCED BASED CRIME PREVENTION 1* (2002) (Lawrence W. Sherman et al. eds.) available at <http://www.ncjrs.gov/works/chapter7.htm> (discussing studies showing the clustering of crimes at specific places and noting that some studies found 60% of crimes occurred in 10% of the places within a city).

use and activity. This will result in a reduction in the fear of crime, an improvement in public safety, a fostering of socialization, and the creation of a sense of community.<sup>23</sup>

Generally, the CPTED literature emphasizes: (1) raising public awareness of the relationship between crime prevention and the design and operation of the built environment; (2) promoting crime-prevention design as a regular and key component of good urban design in all public and private buildings and facilities; and (3) encouraging cities to adopt reasonable design standards and guidelines involving place-based crime prevention in the local governmental zoning and development review and building permit approval process.<sup>24</sup> While the local public agencies and neighborhood groups that can assist a city in these CPTED efforts may vary depending on the particular community and local circumstances, the involvement of local police, building officials and affected local residents and businesses is usually deemed essential for effective place-based efforts to reduce crime in an area.<sup>25</sup>

The place-based crime prevention process typically begins by assessment of the potential criminal risks that are likely to be generated by the development, use, and operation of either existing or proposed buildings and sites. Data collection and assessment is usually undertaken and neighborhood residents,

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<sup>23</sup> ZELINKA & BRENNAN, *supra* note 19 at 4 cited in DESIGNING DEVELOPMENT TO REDUCE CRIME. Monograph presented by these authors at the Rocky Mountain Land Use Institute Eighth Annual Conference, March 12, 1999. ROBERT J. BURSIK, JR. & HAROLD G. GRASNICK, NEIGHBORHOODS AND CRIME 53 (1993).

<sup>24</sup> NEWMAN, *supra* note 2, at 2-3; Kitchen, *supra* note 5 at 251-256; BURSIK & GRASNICK, *supra* note 23; Stephanie W. Greenberg et al., *Safety In Neighborhoods: A Comparison Of Physical Characteristics and Informal Territorial Control in High and Low Crime Neighborhoods*, 5 POPULATION & ENV'T 141 (1982).

<sup>25</sup> ZELINKA & BRENNAN, *supra* note 19.



businesses, and related public agencies are encouraged to be involved and actively participate in the process. Potential crime-reducing design safeguards and procedures are then attempted to be incorporated into the proposed land use, building, and site plans. This may occur through the voluntary efforts of private owners or through a mandatory government site-design review and building permit approval process.<sup>26</sup>

Some placed-based crime prevention guidelines and standards that could be adopted for land use and site design of the built environment, as drawn from the literature, are listed below.<sup>27</sup>

#### 1. Access: Safe Movement and Connections<sup>28</sup>

- Clear routes for different modes of traffic are provided
- Movement safety is maximized between key destinations and entrapment spots eliminated

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<sup>26</sup> See VOL. 5 ZIEGLER, *supra* note 14, at 87:2.-87:4. In this process a site plan is required to be submitted by a developer showing the proposed location of buildings, parking areas, and other structures and improvements on the land, and their relation to existing conditions such as roads, neighboring land uses, natural features, public facilities and other public or private improvements. Site plan review is used by a city in conjunction with some form of discretionary approval of a building permit application. This review process allows the city to consider appropriate design and development issues related to access, building layout, natural and man made features, aesthetic appearance and design, environmental impact, landscaping, and public safety.

<sup>27</sup> These listings are adapted from NATIONAL GUIDELINES FOR NEW ZEALAND PART I, *supra* note 11, at 11-12.

<sup>28</sup> See NEWMAN, *supra* note 2, at 2-3 (“[a]rchitectural design can make evident by the physical layout that an area is the shared extension of the private realms of a group of individuals. For one group to be able to set the norms of behavior and the nature of activity possible within a particular place, it is necessary that it have clear, unquestionable control over what can occur there. Design can make it possible for both inhabitant and stranger to perceive that an area is under the undisputed influence of a particular group, that they dictate the activity taking place within it, and who its users are to be. This can be made so clearly evident that residents will not only feel confident, but that it is incumbent upon them to question the comings and goings of people to ensure the continued safety of the defined areas. Any intruder will be made to anticipate that his presence will be under question and open to challenge; so much so that a criminal can be deterred from even contemplating entry.”).

- Multiple exit routes are provided from public spaces and along pedestrian routes
- Routes do not provide offenders with ready and unnoticed access to pedestrians, especially at night

## 2. Surveillance and Sightlines: See and Be Seen<sup>29</sup>

- Good visibility, sightlines, and casual surveillance are provided
- Surveillance from adjacent areas and buildings is maximized
- Concealment and isolation opportunities are reduced
- Fencing, landscaping and streetscape features enhance visibility
- Lighting opportunities are carefully considered

## 3. Site Design: Clear and Logical Orientation<sup>30</sup>

- Layout supports safe movement and clear orientation for way finding
- Design appropriately considers and reduces potential crime risks at site
- Ground level buildings provide active frontages and surveillance to street (e.g. windows, doors, displays )
- Public spaces are attractive, maintained, and support activity
- Entrances and exits are clearly ascertained and accessible
- Signage is clear and informative about surrounding area, routes, and public facilities

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<sup>29</sup> See JEFFERY, *supra* note 3, at 234. Defensible space means creating territorial areas with through streets which make access and surveillance easy. Definite zones of transition from public to semiprivate to private space would be created through the use of design, color, surface textiles, and so forth. A person should know that a walkway to a door is private or semiprivate territory, and that a stranger will be defined as an intruder who does not belong there. Semiprivate space for playgrounds would also be utilized. Surveillance opportunities would be created by the way in which buildings, streets, shrubbery, trees, and fences are used. To defend space means to control interior public space which is potentially dangerous: lobbies, elevators, stairwells, and corridors.

<sup>30</sup> See ZELINKA & BRENNAN, *supra* note 19, at 1 (“[c]rime and, perhaps more importantly, the fear of crime are major challenges to the livability of our communities. The manner in which places are designed, built, and maintained affect the way we behave and feel. All too often, the physical environment creates opportunities for and underlies our fears relating to crime. We are content when a place is aesthetically pleasing and well maintained. We feel safe when a place facilitates walking, interaction, and learning and when it is designed so we can see our surroundings, control our direction, and move in the presence of others.”).

#### 4. Activity Mix: Informal Surveillance is Supported<sup>31</sup>

- Active use of public space is maximized
- Design supports mixed use activity generators
- Potential conflicts of mixed use addressed
- Strategies support residential uses and pedestrian traffic
- Day and appropriate night time uses are supported

#### 5. Sense of Place and Ownership<sup>32</sup>

- Spaces are clearly identified as public, communal, or private
- Boundaries between spaces are readily perceived
- Property numbering and identification are clear

#### 6. Attractive and Well Maintained Environments<sup>33</sup>

- Appropriate and active use of public areas is supported
- Appropriate management and maintenance systems are in place
- Design and layout support management and maintenance
- Local users and businesses are involved in management
- Materials and fixtures are vandal resistant and easily maintained
- Alliances between residents and businesses are supported

#### 7. Physical Protection and Barriers<sup>34</sup>

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<sup>31</sup> See Katyal, *supra* note 7, at 1050 (“[n]atural surveillance refers to the use of architecture to create spaces that are easily viewed by residents, neighbors, and bystanders. The most famous exponent of this view was Jane Jacobs, who reasoned that ‘eyes on the street’ would deter crime. Jacobs goal was to investigate why crime rates differed among cities. She discarded the conventional theories of architecture and crime, such as those contending that building more public housing would prevent crime. Instead, she emphasized the density and diversity of city life.”).

<sup>32</sup> See NEWMAN, *supra* note 2, at 4 (stating that one can create “defensible space” in multi-unit housing “by grouping dwelling units to reinforce associations of mutual benefit; by delineating paths of movement; by defining areas of activity for particular users through their juxtaposition with internal living areas; and by providing for natural opportunities for visual surveillance.”).

<sup>33</sup> See Kitchen, *supra* note 5, at 253 (discussing the issue of how maintenance of the built environment can provide negative signals inducing crime – also known as the “broken windows” inducement for crime).

<sup>34</sup> See Katyal, *supra* note 7, at 1067 (“[o]ne of the more obvious ways in which architecture can prevent crime is by strengthening targets against attack. Some of these techniques are easy to employ, such as placing deadbolts lower on door frames, having doors in vulnerable locations

- Consideration is given to visual “softening” of target hardening measures
- Barriers are well designed and integrated into landscaping and streetscape
- Site design maximizes active pedestrian private and public policing

Based on community data related to criminal activity in various areas and places or as a result of citizen surveys about the fear of criminal activity at various places, communities may prioritize local efforts addressing place-based crime prevention.<sup>35</sup> Places prioritized for active public or private intervention may include:<sup>36</sup>

- Multi-unit residential developments
- Street Malls
- Entertainment centers
- Tourist areas
- Civic centers and plazas

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swing outward, raising fire escapes to put them out of easy reach, and reducing the size of letter-box openings. Modern technology permits targets to be hardened in ways that are not obvious to the public. Strong plastics, graffiti-resistant paint, and doors with steel cores are a few examples. These advances allow architects to disguise their efforts at strengthening targets and thus avoid sending a message that crime is rampant.”).

<sup>35</sup> State and local Governments in the United States are integrating antiterrorist security measures into the planning, design, and operation of major public monuments, buildings, and other facilities. Cities are attempting to adapt and integrate place-based crime prevention measures into their urban planning strategies and development standards. A recent report in an American Planning Association publication discusses how CPTED principles can be used to address homeland security concerns. The report calls for site-specific assessments of the vulnerability of and the potential threats to terrorist sensitive facilities through design, planning, and site-plan review, the implementation of prudent homeland security measures, and strategies to reduce and mitigate those threats and hazards. Rufus Young & Dwight Merriam, *Homeland Security Begins At Home: Local Planning and Regulatory Review to Improve Security*, *Land Use L. & Zoning Dig.*, Nov. 2003, at 4; see also Richard Schneider, *American Anti-terrorism Planning and Design Strategies*, 15 U. FLA. J. L. & PUB. POL’Y 129, 134-42 (2003).

<sup>36</sup> NATIONAL GUIDELINES FOR NEW ZEALAND PART II, *supra* note 19, at 14; see also Kitchen & Schneider, *supra* note 5, at 252-253.

- Public parks and playgrounds
- Pedestrian bridges and overpasses
- Public transport stations and stops
- Pedestrian and cycle routes
- Car parks
- Public toilets
- Bank teller machines

A common and a potentially cost/effective place-based crime prevention strategy is “target hardening.” Target hardening tactics typically seek to reduce or block opportunities for crime or simply seek to make criminal activity more difficult. In residential buildings, these efforts might include:<sup>37</sup>

- Increasing informal surveillance
- Reducing hiding places
- Increasing visibility
- Controlling access
- CCTV surveillance
- Alarms and intrusion detection systems
- Secure doors and windows
- Active community policing
- Visible security personnel
- Building design that supports safe access, use, and parking
- Continuing crime awareness programs

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<sup>37</sup> See NATIONAL GUIDELINES FOR NEW ZEALAND PART I, *supra* note 19, at 11-12; Kitchen & Schneider, *supra* note 5, at 254-256; see generally Eck, *supra* note 22.

An extensive survey and review of published studies of various target hardening techniques concluded that these programs can work in reducing place-based crime.<sup>38</sup>

This survey examined studies published in the United States, Australia, and the United Kingdom that evaluated the effectiveness of place-based target hardening strategies involving four different types of places: (1) residential buildings; (2) commercial money handling places ( retail stores, banks, and bars); (3) transportation places (airports, public facilities, and parking areas); and (4) select public spaces ( open urban spaces and coin machines).<sup>39</sup> This study found that overall more than 90% of the interventions reported some reduction of crime at places where such strategies had been implemented.<sup>40</sup> The study noted that while “there is uncertainty about what works, at which places, against which crimes”<sup>41</sup> the broader finding was that “opportunity blocking tactics can be productive.”<sup>42</sup>

### III. The Governmental Framework and Legal Mechanisms for City Implementation of Place-Based Crime Prevention Strategies

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<sup>38</sup> See Eck, *supra* note 22; Katyal, *supra* note 7, at 1067-1068 (citing and discussing studies involving crime reduction at banks, post offices, and convenient stores); see also Olasky, *supra* note 3, at 332 (“[a]lthough this is a commonsense observation – a dark deserted alley seems more dangerous than a busy, well lit area – research studies have provided confirmation. For example, in one study burglars were shown photographs of houses and asked to sort the photos on whether they appeared to be promising targets. Naturally, the burglars selected secluded houses and as prime targets. Crime statistics provide additional evidence. For example, in two housing projects in the Bronx, one with a lobby visible from the street and one without, the project with a visible lobby had a crime rate thirty-three percent below the New York average while the project with a lobby hidden from public view had a crime rate fifty-two percent higher than the city average.

<sup>39</sup> *Id.* at 4.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 34.

<sup>42</sup> *Id.*

In the United States, legal jurisdiction for government management and policing of building and lands is divided into three spheres. The national government manages and policies all federally owned lands and facilities, the various individual state governments manage and police their state owned lands and facilities within their respective territories, and local governments, such as cities, management and police local government owned lands and facilities. Governmental powers related to controlling urban planning and design are delegated by state laws to city governments. City governments control private land subdivision and use and private building site plans and design by “police power” regulation through zoning and building regulations.<sup>43</sup>

Generally, a city that wishes to undertake some type of place-based crime prevention will begin by facilitating public participation in prioritizing the places and developing the strategies for such programs. The city will attempt to identify and assess the potential criminal risks at various places and facilities and may utilize citizen opinion surveys about the fear of crime at various locations. The city will then attempt to adopt some guidelines and standards for place-based crime prevention at selected places and facilities. These standards and guidelines can then be implemented by the city at public places and facilities and can be voluntarily implemented by private neighborhood businesses and resident groups with assistance from city staff and with perhaps some city funding. The city then attempts to implement some ongoing process for assessment and

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<sup>43</sup> VOL. 1 ZIEGLER, *supra* note 14, at 1:19.

change in these programs and strategies as deemed appropriate.<sup>44</sup> A city's place-based crime prevention strategies may also be implemented as legal standards and guidelines to govern all privately owned land use and development within the city. The legal framework and implementing mechanisms for city restrictions governing private ownership of land use and building development are described below.<sup>45</sup>

A city's legal jurisdiction for police power regulation of private ownership of land use and development may extend to any aspect of the built environment that involves protection of the public health, safety, or the general welfare. The legal jurisdiction of a city to undertake place-based crime prevention programs either through public management of public places and facilities or through local government police power regulation of private land use and development is unlikely to be a significant issue in the United States.<sup>46</sup>

Each city decides for itself whether to engage in place-based crime prevention programs as there is presently no national or state law that requires cities to undertake these programs. The national and state governments do sometimes provide for limited funding for these kinds of city programs. American cities, however, often are short of funds and must prioritize spending and the allocation

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<sup>44</sup> See ZELINKA & BRENNAN, *supra* note 19 (discussing place-based crime prevention programs utilizing urban planning techniques in the following American cities: Minneapolis, Minnesota; Olympia, Washington; Phoenix, Arizona; Oak Park, Illinois; and Rosebud, Oregon).

<sup>45</sup> See generally VOL. 1 ZIEGLER, *supra* note 14, at 1:12.

<sup>46</sup> *Id.*



of city resources, which often leads to greatly different levels of effort with respect to crime prevention programs among different cities.<sup>47</sup>

American cities typically regulate land use and development through “zoning codes” and “building codes” which specify the regulations that govern private land use and building development. The basic tools of zoning are a zoning map of the city (which designates geographically different zoning districts within the city) and a zoning code (which specifies the allowed uses and restrictions on building development in the various city zoning districts).<sup>48</sup> Cities, also often have a “comprehensive urban plan” for future development that sets forth a city’s goals and policies for future land use and building development within the city. Often, cities also will have separate subarea or neighborhood plans that set out a city’s goals and policies for future urban development in specific areas of the city.<sup>49</sup> The goals and policies of these subarea plans provide a guide for a city’s zoning and building codes that regulate private land and building development in those areas. These plans also frequently address important quality of life and community issues related to land development. These subarea urban plans can be referenced by city officials when the city is considering whether to approve permits for proposed private building developments.<sup>50</sup>

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<sup>47</sup> See ZELINKA & BRENNAN, *supra* note 19.

<sup>48</sup> See VOL. 1 ZIEGLER, *supra* note 14, at 10:3.

<sup>49</sup> *Id.* at 11:8.

<sup>50</sup> See VOL. 2 ZIEGLER, *supra* note 14, at 14:4.

Any significant building development within a city may be made subject to government control through the process of site-plan review.<sup>51</sup> In this required site-plan review process, city officials decide whether to approve a permit for any proposed private land use or development.<sup>52</sup> City officials in making these decisions look to the city's comprehensive urban plan, to the specific subarea or neighborhood plan for the place in question, and to the city's zoning and building codes. These official documents provide the city's legal standards and guidelines for approving permits for building development. These legal standards for building approval may be more or less "objective" measurable standards, such as linear distance restrictions on building setbacks, yards, or building height, or the restrictions may be "subjective" more or less discretionary standards based on some type of impact assessment analysis, such as the provision of "adequate" parking or utilization of "safe" road access points, etc.<sup>53</sup>

Place-based crime prevention standards and guidelines can be incorporated into a city's comprehensive urban plan, its subarea or neighborhood plans, its zoning and building codes, and the legal standards and guidelines for use by city officials in site-plan review of permits for private building development. These standards and guidelines may involve restrictions on location of a particular type of land use or activity, restrictions on site and building design, or may involve management and operational restrictions. All of these laws and standards can be enforced by the grant or denial of building permits (without which the

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<sup>51</sup> See VOL. 5 ZIEGLER, *supra* note 14, at 87:3.

<sup>53</sup> See VOL. 3 ZIEGLER, *supra* note 14, at 60:10.

development activity is illegal) and by the grant or denial of occupancy permits for a particular place (without which the use of the premises is illegal).<sup>54</sup>

City officials typically may either grant the private owner the permits requested after site plan review, deny the permits requested after site plan review, or perhaps, and as is most often the case, the city can grant the requested permits after site-plan review but subject to the private owner complying with specific permit "conditions" on future building development or operations. Some of these permit conditions on building development may be imposed based on application of place-based crime prevention standards and guidelines.<sup>55</sup>

As a matter of United States' national constitutional law, city laws in the form of police power regulations (such as standards and guidelines governing private conduct related to place-based crime prevention) must meet certain established criteria for protection of private property rights. American courts will rule city police power regulations invalid if the restrictions or conditions either: (1) are found by the court not to reasonably promote public health, safety, or the general welfare;<sup>56</sup> (2) are found by the court to unreasonably discriminate against some private owners;<sup>57</sup> or (3) are found by the court to deny an owner any economically viable use of the land (this is considered a taking of private property for which the local government must pay the private owner monetary

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<sup>54</sup> See VOL. 2 ZIEGLER, *supra* note 14, at 65:1.

<sup>55</sup> See ZELINKA & BRENNAN, *supra* note 19.

<sup>56</sup> See VOL. 2 ZIEGLER, *supra* note 14, at 2:3.

<sup>57</sup> *Id.* at 2:4.

compensation).<sup>58</sup> These are all constitutional standards that are usually easily satisfied by a city. Most city zoning and building regulations are seldom, if ever, challenged in court by affected private owners.

A city's legal standards and guidelines for place-based crime prevention are treated by courts in the United States no differently than other more ordinary city restrictions on private land development, such as plumbing, windows, and lighting, etc. There are no special laws in the United States controlling these areas of the law except where the national government controls the activity or place involved, such as at airports or national monuments, etc. Courts apply the usual constitutional criteria, as set out above, in evaluating the legal validity of city laws on place-based crime prevention. There are a number of recent court decisions in the United States dealing with the legal validity of a city's place-based crime prevention standards, such as lighting requirements, security guards, and hours of operation for convenience retail stores and with respect to the location, internal design, seating, lighting and operation of certain types of saloons and cabarets.<sup>59</sup> All of these court decisions generally have ruled these standards legally valid as they are found to reasonably promote the public safety and welfare.<sup>60</sup> Courts in the United States have often upheld the legal validity of other legal conditions on building design and development such as pedestrian routes, open spaces, fences, landscaping, vegetative covers, maintenance, and buffers, parking access and design controls, building bulk, design, height,

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<sup>58</sup> *Id.* at 2:5.

<sup>59</sup> See VOL. 2 ZIEGLER, *supra* note 14, at 24:40.

<sup>60</sup> See VOL. 2 ZIEGLER, *supra* note 14, at 60:18 - 60:39.

access, and orientation, and requirements related to doors, windows, internal areas, and street orientation, etc.<sup>61</sup>

#### IV. Some Concluding Thoughts

The experience of American cities with place-based crime prevention through urban planning and design is fairly recent and somewhat limited and good empirical studies of what actually works, for which crimes, and at which places do not always exist.<sup>62</sup> This also seems to be true in other countries.<sup>63</sup> Studies of place-based crime prevention seldom show clearly what actually has worked to reduce particular crimes at particular places. While studies do show that place-based target hardening programs have produced positive results,<sup>64</sup> more studies in this field will be needed both in the United States and elsewhere to have a better knowledge of the efficacy of place-based crime prevention techniques.<sup>65</sup>

Displacement of crime from one area of a city to another nearby area is also a concern of public officials with respect to place-based crime prevention programs. Many types of crimes, however, are largely opportunistic and displacement to another area is likely to be far less than 100%.<sup>66</sup> In fact, a review of the available studies indicates that there is little empirical evidence that

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<sup>61</sup> *Id.*

<sup>62</sup> Eck, *supra* note 22, at 34.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 4; see also L. W. SHERMAN, ET AL, PREVENTING CRIME: WHAT WORKS, WHAT DOESN'T, WHAT'S PROMISING (1998) (Nat'l Inst. Of Just. Research Report).

<sup>65</sup> Eck, *supra* note 22, at 34; see also Kitchen, *supra* note 5, at 242-246.

<sup>66</sup> See JEFFERY, *supra* note 3, at 228-229.

displacement occurs.<sup>67</sup> There are, at least, theoretical reasons to believe that there actually may be a diffusion of the benefits of place-based crime prevention. As one report observed, under some circumstances “offenders may be uncertain about the scope of prevention efforts and avoid both the blocked opportunities and similar unblocked opportunities. When this occurs, prevention may spread.”<sup>68</sup>

There are also likely to be important differences in the “culture of crime” between different countries when formulating place-based crime prevention techniques. Though the benefits of certain target hardening techniques, such as securing access, doors, and windows may well be universal, there are likely to be relevant and highly variable culturally specific aspects to the efficacy of specific place-based crime prevention programs.<sup>69</sup> Nearly anywhere in the world today, in any large metropolitan city, there are likely to be great differences in ethnicity, age, class, education, gender, identity, and culture between neighborhoods. This diversity of neighborhoods suggests the vital importance in any city of direct neighborhood involvement in the formulation and management of these and similar crime prevention programs.<sup>70</sup>

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<sup>67</sup> Eck, *supra* note 22, at 35-36; JEFFERY, *supra* note 3, at 228-229.

<sup>68</sup> Eck, *supra* note 22, at 36.

<sup>69</sup> See Kitchen, *supra* note 5, at 242 (“[w]e believe that if we are to learn effectively from the experience of trying out other people’s ideas, we need to understand the cultural and socio-economic contexts which led to the emergence of those ideas in the first place, the specific circumstances in which they were applied, and the outcomes that materialized.”).

<sup>70</sup> See Dovey, *supra* note 6, at 278 (“[r]eal communities are shot through with differences of identity, ethnicity, age, class, and gender. A socially engaged architecture entails the deconstructive and reconstructive tasks of exposing and giving voice to real public interests; unpacking and restructuring the habitus. Such a programmatic deconstruction would entail a systematic engagement with the ways in which the lifeworld has been sliced, its functions categorized, coded, juxtaposed and omitted. The key role of architects is to join design imagination to the public interest; it is to catch the public imagination with visions of a better world.”).

On this point, a recent analysis of the use of building and site design in place-based crime prevention efforts noted:

A one-size-fits-all approach is destined to fail. Effective prevention of crime through architecture involves working through tradeoffs among operability, aesthetics, crime prevention, and other goals. Therefore, design principles for architecture and crime control cannot be divorced from the context in which they are applied and must be malleable enough to adapt to a variety of circumstances. Like good police officers and prosecutors, skilled architects examine the innate functions of an existing area to see what is already working before they act. Accordingly, they recognize that effective design requires input by the community.<sup>71</sup>

In the United States, cities generally take a common sense and practical approach in assessing the potential benefits and implementing costs of place-based crime prevention techniques and programs. The cost effectiveness of alternative crime prevention measures, such as simply higher visibility of public or private policing efforts, is always assessed. Flexibility and discretion in evaluating new development is preferred in the site plan review and permit approval process.

Cities can address crime prevention in this process by applying general standards and guidelines to the proposed design of the particular development project under review, tailoring the requirements to the needs of the particular neighborhood and site. In this undertaking, cities may prioritize certain important commercial areas, public places, or types of development projects. It is largely

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<sup>71</sup> Katyal, *supra* note 7, at 1041.

still a “learning as one goes” process.<sup>72</sup> Nearly everyone agrees, however, that to be successful, these programs must directly involve affected neighborhood residents and businesses and be coordinated with the efforts of local police and other relevant public agencies.<sup>73</sup> If as Oscar Newman points out, “defensible space” is ultimately about “urban man committed to an open society,”<sup>74</sup> city place-based crime prevention programs through urban planning and design are ultimately about effectuating community control at the neighborhood level through the energy and efforts of the people who inhabit those neighborhoods.<sup>75</sup>

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<sup>72</sup> Eck, *supra* note 22, at 4; *see also* Kitchen, *supra* note 5, at 260-261.

<sup>73</sup> ZELINKA & BRENNAN, *supra*, note 19.

<sup>74</sup> NEWMAN, *supra* note 2, at 203.

<sup>75</sup> *Id.* at 204.