

**Touro College Jacob D. Fuchsberg Law Center**

---

**From the Selected Works of Michael E Lewyn**

---

February, 2007

# How Zoning Causes Sprawl

Michael E Lewyn, *Florida Coastal School of Law*



Available at: <https://works.bepress.com/lewyn/35/>

## HOW ZONING CAUSES SPRAWL

Thank you for bringing me here.

When we talk about “sprawl” we talk about two separate concepts. One is where we grow- in suburbs rather than in cities. Most remarks at this conference have focused on that definition of sprawl.

But I would like to talk about sprawl in another sense- how we develop, not where we develop. Specifically, I would like to focus on development that is car-dependent rather than being pedestrian-friendly. I would like to discuss exactly how zoning and land use regulation creates sprawl, using my new home town of Jacksonville as a case in point.

Now you may be thinking: “Hey, wait a minute! Regulations actually CAUSE sprawl? But I thought comprehensive planning and regionalism prevented sprawl and deregulation means more sprawl!”

Well, let’s visit Jacksonville to test this theory. In Jacksonville, we have one government covering 800 square miles, a comprehensive plan that state law requires the city to follow, and even an urban services boundary. Yet Jacksonville is one of the most automobile-dependent cities in America. For example, 92% of residents drive to work, more than in any of America’s other 25 largest cities.

So let’s look at the regulations to see what the real problem might be.

For example, let’s talk about single-use zoning. Nearly all American cities have zoning codes that divide cities into single-use zones in which some activities are allowed and some activities are prohibited. Typically, residences and commerce are rigidly separated: you can’t build apartments next to stores or offices. This sort of separation of uses means that people can’t live as close to stores or offices as they might like, which means that they aren’t going to be able to walk to those stores or offices.

For example, Jax’s zoning code has thirty separate districts, including 17 residential zones and 7 commercial zones. In 15 of the residential zones, shops and offices are not permitted land uses. Similarly, in many of the commercial districts, residential uses are prohibited. The city’s most egregious offender is the “Neighborhood Commercial” zone- a zone supposedly designed for businesses that “serve the daily needs of contiguous residential neighborhoods.” Even though this zone exists primarily to serve people who live nearby, neither houses nor apartments are allowed in the “Neighborhood Commercial” zone. The city also has two “Commercial/Community General” zones, where a wider range of activities may occur - but again, housing is not among the permitted activities. Finally, the city has a separate zone for office parks- and here too, housing is not allowed.

To be fair, single-use zoning alone doesn't prevent communities from being walkable. If housing zones are fairly compact, maybe a decent number of people will live close enough to the commercial zones to walk to that commercial zone.

But this sort of compact development is not allowed in large chunks of Jacksonville. 8 of the city's 17 residential zones are designated low density zones. Some of these zones require houses to gobble up a full acre of land, others allow six or seven houses to an acre. Even apartments are governed by density restrictions; in most of town, height restrictions ensure that multifamily dwellings are one or two story garden apartments.

So what's wrong with that? After all, doesn't density mean skyscrapers and squalid tenements? Not necessarily. San Francisco is a lot denser than Jacksonville and it sure gets a lot more tourists for a place that everyone hates. The problem is, when government mandates artificially low density, people are essentially forced to drive everywhere, for two reasons.

First, if each residence consumes large amounts of land, fewer residences can be placed within a short walk of shops, jobs or each other. Thus, anti-density regulation reduces the number of people who can walk to errands or jobs.

Second, in low-density areas, very few people will live within walking distance of a bus or train stop, which in turn means that very few people can conveniently use public transit. By contrast, more compact neighborhoods increase transportation choices because a higher number of households per acre means more potential riders within a short walking distance of a bus or train stop. Typically a neighborhood must have at least 7-15 dwelling units per acre to support significant public transit ridership. Jacksonville low-density neighborhoods are all below this threshold, and even some of its townhouse and multifamily zones are at the low end of the scale.

It could be argued that none of this matters, that zoning essentially mimics market demand. However, in 2001 the Urban Land Institute, a developers' organization, conducted a survey that addressed this issue. The survey asked developers about alternatives to "conventional, low-density, automobile-oriented, suburban development". 85% of developers surveyed agreed that the supply of this kind of development was inadequate to meet market demand. 78% of developers agreed that government regulation was a significant barrier to this kind of development. By contrast, only 35% identified financing as a barrier, and even fewer cited consumer demand. If you want more information about this survey and similar data, I would cite an excellent book called *Zoned Out*, by Jonathan Levine.

A third sprawl-creating requirement is minimum off-street parking requirements. If you want to build an apartment, office or restaurant, you also have to give drivers a parking lot. In Jacksonville, Big Brother requires that apartments have 1.75 spaces for most 1 BR apartments (unless they are under 500 ft, which nothing is in Jacksonville). The city also requires 3-4 spaces per 1000 feet for most business - 4 for most offices, 3 and a third for retail. Each parking space

typically takes up about 300 feet of space (shoup at 214)- so this means Jacksonville requires landowners to give as much space to cars as to people.

Because parking requirements create a glut of parking, government-mandated parking is usually free. And because parking is usually in front of buildings, minimum parking requirements create a kind of strip mall effect. So essentially, parking requirements typically encourage creating government-mandated strip malls full of free parking. Government-mandated strip malls create a sprawling, automobile-dependent urban form in several ways. First, strip mall landscapes are visually unappealing for pedestrians. An Environmental Protection Agency report states that where bldgs are set back behind yards of parking rather than being “flush with the sidewalk,” a pedestrian “has less to look at [and] feels more isolated.” By contrast, “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.”

Second, parking lots in front of buildings lengthen pedestrians’ commutes by increasing the distance between streets and destinations such as offices and shops. Where parking is in front of a shop, pedestrians cannot approach the shop without trudging through an uninviting parking lot and dodging cars on the way to their errand.

Third, minimum parking requirements discourage walking and transit use by reducing the density of population and jobs, because land devoted to parking cannot be used for apartments or commerce. For example, in 1961, Oakland began to require one parking space per dwelling unit for apartment buildings. Within just three years, the number of apartments per acre fell by 30%. And by reducing residential density, minimum parking requirements reduce the number of people who can live within walking distance of shopping, jobs or public transit.

Finally, minimum parking requirements subsidize driving. While roads are at least partially paid for by user fees, parking is nearly always “free” to its users. But such “free” parking is in fact paid for by landowners, who build parking lots and in turn pass the costs of those parking lots to society as a whole in the form of higher rents, and by their business tenants, who in turn pass the costs on to society as a whole in the form of higher prices for goods and services. Thus, minimum parking requirements are essentially a sort of tax that redistributes money from society as a whole (including both nondrivers and all Americans in their roles as consumers and business owners) to drivers.

Now of course, the common argument for these kind of rules is that government-mandated free parking is necessary to prevent parking shortages. But of course, if you order business to provide free parking, you’ll have lots of people wanting to drive and park everywhere -which in turn creates the shortages. To draw an analogy: if you told businesses to give people free pizza, wouldn’t you have pizza shortages?

A related concern is the idea of spillover parking: that if people can't park in business A, they will park in business B, or worse still, in neighboring residential areas. Of course, this isn't really a problem in most of the commercial districts created by sprawl: business B usually is too far away to walk to. If your neighborhood is walkable enough for spillover parking to even be an issue, you've won half the battle. But in more walkable neighborhoods, this comes up as an issue now and then. I would argue that minimum parking requirements use a hammer to kill a fly: even if they address a real problem, the amount of harm they do simply outweighs a problem that only comes up in a few neighborhoods, and even then often comes up only at certain times of the day: for example, in a nightclub-oriented area, spillover parking is most likely to be an issue only at night.

Another justification for the status quo is that most businesses will all want their customers to have free parking anyhow. But if that's so, why have govt. regulation at all?

Another sprawl-producing regulation is wide streets. Jacksonville's comprehensive plan divides streets into a wide variety of categories: major arterials, minor arterials, collectors and local. Major arterials have to be 150 feet wide: since each lane is 12 to 16 feet wide, that means Jax has some streets that are ten lanes. Minor arterials (like San Jose Boulevard, the street I walk to when I catch a bus to work) are 120 feet wide- that's about 8 lanes. Even smaller collector streets, the smallest type of commercial streets, are 70 to 80 feet wide, which means five or six lanes. Of course, not all of the country has streets as wide as Jacksonville. Nationally, the average arterial is about 40 feet wide, and the average collector has two lanes. That may be one reason why Jacksonville has the lowest transit ridership of any of the nation's 25 largest cities, only 2% of commutes.

Because government sometimes builds streets, the impact of wide streets upon property rights is not as obvious as the impact of parking requirements or single-use zoning on property rights. But even here, government affects what landowners must do- because govt. has to take land to build streets and roads, and as we learned from the controversy over recent eminent domain cases, even a compensated taking of private land is still a taking.

And what impact do wide streets have on sprawl? Quite simply, the wider the street, the harder it is for a pedestrian to cross. A wide street takes more time to cross, and is also more dangerous because the pedestrian is exposed to traffic for more time. And if the widened street successfully improves traffic flow, the dangers for pedestrians are even greater: obviously, a car traveling 50 mph poses more of a danger to a pedestrian than one traveling 20 mph. Furthermore, by reducing the amount of land that is available for housing and commerce, wider streets mean lower density- which, as I mentioned earlier, reduces walkability.

Jacksonville also requires long blocks - that is, that intersections be few and far apart. On major arterials, the city only allows 4 intersections per mile (or one every 1300 feet or so) - or to put it another way, each block has to be 1300 feet long. By contrast, more environmentally minded

cities like Portland have blocks as short as 200 feet. If a city has only a few intersections per mile, pedestrians have very few opportunities to cross streets, and thus must spend more time trying to reach destinations between two intersections. By contrast, short blocks (such as the 200-foot blocks common in Portland, Oregon) make it easier for pedestrians to cross streets and thus to reach destinations without going out of their way to do so. Thus, pedestrians benefit from short blocks and suffer from long blocks.

It is a common cliché that sprawl is a result of market failure. What the example of Jacksonville should show is that sprawl is an example not of market failure, but of political failure: of obscure regulations buried deep in the bowels of the city's code, that not one citizen in a thousand knows about.

Now what does this have to do with Pennsylvania? Two things:

First, I suspect that if you look in your own municipal code, you will find plenty of regulations similar to those in Jacksonville. To find these regulations, go to [www.municode.com](http://www.municode.com).

Second, a common pro-sprawl argument is that sprawl is just the natural result of people exercising their property rights. But these regulations and their likely effects suggest that sprawl is the result not of unfettered property rights, but of government's limitations on those rights.