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Bringing Judaism Downtown: A Smart Growth Policy for Orthodox Jews

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**BRINGING JUDAISM DOWNTOWN: A SMART GROWTH
POLICY FOR ORTHODOX JEWS**

Michael Lewyn*

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INTRODUCTION

Until the late twentieth century, the most rigorously traditional Jews, Haredi Jews (often referred to as “ultra-Orthodox”), tended to congregate in New York City.¹ As the price of living in New York increased and the Haredi population grew,² many Haredi Jews (known collectively as “Haredim”)³ moved to small towns and suburbs in search of cheaper land to establish predominantly Haredi towns, such as Kiryas Joel, New York and Lakewood, New Jersey.⁴

As Haredi populations continue to grow, their communities are seeking more undeveloped land to expand existing Haredi enclaves.⁵ However, as Haredim move deeper into the countryside, zoning conflicts have multiplied; residents of nearby rural and suburban towns often do not want densely-populated Haredi settlements nearby and seek land use regulations that will keep Haredim away.⁶ This article suggests that Haredi communities can avoid such conflicts through a “smart growth” strategy⁷: towns such as Lakewood can zone for more dense housing in the centers of their towns, thus reducing the need for expansion into other towns.

Part I of this Article discusses the growth and widespread expansion of suburban Haredi communities.⁸ Part II suggests that a “smart growth” strategy of funneling growth into existing Haredi towns might benefit Haredim by reducing the frequency of zoning

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1. *See infra* notes 11–26 and accompanying text (describing Haredim and Haredi-dominated parts of Brooklyn).
2. *See infra* notes 27–41 and accompanying text (summarizing the history of Haredim moving out of New York and relocating to smaller towns and suburbs).
3. *See generally* MENACHEM FRIEDMAN & SAMUEL C. HEILMAN, *THE HAREDIM IN ISRAEL: WHO ARE THEY AND WHAT DO THEY WANT?* (1996) (providing background information on Haredi culture).
4. *See infra* notes 25–40 and accompanying text.
5. *See infra* notes 25–40 and accompanying text (describing the expansion of Haredi communities outside New York City).
6. *See infra* notes 41–60 and accompanying text (outlining examples of land disputes stemming from Haredi settlements).
7. *See infra* notes 105–17 and accompanying text.
8. *See infra* Part I.

conflicts with non-Haredim.⁹ Part III suggests some zoning reforms that would promote this smart growth strategy.¹⁰

I. BACKGROUND: HAREDIM AND THEIR GROWTH

The leading denominations of American Jewry are Orthodox, Conservative, and Reform Judaism.¹¹ Orthodox Jews follow traditional Jewish law, as interpreted by rabbis for centuries.¹² For example, Orthodox Jews who follow these laws do not work, drive, write, or make phone calls on the Jewish Sabbath.¹³ Within Orthodoxy, one major distinction is between modern Orthodox Jews and Haredi Jews. Modern Orthodox Jews follow traditional Jewish law but seek to harmonize Orthodoxy with modern life; for example, modern Orthodox Jews tend to wear “modern attire” and “go into the professions.”¹⁴ The term “Haredim” is a Hebrew term, meaning “those who tremble before God.”¹⁵ Haredi Jews stay more distant from modern life; they are more likely than modern Orthodox Jews to avoid television, radio, and the integration of the sexes in their schools.¹⁶ They are also less likely to attend secular universities,¹⁷ and they often wear distinctive attire.¹⁸

9. See *infra* Part II.

10. See *infra* Part III.

11. *The Jewish Denominations: A Quick Look at Reform, Conservative, Orthodox and Reconstructive Judaism—and at Other Jewish Streams*, MY JEWISH LEARNING [hereinafter *The Jewish Denominations*] <https://www.myjewishlearning.com/article/the-jewish-denominations/> [https://perma.cc/2HSA-N63D] (last visited July 13, 2021).

12. *Id.*; see also Lydia M. Belzer, *Toward True Shalom Bayit: Acknowledging Domestic Abuse in the Jewish Community and What to Do About It*, 11 CARDOZO WOMEN’S L.J. 241, 243 (2005) (describing Orthodoxy in more detail).

13. See *Shabbat: What Is Shabbat?*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/what-is-shabbat-jewish-sabbath> [https://perma.cc/DW5E-L4QM] (last visited July 16, 2021) (explaining the Jewish Sabbath occurs from Friday night to Saturday night); see also Aaron R. Petty, “*Faith, However Defined*”: Reassessing JFS and the Judicial Conception of Religion, 6 ELON L. REV. 117, 132 (2014) (noting that Orthodox Jews do not write on the Sabbath).

14. Ranaan Geberer, Opinion, “*Ultra-Orthodox Jews: Who are They?*”, BROOKLYN DAILY EAGLE (Mar. 27, 2013), <https://brooklyneagle.com/articles/2013/03/27/opinion-ultra-orthodox-jews-who-are-they/> [https://perma.cc/GRG8-JZZY].

15. AYALA FADER, MITZVAH GIRLS: BRINGING UP THE NEXT GENERATION OF HASIDIC JEWS IN BROOKLYN 13 (2009).

16. See Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet, 512 U.S. 687, 691 (1994) (For example, Satmar Hasidim “segregate the sexes outside the home; speak Yiddish as their primary language; eschew television, radio, and English-language publications; and dress in distinctive ways that include head coverings and special garments for boys and modest dresses for girls.”).

Haredim fall into two major camps: Hasidic and Yeshivish.¹⁹ Hasidic Jews are divided into a variety of sects, all of which arise from an eighteenth century mystical movement that emphasized fervent prayer.²⁰ Yeshivish (or “Litvish”)²¹ Jews are the intellectual heirs of other European rabbis who emphasized Jewish scholarship more than the Hasidim.²² Most Hasidic sects are led by a rabbi known as a “rebbe”,²³ the most prestigious Litvish leaders often head yeshivas (institutions of advanced Jewish study).²⁴

Most Haredim are descendants of Jews who came from eastern Europe to the United States after the Holocaust.²⁵ Haredim originally moved to Brooklyn; leading Hasidic neighborhoods include Williamsburg, Crown Heights, and Borough Park, while Litvish Jews are concentrated in Midwood and Kensington.²⁶ But some Haredim have moved to suburbs, apparently because of New York’s exploding housing costs.²⁷ Between 2006 and 2018, real median rent increased by twenty percent in Midwood and twenty-nine percent in Borough

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17. See Stephen H. Resnicoff, *Jewish Law and the Tragedy of Sexual Abuse of Children — The Dilemma Within the Orthodox Jewish Community*, 13 RUTGERS J.L. & RELIGION 281, 284 (2012).
 18. See *The Jewish Denominations*, *supra* note 11.
 19. *Id.*
 20. *Id.*
 21. See FADER, *supra* note 15, at 8 (describing the origins of “Litvish” as the name for Lithuanian Jews).
 22. *Id.*; see also *The Jewish Denominations*, *supra* note 11.
 23. FADER, *supra* note 15, at 8.
 24. *Id.* (explaining Litvish believed “religious authority should come from scholars in [institutions of learning called] *yeshivas*” while Hasidim relied on charismatic leaders known as “rebbe”).
 25. *See id.*
 26. See John Mangin, *Ethnic Enclaves and the Zoning Game*, 36 YALE L. & POL’Y REV. 419, 434–37 (describing how the Satmar Hasidic sect moved to South Williamsburg while other Hasidim moved to Borough Park); Molly Boigon, *Here’s How to Think About NYC’s New COVID-19 Data*, FORWARD (May 27, 2020), <https://forward.com/news/447380/nyc-coronavirus-data-haredi-hasidic-visualizations-charts-graphs-maps/> [<https://perma.cc/2VRT-SB7R>] (leading Haredi neighborhoods are Williamsburg, Borough Park, and Crown Heights in Brooklyn); FADER, *supra* note 15, at 13 (explaining that Litvish Jews are also concentrated in Brooklyn areas of Kensington and Midwood.).
 27. See Gil Shefler, *Turf Battles Follow Haredi Population Surge in New York*, THE TIMES OF ISRAEL (Feb. 19, 2013, 5:25 PM), <https://www.timesofisrael.com/turf-battles-follow-haredi-population-surge-in-ny/> [<https://perma.cc/R9U2-YZSR>] (“The tough real estate market has enticed many Haredim to leave [Brooklyn] for Jewish towns farther upstate . . .”).

Park.²⁸ Some of the Haredim priced out of Brooklyn have moved to create their own towns at the edge of suburbia and beyond.²⁹ As early as the 1950s, some Skver Hasidim moved to the upstate suburbs to create New Square, which was later incorporated as a village.³⁰ A few decades later, Satmar Hasidim created their own village in Orange County, New York, named Kiryas Joel.³¹ The boundaries of this municipality are drawn to include 320 acres owned entirely by

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28. *Borough Park BK12*, NYU FURMAN CTR.: NEW YORK NEIGHBORHOOD DATA PROFILES, <https://furmancenter.org/neighborhoods/view/borough-park> [<https://perma.cc/DRR6-U6ZL>] (last visited July 11, 2021) (“[M]edian gross rent in Borough Park increased from \$1,230 in 2006 to \$1,610 in 2019.”); *Flatbush/Midwood BK14*, NYU FURMAN CTR.: NEW YORK NEIGHBORHOOD DATA PROFILES, <https://furmancenter.org/neighborhoods/view/flatbush-midwood> [<https://perma.cc/QXA4-YA25>] (last visited July 11, 2021) (In Midwood and nearby Flatbush, real median gross rent “increased from \$1,190 in 2006 to \$1,510 in 2019.”). One possible cause of this trend is increased housing costs citywide. See Ingrid Gould Ellen & Brian Karfunkel, *Renting in America’s Largest Metropolitan Areas*, NYU FURMAN CTR. (March 8, 2016), <http://furmancenter.org/research/publication/renting-in-americas-largest-metropolitan-areas> [<https://perma.cc/FA6L-3MP9>] (Between 2006 and 2014, citywide rents rose by eleven percent.). Another factor might be increased demand arising from Haredi population growth. Haredi families average six or seven children, and the Jewish population of Haredi neighborhoods have increased as a result. See Viva Hammer, *Blessed with Children*, JEWISH ACTION, <https://jewishaction.com/jewish-world/blessed-with-children/> [<https://perma.cc/2N9B-YEQ7>] (last visited July 11, 2021) (As of 2001, the average Litvish family had 6.6 children and the average Hasidic family had 7.91, more than twice the birth rate of modern Orthodox households.); Shefler, *supra* note 27 (“About 74,500 Jews — mostly Haredim — lived [in Williamsburg] in 2011, up from 52,700 a decade earlier. The fastest-growing Jewish neighborhood of the city was Borough Park, another Haredi stronghold in Brooklyn. More than 130,000 Jews lived there in 2011, up from 76,000 in 2001.”).
29. See Shefler, *supra* note 27.
30. See Gerald Benjamin, *The Chassidic Presence and Local Government in the Hudson Valley*, 80 ALB. L. REV. 1383, 1391 (2016–2017) (Skver Hasidim purchased a farm in 1954 on current site of the village and began to settle there in 1956.); David B. Green, *Cult-like Home to Skver Hasidim in N.Y. Holds First Mayoral Election*, HAARETZ (Nov. 20, 2016), <https://www.haaretz.com/jewish/cult-like-hasidic-town-holds-first-mayoral-election-1.5464037> [<https://perma.cc/4D9P-B4VG>] (describing New Square). In New York, a group of citizens may vote to create a municipality known as a “village” within a larger suburban municipality known as a “town.” See Benjamin, *supra*, at 1388–89 (noting that existence of villages facilitates “the delivery of a more extensive array of public services than towns were authorized by law to provide in more densely settled enclaves” in rural and suburban New York, and adding that any group of over five hundred persons may vote to establish village). For example, New Square is a village within the town of Ramapo. *Id.* at 1391.
31. See Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet, 512 U.S. 687, 690–91 (1994).

Satmars.³² In 1994, the town had 8,500 residents.³³ Today, the town has over 24,000, and birth rates are so high that the median resident is 13.8 years old, about one-third the statewide average.³⁴

Some Haredim have moved into existing towns. For example, the Haredi story of Lakewood, New Jersey began in 1943 when Rabbi Aharon Kotler opened Beth Midrash Gohova (BMG), a yeshiva specializing in Talmud study.³⁵ This particular yeshiva became more popular than most and is today the largest yeshiva in the United States³⁶ with 6500 students.³⁷ As BMG has grown, the town has become extremely popular among Litvish Haredim, which in turn has caused explosive growth.³⁸ The town's population has grown from 45,000 in 1990 to over 100,000 today.³⁹ The town is now sixty percent Jewish, and has more than eighty synagogues and over 100 schools and yeshivas.⁴⁰

As towns such as Lakewood and Kiryas Joel have become more populous, Haredi families have begun to be priced out of those towns, and to seek housing in nearby suburbs and exurbs.⁴¹ This has led to a variety of land use-related disputes. For example, in 2014, a Lakewood developer bought empty land in nearby Toms River, hoping to build a synagogue; at the time, the land was zoned to allow

32. *Id.* at 691.

33. *Id.*

34. *See Kiryas Joel, New York*, CITY-DATA.COM, <http://www.city-data.com/city/Kiryas-Joel-New-York.html#b> [<https://perma.cc/WG3F-A2N3>] (last visited July 11, 2021).

35. *See* Kevin Gilmore, Comment, *Ding-Dong Ditched: Cultures Clash as a Town Attempts to Stop Real Estate Solicitations*, 48 SETON HALL L. REV. 475, 477 (2018) (BMG opened in 1943 by Kotler); Jeffrey Olsen, Comment, *Making Sense of Taxpayer Cents: A Look at Lakewood, New Jersey's Unique School*, 19 RUTGERS J.L. & RELIGION 323, 327 (2018) (all of BMG's required courses involve study of Talmud). The Talmud is primarily a commentary on an earlier Jewish code known as the Mishnah, but also addresses a variety of other issues. *See* David C. Flatto, *The King and I: The Separation of Powers in Early Hebraic Political Theory*, 20 YALE J.L. & HUMAN. 61, 67 (2008) (describing how the Talmud was "redacted in the sixth and seventh centuries . . . [and] presents a running commentary on the Mishnah"). The Talmud is the primary source of Jewish law. *See* Adam Mintz, *Halakhah in America: The History of City Eruvin, 1894–1962* (Sept. 2011) (Ph.D. dissertation, New York University), <http://www.rabbimintz.com/wp-content/uploads/Mintz-Dissertation-Final.pdf> [<https://perma.cc/Z7LL-489K>] (discussing the development of Jewish law in the context of eruv from the Mishnah to the Talmud); *see infra* notes 49–51 and accompanying text (explaining eruvs).

36. *See* Olsen, *supra* note 35, at 326.

37. *See* Gilmore, *supra* note 35, at 477.

38. *See* FADER, *supra* note 15, at 13.

39. *See* Gilmore, *supra* note 35, at 477.

40. *Id.* at 478.

41. *See* Olsen, *supra* note 35, at 326.

religious uses.⁴² The town responded by rezoning the land for residential use and purchasing the land from the developer.⁴³ After another Lakewood developer proposed to build townhomes and retail space on another parcel of Toms River land, the town purchased that land as well.⁴⁴ Even where government does not preempt development by Haredim, homeowners try to discourage each other from selling to Haredim.⁴⁵ For example, in the part of Toms River nearest to Lakewood, front lawns often have signs saying, “Don’t Sell! Toms River Strong.”⁴⁶

Jackson, another town near Lakewood, has also been less than welcoming towards Jews who seek to leave Lakewood.⁴⁷ Under traditional Jewish law, Jews may not carry objects outside during the Jewish Sabbath.⁴⁸ However, they may do so if they establish an artificial boundary known as an eruv,⁴⁹ which usually requires a Jewish community to place wires on utility poles to demarcate the eruv’s boundaries.⁵⁰ To build such an eruv, a Jewish community must usually have municipal permission.⁵¹ Jackson sought to deter migration from Lakewood by refusing to allow the creation of an eruv.⁵² However, the town reversed its position after a Jewish group sued.⁵³

42. Gilmore, *supra* note 35, at 479.

43. *Id.*

44. *Id.*

45. *See id.* at 481.

46. *Id.* at 480.

47. *See* Olsen, *supra* note 35, at 325–26.

48. *Bikur Cholim, Inc. v. Vill. of Suffern*, 664 F. Supp. 2d 267, 280 (S.D.N.Y. 2009) (Jewish law typically prohibits “carrying objects in public areas[.]”).

49. *See Blackhawk v. Pennsylvania*, 381 F.3d 202, 209 (3d Cir. 2004) (An eruv is “a ceremonial demarcation of an area within which . . . Jews may push or carry objects on the Sabbath.”).

50. *See Am. C.L. Union of New Jersey v. City of Long Branch*, 670 F. Supp. 1293, 1294 (D.N.J. 1987). An eruv may also be created from natural barriers. *See Smith v. Cmty. Bd. No. 14*, 491 N.Y.S.2d 584, 585 (N.Y. Special Term 1985) (An eruv is “created from natural barriers or from wires strung across poles[.]”).

51. *See Lorin Geitner, Eruv and Establishment*, 52 ORANGE CNTY. L. 26, 27 (2010) (For an eruv to be effective the “local government must officially recognize this area as an eruv, and, in return for valuable consideration, lease it to the local Jewish community.”).

52. *See* Olsen, *supra* note 35, at 324–25.

53. Austin Bagues, *Jackson OKs Eruv Deal for Orthodox Jewish Community*, APP., <https://www.app.com/story/news/local/communitychange/2017/12/13/jackson-town-council-approves-eruv-agreement/950352001/> [https://perma.cc/F4SZ-67CE] (Dec. 14, 2017, 2:50 PM).

Jackson has also banned the construction of new schools and dormitories in most of the town, which presumably would prevent the creation of new yeshivas.⁵⁴

Residents of Kiryas Joel have also squabbled over land use with residents of nearby suburbs. In the 2010s, Kiryas Joel proposed to accommodate population growth by annexing 507 acres of nearby land.⁵⁵ The land in question was in a municipality called the Town of Monroe, which initially denied permission.⁵⁶ However, the town council approved a more modest request to annex 164 acres.⁵⁷ The county legislature, nine nearby municipalities, and a community group then sued to prevent both the 507-acre annexation and the more modest 164-acre annexation proposal.⁵⁸ In 2017 the parties settled litigation over the issue by allowing Kiryas Joel to annex the 164 acres, form its own town, and add 56 more acres.⁵⁹ Thus, the village's development strategy was only partially successful; it was

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54. See Olsen, *supra* note 35, at 326. The United States Justice Department has recently filed suit to invalidate this policy. Patricia Salkin, *US DOJ Files Suit Against Jackson, New Jersey, Alleging Zoning Code Used to Keep Out Orthodox Jewish Schools and Residents*, LAW OF THE LAND (May 31, 2020) <https://lawoftheland.wordpress.com/2020/05/31/us-doj-files-suit-against-jackson-new-jersey-alleging-zoning-code-used-to-keep-out-orthodox-jewish-schools-and-residents/> [<https://perma.cc/GMF8-VSMD>].
55. See Cathryn J. Prince, *Fierce Protest Against Satmar Annexation of NY Town*, THE TIMES OF ISRAEL (Oct. 8, 2015, 5:18 AM), <https://www.timesofisrael.com/fierce-protest-against-satmar-annexation-of-ny-town/> [<https://perma.cc/WMB7-2DZL>]; Chris McKenna, *Kiryas Joel's Split from Monroe Overwhelmingly Approved*, TIMES HERALD-RECORD, <https://www.recordonline.com/news/20171107/kiryas-joels-split-from-monroe-overwhelmingly-approved> [<https://perma.cc/HT26-JXXW>] (Nov. 9, 2017, 12:15 AM) (describing Kiryas Joel's secession from the town of Monroe after a land dispute involving the 507 acres).
56. See Prince, *supra* note 55. As noted above, villages such as Kiryas Joel are generally part of larger municipalities called towns; for example, Kiryas Joel is part of Monroe. See Benjamin, *supra* note 30, at 1395. Villages may annex land from towns, but only with the town's permission. See *id.*
57. See Prince, *supra* note 55.
58. *Id.*; see *Vill. of S. Blooming Grove v. Vill. of Kiryas Joel Bd. of Trustees*, No. 51602(U), slip op. at 1–2 (N.Y. Sup. Ct. Nov. 5, 2015) (issuing a preliminary injunction against annexations pending litigation).
59. See McKenna, *supra* note 55. Hasidic attempts to move into other towns near Kiryas Joel has also led to litigation. See, e.g., Josh Nathan-Kazis, *How the Hasids Won the Battle of Bloomingburg – and Everyone Else Lost*, FORWARD (Dec. 15, 2016), <https://forward.com/news/357030/how-the-hasids-won-the-battle-of-bloomingburg-and-everyone-else-lost/> [<https://perma.cc/RHU8-FVFF>] (describing controversy in village of Bloomingburg).

able to annex less than half the land it wanted, and was forced to spend time litigating the issue.⁶⁰

Opposition to new development is of course common in American suburbs.⁶¹ However, suburbanites are especially motivated to oppose development in towns near Haredi communities, for two reasons. First, Haredi communities may have more synagogues, religious schools, and other tax-exempt institutions than more secular communities.⁶² In Lakewood, for example, 8% of the town's total property value is held by such institutions, as opposed to 1.5% in Toms River.⁶³ Toms River residents, therefore, fear that accommodating Haredim will reduce the town's tax base.⁶⁴ Second, Haredi children mostly attend yeshivas rather than public schools, and Haredi parents might not be motivated to pay additional taxes to support those schools.⁶⁵ As a result, non-Haredim in both Lakewood and other Orthodox-dominated suburbs have blamed Haredi-dominated school boards for allegedly cutting school budgets.⁶⁶

Some of the anti-Haredi policies discussed above are likely to violate the Religious Land Use and Institutionalized Persons Act (RLUIPA) which prohibits discrimination against religious land uses.⁶⁷ For example, the U.S. Justice Department recently sued Jackson, alleging that Jackson's restrictions on dormitories violated RLUIPA.⁶⁸ Nevertheless, Haredi communities have an incentive to avoid conflicts with non-Haredi suburbs, because even successful litigation is costly, time-consuming, and may lead to avoidable ill-will with residents of those communities.⁶⁹ Thus, Haredim may wish

60. See McKenna, *supra* note 55.

61. Cf. Shelley Ross Saxer, *Local Autonomy or Regionalism?: Sharing the Benefits and Burdens of Suburban Commercial Development*, 30 IND. L. REV. 659, 685–86 (1997) (suburbanites often refuse to allow unwanted land uses in their community).

62. See Gilmore, *supra* note 35, at 482.

63. *Id.*

64. See *id.*

65. See *id.* at 483–84.

66. E.g., *id.* at 484–86.

67. See 42 U.S.C. § 2000cc(b) (stating that the government must treat religious institutions on “equal terms” with nonreligious institutions and may not discriminate against any particular religion).

68. Salkin, *supra* note 54 (describing a Justice Department lawsuit against Jackson); cf. Douglas Laycock & Luke W. Goodrich, *RLUIPA: Necessary, Modest and Under-Enforced*, 39 FORDHAM URB. L.J. 1021, 1027 (2012) (describing similar cases).

69. For example, Kiryas Joel first sought to annex land in 2015, and did not settle its dispute with nearby municipalities until 2017. See Prince, *supra* note 55; McKenna, *supra* note 55.

to stay within the city limits of towns that they already inhabit in order to avoid such conflicts.

II. SMART GROWTH AND WHY IT IS RELEVANT

Haredim who move outside the city limits of towns like Lakewood are often moving into suburban sprawl; that is, low-density development at the fringe of a city or a metro area,⁷⁰ as opposed to development near older areas such as downtown Lakewood.⁷¹ Such development is usually oriented towards automobiles rather than to

70. See Ronda Larson, Note & Comment, *The End of an Era: Suburban Village Aversion in Citizens for Mount Vernon v. City of Mount Vernon*, 74 WASH. L. REV. 367, 376 n.52 (1999) (“Researchers have defined suburban sprawl, also called urban sprawl, as low density, homogeneous, single-family residential districts sited at urban fringe of metropolitan areas.”).

71. *Lakewood, NJ*, GOOGLE MAPS, <https://www.google.com/maps> [<https://perma.cc/73YW-VQK6>] (last visited July 11, 2021). Toms River does have a downtown; however, most Haredi-related conflicts over development seem to be areas bordering Lakewood at the fringe of the town, several miles from downtown Lakewood. See Gilmore, *supra* note 35, at 492 (referring to land use-related conflicts near the Lakewood/Toms River border); *Toms River, NJ*, GOOGLE MAPS, <https://www.google.com/maps> [<https://perma.cc/73YW-VQK6>] (last visited July 11, 2021) (mapping the Toms River/Lakewood border at the northern edge of Toms River several miles from downtown Lakewood, while City Hall and the courthouse are at the southern end of Toms River). Jackson does not appear to have anything resembling a traditional downtown. *Jackson Township, NJ*, GOOGLE MAPS, <https://www.google.com/maps> [<https://perma.cc/73YW-VQK6>] (last visited July 11, 2021) (mapping City Hall at 95 W. Veterans Highway, a suburban environment, with no sidewalks and buildings set back far behind street).

public transit or walkers.⁷² This is also true of most of Lakewood outside of downtown.⁷³

Because so much new development is miles from downtown Lakewood, downtown is less prosperous than urban Haredi neighborhoods, such as Borough Park and Williamsburg in Brooklyn⁷⁴—despite the fact that downtown is less than a mile from the enormous Beth Midrash Godova (BMG) yeshiva.⁷⁵ One might think that because of the size of BMG, the blocks near BMG could function as a dense satellite downtown, full of large apartment buildings and stores that serve students. Instead, those blocks continue to be dominated by single-family houses.⁷⁶ By contrast, if

72. See *In re* Petition of Dolington Land Group, 839 A.2d 1021, 1028 n.8 (Pa. 2003) (describing sprawl as typically “automobile dependent”); M. Tanner Claggett, *If It’s Not Mixed-Income, It Won’t Be Transit-Oriented: Ensuring Our Future Developments are Equitable and Promote Transit*, 41 TRANSP. L.J. 1, 9 n.61 (2014) (referring to the “mid-20th century exodus to automobile-dependent suburbs”); MICHAEL LEWYN, GOVERNMENT INTERVENTION AND SUBURBAN SPRAWL: THE CASE FOR MARKET URBANISM 101 (2017).

[I]n such thinly populated places, very few people can walk to shops or other destinations. For example, suppose that a grocery store is in a neighborhood with only five homes or apartments per block. If most people will walk no more than five blocks to the store, that means that only twenty-five households in any direction will walk to the store. By contrast, if the same store is surrounded by 30 dwellings per block, 150 households in each direction can walk to the store.

Id.

73. See *infra* note 152 and accompanying text (noting Lakewood’s low density).

74. See Nick DiUlio, *Lakewood: A City on Edge*, N.J. MONTHLY (Mar. 6, 2017), <https://njmonthly.com/articles/politics-public-affairs/lakewood-city-on-edge/3/> [<https://perma.cc/B76V-QC62>] (“Walking along Clifton Avenue through Lakewood’s once-flourishing downtown, one sees few signs of a boom. The presence of several upscale restaurants and a smattering of other contemporary businesses—like the French Press, a coffee bar—is offset by other storefronts that are dirty and neglected.”); see also Shefler, *supra* note 27 (describing the population boom in Brooklyn’s Haredi neighborhoods).

75. See *Lakewood, NJ*, GOOGLE MAPS, *supra* note 71 (follow “Directions” hyperlink; then search starting point field for “Beth Medrash Govoha” and search destination field for “Lakewood Municipal Office”; then click walking icon) (showing that BMG is a 0.6 mile walk from City Hall); *supra* notes 35–38 and accompanying text (describing BMG).

76. See *Lakewood, NJ*, GOOGLE MAPS, *supra* note 71 (showing that 625 7th Street, across street from BMG, is still dominated by single-family homes).

there was more dense housing near BMG and downtown, more people would be able to walk to those destinations.⁷⁷

A. *The Costs of Sprawl*

Lakewood's pattern of sprawl development may have some benefits. In low-density sprawl, many people meet their needs by driving to strip malls with huge free parking lots, instead of paying for parking in a downtown garage.⁷⁸ However, this pattern of development also has costs.

One cost unique to Haredi towns is political. As Haredim move further away from existing Haredi neighborhoods, they will have to move to areas already dominated by non-Haredim.⁷⁹ Often, as in Jackson and Toms River, these neighbors may not welcome Haredim with open arms, and will instead use legislation and litigation to prevent the construction of Haredi-oriented synagogues, private schools, and other religious infrastructure.⁸⁰ By contrast, if Haredim build more housing in existing Haredi towns such as Lakewood, they will waste less time and money on lobbying and litigation.⁸¹

Even where sprawl is not politically controversial, it may have adverse fiscal and environmental consequences. Towns such as Lakewood and Kiryas Joel are not wealthy areas; 45.1% of Kiryas Joel residents and 29.6% of Lakewood residents have incomes below the poverty level.⁸² Where commercial development is scattered

77. See LEWYN, *supra* note 72, at 101.

78. See *id.* (describing when people must walk versus drive to shops). My sense, based on conversations with Lakewood residents, was that the strip malls far from downtown seemed to have more parking than downtown. See *Lakewood, NJ*, GOOGLE MAPS, *supra* note 71 (strip mall at 945 River Avenue with many unused parking spaces).

79. See *supra* note 41 and accompanying text (describing the migration of Haredi families to suburbs and exurbs from Haredi areas).

80. See, e.g., *supra* notes 42–60 and accompanying text (describing land use conflicts in towns near Lakewood).

81. One other point that may be especially relevant to Orthodox Jews is that because they cannot ride on the Sabbath, they must live within walking distance of a synagogue. See *supra* note 13 and accompanying text. Thus, they must live in at least somewhat compact communities. However, Haredim are so resourceful at establishing small congregations that hundreds exist in Lakewood. See *Lakewood, NJ*, GODAVEN: MINYANIM EVERYWHERE, <https://www.godaven.com/> [<https://perma.cc/S8J2-36MK>] (last visited July 11, 2021) (showing that 149 congregations are open on the Sabbath within five miles of Lakewood).

82. See *Kiryas Joel, New York*, CITY-DATA.COM, *supra* note 34; *Lakewood, New Jersey*, CITY-DATA.COM, <http://www.city-data.com/city/Lakewood-New-Jersey.html> [<https://perma.cc/A9NC-U2ZP>] (last visited July 11, 2021). One might think that the city's high poverty rate is instead the result of racial diversity or high levels of immigration. But in Lakewood, unlike much of the United States, the poverty level

widely across the landscape, people may need to own a car to access shops and jobs in other neighborhoods⁸³—a significant hardship for households without cars (a category that includes over forty percent of Kiryas Joel households).⁸⁴

In addition to increasing household vehicle expenses, sprawl increases costs for school commutes because, in a sprawling region, fewer children can walk to school and students therefore must be driven or bused longer distances than in a more compact region. In New Jersey and in some New York towns, school districts subsidize buses for private schools.⁸⁵ Because many Lakewood children cannot walk to school, that district spends \$27 million yearly on busing—more than it spends on instruction.⁸⁶ Government supports private school busing even for children who live in one town and go to school in another;⁸⁷ as a result, Toms River has to pay to bus its Orthodox children who go to school in Lakewood.⁸⁸ While Toms River paid to bus 150 students five years ago, it now pays to bus

among whites is higher than the poverty level among blacks or Hispanics—a fact suggesting that yeshiva students are especially likely to have poverty-level incomes. See *Lakewood, New Jersey*, CITY-DATA, *supra*. On the other hand, some of these students might be supported by in-laws or parents. See *id.* (reporting that the median age in Lakewood is 16.7, whereas the median age in New Jersey is 40.2).

83. This is less true in big cities with significant public transit systems. However, both Lakewood and Kiryas Joel are over 50 miles from New York City, and thus unlikely to have significant public transit in the foreseeable future. See *Lakewood, NJ*, GOOGLE MAPS, *supra* note 71; *Kiryas Joel, NY*, GOOGLE MAPS, <https://www.google.com/maps> [<https://perma.cc/73YW-VQK6>] (last visited July 11, 2021).
84. See *Household Size by Vehicles Available, Kiryas Joel Village, New York*, tbl.B08201, U.S. CENSUS BUREAU (2019), <https://data.census.gov/cedsci/table?q=B08201&g=1600000US3639853&tid=ACSDT5Y2019.B08201> [<https://perma.cc/H29S-5DDQ>].
85. See *Daily Transportation to Masters*, THE MASTERS SCH., <https://www.mastersny.org/admission/transportation> [<https://perma.cc/9ZVG-FF5M>] (last visited July 2, 2021) (“Most New York towns and villages . . . [near school] that provide busing to public school students will provide busing to [private school] students as well.”); Kelly Heyboer, *Why is Lakewood Spending \$32M to Send Kids to Private School?*, NJ.COM, https://www.nj.com/news/2017/08/why_is_lakewood_spending_32_million_to_send_kids_t.html [<https://perma.cc/W444-KH33>] (May 15, 2019, 1:04 PM) (showing public support for private school busing in New Jersey).
86. Heyboer, *supra* note 85.
87. *Id.*
88. See Adam Clark, *Lakewood’s School Busing Mess Spilled over to Its Neighbor. Here’s the Price Tag*, NJ.COM, <https://www.nj.com/education/2019/05/lakewoods-school-busing-mess-spilled-over-to-its-neighbor-heres-the-price-tag.html> [<https://perma.cc/98KH-892B>] (May 23, 2019, 12:30 PM).

1,100 students, contributing to a \$1.1 million busing bill.⁸⁹ By contrast, if Haredim lived in more compact communities, more students would live within walking distance of their yeshivas, thus reducing taxpayers' transportation costs.

Furthermore, automobile-oriented sprawl creates environmental harms from constant vehicle travel.⁹⁰ Numerous studies have found that high levels of automobile traffic contribute to localized air pollution, which in turn increases heart disease, asthma, and similar problems.⁹¹ For example, one study showed that children are more likely to suffer from asthma and bronchitis if they live near busy roads with high levels of pollution caused by vehicle traffic.⁹² This correlation is not limited to the most polluted cities but applies even to areas with low levels of overall pollution.⁹³ Because automobile-oriented sprawl causes more people to drive more miles, it is likely to increase pollution and the resulting health risks.

89. *Id.*

90. *E.g.*, Christine L. Rioux et al., *Characterizing Urban Traffic Exposures Using Transportation Planning Tools: An Illustrated Methodology for Health Researchers*, 87 J. URB. HEALTH 167, 168 (2010), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2845826/pdf/11524_2009_Article_9419.pdf [<https://perma.cc/LM8Q-WMM2>].

91. *Id.* at 167–68.

92. *See* Janice J. Kim et al., *Traffic-Related Air Pollution near Busy Roads: The East Bay Children's Respiratory Health Study*, 170 AM. J. RESPIRATORY & CRITICAL CARE MED. 520, 523–24 (2004), <https://www.atsjournals.org/doi/pdf/10.1164/rccm.200403-281OC> [<https://perma.cc/V858-WVCE>] (finding “modest but significant increases in the odds of bronchitis symptoms and physician-diagnosed asthma in neighborhoods with higher concentrations of traffic pollutants” and adding that variations in exposure were “due specifically to roads with heavy traffic”).

93. *Id.* at 523 (“[O]ur findings were observed in a region with relatively clean air . . .”). It could be argued that sprawl creates environmental benefits that outweigh its costs, because as people move to low-density environments, they have fewer neighbors and thus fewer pollution-causing vehicles near them. *See* Michael Lewyn, *The Environmentalist Case for Sprawl—And Why It Fails*, 46 REAL EST. L.J. 92, 101 (2017) (citing Wendell Cox, *Reducing Greenhouse Gases from Personal Mobility: Opportunities and Possibilities*, REASON FOUND., Nov. 2011, at 1, 10, https://reason.org/wp-content/uploads/2011/11/reducing_greenhouse_gases_mobility_development.pdf [<https://perma.cc/V858-WVCE>]). This argument is unpersuasive for two reasons. First, traffic is caused not just by neighbors, but by visitors from other neighborhoods. *Id.* at 101–02. So, in an automobile-dependent town where people are driving into a wide variety of neighborhoods, they are creating pollution in all types of neighborhoods. *Id.* (giving the example of downtown that suffers high levels of pollution from suburban commuters). Second, dense urban areas can have low traffic volumes as long as they are not near major roads such as interstate highways. *See, e.g.*, Rioux et al., *supra* note 90, at 175–83 (showing an example from Boston, where streets near interstate highways have far more auto traffic than places just a few blocks away); Lewyn, *supra*, at 102–03 (citing other examples).

Such development has other public health costs as well. Where people must drive to every conceivable destination, they do not get as much exercise during their daily lives.⁹⁴ If people get less exercise, they may suffer more from obesity and related health problems.⁹⁵ For example, one study by three Arizona State University scholars created a “walkability index” (measuring the distance of places of worship, schools and entertainment from an address) and found that areas with high walkability scores were less likely to have high levels of obesity, diabetes, hypertension, and heart disease.⁹⁶

Generally, cities and regions with high levels of automobile commuting tend to have higher death rates from car crashes.⁹⁷ For example, New York City (where most people use public transit to get to work)⁹⁸ has far lower vehicle death rates than its car-dependent suburbs.⁹⁹ Manhattan, the Bronx, suburban Nassau County, and suburban Suffolk County all have roughly equal populations (between 1.3 and 1.7 million residents).¹⁰⁰ Yet between 2012 and

94. E.g., Maggie L. Grabow et al., *Air Quality and Exercise-Related Health Benefits from Reduced Car Travel in the Midwestern United States*, 120 ENV'T HEALTH PERSPS. 68, 68 (2012), <https://ehp.niehs.nih.gov/doi/pdf/10.1289/ehp.1103440> [<https://perma.cc/6UL7-T8LM>].

95. *Id.*

96. See Vasudha Lathey et al., *The Impact of Subregional Variations in Urban Sprawl on the Prevalence of Obesity and Related Morbidity*, 29 J. PLAN. EDUC. & RSCH. 127, 132–34 (2009), <https://journals.sagepub.com/doi/10.1177/0739456X09348615> [<https://perma.cc/NB2E-CYUR>]; see also LEWYN, *supra* note 72, at 15 n.67 (citing other studies with similar results).

97. LEWYN, *supra* note 72, at 16–19 (citing various examples; for example, five metropolitan areas with lowest percentages of commuters driving to work had between 5 and 6 car crash deaths per 100,000 residents in 2009, while of five metropolitan areas with highest levels of car commuting, four had between 9 and 11 deaths per 100,000 and the fifth had 7.5).

98. See *Commuting Characteristics by Sex, New York City, New York*, tbl.S0801, U.S. CENSUS BUREAU (2019), <https://data.census.gov/cedsci/table?q=S0801&tid=ACSS1Y2019.S0801> [<https://perma.cc/6SQZ-9EW3>]. Under 8% of Manhattan residents and 26% of Bronx residents drive or carpool to work. *Id.* at *New York County, New York*, tbl.S0801; *id.* at *Bronx County, New York*, tbl.S0801.

99. See Robert Wood Johnson Found. & Univ. Wis. Population Health Inst., *New York Summary Information: Motor Vehicle Crash Deaths*, CNTY HEALTH RANKINGS & ROADMAPS (2020), <https://www.countyhealthrankings.org/app/new-york/2020/measure/factors/39/data> [<https://perma.cc/S7HE-H64J>] (last visited July 22, 2021). In contrast to New York City, 74.6% of Nassau County residents and 87% of Suffolk County residents drive or carpool to work. See *Commuting Characteristics by Sex, supra* note 98, at *Nassau County, New York*; *id.* at *Suffolk County, New York*.

100. See *Population of Counties in New York*, WORLD POPULATION REV. (2021), <https://worldpopulationreview.com/us-counties/states/ny> [<https://perma.cc/H5LS-N38H>] (last visited July 10, 2021).

2018, Manhattan and the Bronx had 300 and 378 traffic deaths respectively, while Nassau and Suffolk Counties had 576 and 982 traffic deaths, respectively.¹⁰¹

If (as in Lakewood and its neighbors) suburban development skips over municipal boundaries,¹⁰² it may threaten the financial viability of older municipalities such as Lakewood. If households that choose Toms River or Jackson over Lakewood are wealthier than those who stay in Lakewood, Lakewood (like many larger cities) will have a smaller residential tax base than its neighbors,¹⁰³ causing it to suffer from higher taxes and worse public services. As commercial development sprawls beyond Lakewood's town limits, Lakewood's commercial tax base may deteriorate. In turn, a weak central city may make the entire region less attractive, as people who like urban living shun areas with undesirable central cities.¹⁰⁴

B. Smart Growth Benefits (and Possible Costs)

The leading alternative to sprawl is commonly referred to as “smart growth.”¹⁰⁵ Although this term is somewhat imprecise, some commentators have defined it to include shifting growth towards existing neighborhoods (as opposed to the fringe of a city or metro area) and development that makes cities more walkable, as opposed to development solely oriented towards automobiles.¹⁰⁶ In the context of a small city like Lakewood or Kiryas Joel, that means adding

101. See Robert Wood Johnson Found. & Univ. Wis. Population Health Inst., *supra* note 99.

102. See *supra* notes 35–45 and accompanying text (describing Haredi-oriented development in towns near Lakewood).

103. Cf. Roy Bahl et al., *Central City-Suburban Fiscal Disparities*, 20 PUB. FIN. REV. 420, 425 (1992) (noting taxes per capita are 1.25 times higher in central cities than in suburbs).

104. See Andrew F. Haughwout & Robert P. Inman, *Should Suburbs Help Their Central City?*, in BROOKINGS-WHARTON PAPERS ON URB. AFFAIRS 45, 46–47 (2002).

105. See Oliver A. Pollard III, *Smart Growth and Sustainable Transportation: Can We Get There From Here?*, 29 FORDHAM URB. L.J. 1529, 1530 n.7 (2002) (noting smart growth is “the leading alternative to sprawl”); Timothy Beatley & Richard Collins, *Smart Growth and Beyond: Transitioning to a Sustainable Society*, 19 VA. ENV'T L.J. 287, 289 (2000) (“[S]mart growth is generally defined in relation to sprawl, as the alternative or antidote to sprawl.”).

106. See Pollard, *supra* note 105, at 1530 (“[Smart growth] include[s] efforts to develop a more balanced transportation system; revitalize existing communities . . . and promote development that offers a variety of land uses in close proximity and that can support public transit, bicycling, and walking.”); Beatley & Collins, *supra* note 105, at 289 (noting smart growth initiatives “general[ly] . . . aim to guide new growth into somewhat denser, more compact areas, where existing public services and facilities are already located”).

development to existing downtowns and neighborhoods near those downtowns, rather than spreading out into nearby towns and suburbs. If a smart growth vision was implemented, more people would live downtown, and more cities would look like Israel's Haredi towns (which tend to be far more compact and walkable than their U.S. equivalents).¹⁰⁷ To the extent that American communities resembled these Israeli towns, their residents would benefit in a variety of ways—some especially relevant to Haredim, and others that apply equally to all Americans.

1. Haredi-Specific Benefits

One benefit of smart growth disproportionately affects Haredim. As noted above, one disadvantage of sprawl is that where Haredim are scattered across several suburbs or towns, land use conflicts are more common, because each new town that Haredim move into is another town where they have to lobby and litigate for permission to build homes, synagogues, and schools.¹⁰⁸ By contrast, if Haredim were concentrated in a smaller number of towns, they would dominate those towns, which means that Haredi-oriented development would be more popular,¹⁰⁹ and that developers would spend less money and time on lobbying and litigation. Thus, smart growth facilitates the construction of housing and shops for Haredim.

107. *See infra* notes 113–16 (describing Israeli towns). Seventy-seven percent of Israeli Haredi households own no car. THE ISR. DEMOCRACY INST., STATISTICAL REPORT ON ULTRA-ORTHODOX SOCIETY IN ISRAEL 16 (2016), https://en.idi.org.il/media/4240/shnaton-e_8-9-16_web.pdf [<https://perma.cc/6FYE-B2UY>]. This percentage is far higher than the poverty rate among Israel Haredim. *Id.* (finding a poverty rate of fifty-two percent for Israel Haredim). Thus, it appears that low rates of car ownership there are caused not just by poverty, but by Haredi willingness to live in walkable neighborhoods where cars are unnecessary. *Id.*

108. *See supra* notes 41–46 and accompanying text (describing conflicts).

109. In fact, Lakewood has allowed more new housing in recent years than its neighbors. Twelve percent of Lakewood housing was built after 2010, as opposed to less than two percent of Toms River housing. *See Comparative Housing Characteristics, New York City, New York*, tbl.CP04, U.S. CENSUS BUREAU (2019), <https://data.census.gov/cedsci/table?q=CP04%20New%20York,%20New%20York&tid=ACSCP5Y2019.CP04&hidePreview=true> [<https://perma.cc/6FYE-B2UY>]; *Selected Housing Characteristics, New York City, New York*, tbl.DP04, U.S. CENSUS BUREAU (2019), <https://data.census.gov/cedsci/table?q=DP04%20New%20York,%20New%20York&tid=ACSDP5Y2019.DP04&hidePreview=true> [<https://perma.cc/579G-KU5D>]. This fact strongly suggests that Haredi-dominated Lakewood is more permissive than Toms River.

And as noted above, sprawl maximizes both household expenses for car use and municipal expenses for school busing;¹¹⁰ when most people must drive from town to town to meet their daily needs, they have to purchase more cars and drive them more miles, and their government has to spend more money busing children who live far from school. It logically follows that less sprawling development reduces car and school bus expenses, and thus is more economical for both the private and public sectors. This benefit of smart growth is especially relevant to Haredim, for two reasons. First, Haredi towns tend to be poorer than most—which means that they have less money for vehicles.¹¹¹ Lakewood's median household income is less than two-thirds of the New Jersey average, and Kiryas Joel is even poorer than Lakewood.¹¹² Second, Haredim have large families,¹¹³ which means that if no children walk to school, their school bus expenditures will be larger than those of other towns.

2. Other Benefits

The smart growth benefits discussed above are especially relevant to Haredi communities such as Lakewood and Kiryas Joel. Other benefits do not disproportionately benefit these communities, but create positive effects everywhere. Where long-distance driving is not mandatory, there will be less car-induced air pollution.¹¹⁴ Although such pollution may be less common in smaller towns with fewer commuters, it is nevertheless the case that even in the suburbs, some roads may be busy enough to create dangerous levels of pollution.¹¹⁵ Similarly, car crashes and illnesses related to lack of

110. See *supra* notes 83–86 and accompanying text.

111. Adi Gold, *Haredi Town is Poorest Place in US*, YNETNEWS (Apr. 26, 2011, 7:48 AM), <https://www.ynetnews.com/articles/0,7340,L-4060398,00.html> [<https://perma.cc/W97L-6D7M>].

112. See *Lakewood, New Jersey*, CITY-DATA.COM, *supra* note 82 (demonstrating that the median income for Lakewood is just over \$47,000, while statewide median income is over \$80,000); *Kiryas Joel, New York*, CITY-DATA.COM, *supra* note 34 (illustrating Kiryas Joel's median income as just over \$32,000 and roughly half of the statewide median).

113. See *supra* note 28 and accompanying text.

114. See Anushree Gupta, *Driving for Long Hours? Here is How it is Impacting Your Health*, TIMESNOWNEWS, <https://www.timesnownews.com/health/article/driving-for-long-hours-here-is-how-it-is-impacting-your-health/435411> [<https://perma.cc/F2LB-67D6>] (Jun. 12, 2019, 1:20 PM).

115. See *supra* notes 76–78 and accompanying text (discussing a study of San Francisco suburbs); Shao Lin et. al., *Childhood Asthma Hospitalization and Residential Exposure to State Route Traffic*, 88 ENV'T RSCH. 73, 76–77 (2002), <https://www.sciencedirect.com/science/article/abs/pii/S0013935101943038> [<https://perma.cc/9JNM-QSUL>] (noting similar results in Buffalo suburbs).

exercise exist in every kind of community, and can be reduced through smart growth if people drive less and walk more.¹¹⁶ And if affluent households stay in existing towns rather than moving to newer suburbs, the existing towns will be wealthier.¹¹⁷

3. COVID-19: A Cost of Smart Growth?

It could be argued that because of the COVID-19 pandemic, sprawl is less dangerous than any alternative, because low population density and high automobile use facilitates social distancing.¹¹⁸ At first glance, this argument may seem persuasive, because dense, transit-dependent New York has suffered more from COVID-19 than more automobile-oriented cities such as Los Angeles.¹¹⁹ But this argument overlooks a few important facts.

First of all, although the New York region has suffered more than other regions, the most compact parts of the New York region were not the most heavily infected.¹²⁰ Manhattan is the densest borough,¹²¹ yet peak infection rates were higher in the city's suburbs and outer boroughs.¹²² As of early August 2020, Manhattan had 1,900 COVID-19 cases per 100,000 people—less than half the rate of suburban Rockland County (which had over 4,000 cases per 100,000 people),

116. See *supra* notes 79–84 and accompanying text.

117. See *supra* notes 85–86 and accompanying text.

118. See, e.g., Joel Kotkin, Opinion, *Angelenos Like Their Single-Family Sprawl. The Coronavirus Proves Them Right*, L.A. TIMES (Apr. 26, 2020, 3:00 AM), <https://www.latimes.com/opinion/story/2020-04-26/coronavirus-cities-density-los-angeles-transit> [<https://perma.cc/ADF6-MZFR>]. But cf. James Brasuell, *Density Debate Rages Alongside the Pandemic*, PLANETIZEN (Apr. 27, 2020, 5:00 AM), <https://www.planetizen.com/blogs/109173-density-debate-rages-alongside-pandemic> [<https://perma.cc/XSM4-4YF9>] (citing articles on all sides of issue).

119. See Kotkin, *supra* note 118.

120. Matt Coneybeare, *New York City Population Density Mapped*, VIEWING NYC (Dec. 5, 2014, 10:34 AM), <https://viewing.nyc/new-york-city-population-density-mapped/> [<https://perma.cc/A82E-7796>].

121. See NYU FURMAN CENTER, STATE OF NEW YORK CITY'S HOUSING AND NEIGHBORHOODS IN 2018 37, 51, 71, 85, 101 (2018), https://furmancenter.org/files/sotc/2018_SOC_Full_2018-07-31.pdf [<https://perma.cc/HL3A-DAZ4>] (listing density of each borough).

122. See Todd Litman, *Lessons from Pandemics: Transportation Risks and Safety Strategies*, PLANETIZEN (Apr. 23, 2020, 5:00 AM), <https://www.planetizen.com/blogs/109146-lessons-pandemics-transportation-risks-and-safety-strategies> [<https://perma.cc/GB87-4LHH>]; *Density and COVID-19 in New York City*, CITIZENS HOUS. PLAN. COUNCIL N.Y.C. (May 2020), <https://chpcny.org/wp-content/uploads/2020/05/CHPC-Density-COVID19-in-NYC.pdf> [<https://perma.cc/YQ5L-QR7A>].

fewer than any of the four outer boroughs, and also fewer than suburban Bergen, Passaic, Hudson, Orange, Nassau, and Suffolk Counties.¹²³ Within Manhattan, the three least heavily infected zip codes have above-average levels of population density.¹²⁴ Thus, it appears that within the New York region, there is no correlation between population density and COVID-19 infections.

Second, other dense cities have been far more successful in controlling this disease than New York. San Francisco is the second densest big city (with just over 17,000 persons per square mile) in the United States.¹²⁵ But as of early August 2020, San Francisco had 784 cases per 100,000 residents.¹²⁶ Obviously, this number is far lower than that of New York and its suburbs—but San Francisco also has fewer than half as many infections per person as Los Angeles County,¹²⁷ despite the fact that the latter county has less than one-

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123. See *At Least 159,000 People Have Died From Coronavirus in the U.S.*, WASH. POST, (Aug. 10, 2020, 8:15 PM), <https://www.washingtonpost.com/graphics/2020/national/coronavirus-us-cases-deaths/> [https://perma.cc/5UGM-AEY3]. All of the outer-borough and suburban counties had between 2,239 (Bergen) and 3,739 (Westchester) cases per 100,000 residents. *Id.*
124. As of August 10, 2021, the New York City zip codes with the lowest infection rates were in Manhattan—10280 (644 cases per 100,000), 10007 (848), 10012 (846). See *COVID-19: Data*, NYCHEALTH, <https://www1.nyc.gov/site/doh/covid/covid-19-data-totals.page> [https://perma.cc/4CWH-JUBH] (last visited Nov. 8, 2021). Each of these three zip codes have over 40,000 people per square mile—about fifty percent more than the citywide density level. See *New York Population Density Zip Code Rank, USA*, <http://www.usa.com/rank/new-york-state--population-density--zip-code-rank.htm> [https://perma.cc/PD5B-EKCR] (last visited July 12, 2021) (listing densities of each zip code); Mike Macaig, *Mapping the Nation's Most Densely Populated Cities*, GOVERNING (Oct. 2, 2013), <https://www.governing.com/archive/most-densely-populated-cities-data-map.html> [https://perma.cc/FD3T-NXVW] (highlighting New York City has 27,012 people per square mile).
125. See *COVID-19: Data*, *supra* note 124; *New York Population Density Zip Code Rank*, *supra* note 124; Macaig, *supra* note 124.
126. See *At Least 159,000 People Have Died From Coronavirus in the U.S.*, *supra* note 123. Although the Post COVID-19 tracker generally lists deaths by county rather than city, this classification is irrelevant to San Francisco, because the city of San Francisco and its county are identical. See *City and County of San Francisco*, SF.GOV, <https://sf.gov> [https://perma.cc/4YSR-VK47] (last visited July 14, 2021) (showing that San Francisco City and County are one entity).
127. See *At Least 159,000 People Have Died From Coronavirus in the U.S.*, *supra* note 123 (stating that San Francisco has 784 infections per 100,000 residents while Los Angeles County has just over 2,000 infections: more than twice that of San Francisco).

sixth the density of San Francisco.¹²⁸ A recent study published in the *Journal of the American Planning Association* finds that even though large metropolitan areas such as New York tend to have higher infection rates, “after controlling for metropolitan population, county density is unrelated to the infection rate and negatively related to the mortality rate.”¹²⁹ Similarly, during the 1918 influenza pandemic, lower-density areas actually suffered higher mortality rates.¹³⁰

Third, Lakewood is unlikely to ever reach New York, or even San Francisco, levels of density. As of 2018, Lakewood had 102,000 residents within its twenty-five square miles.¹³¹ To reach San Francisco’s level of density, Lakewood would need 425,000 people, more than four times its current size.¹³²

4. Is There Demand for Smart Growth?

It could also be argued that even if zoning rules allowed more dense housing near downtown, the market would prefer suburbs with more land because Haredim have large families and thus need more space than other households.

This argument is unpersuasive for three reasons. First, Haredi families are perfectly capable of living in dense neighborhoods; for example, Borough Park and Williamsburg both have over 60,000 people per square mile,¹³³ far above New York’s citywide average.¹³⁴

128. Los Angeles County has 2,472 persons per square mile. *See Los Angeles County, California (CA)*, CITY-DATA.COM, http://www.city-data.com/county/Los_Angeles_County-CA.html [https://perma.cc/36SG-YY44] (last visited July 13, 2021).

129. *See* Shima Hamidi et al., *Does Density Aggravate the COVID-19 Pandemic?*, 86 J. AM. PLAN. ASS’N 495, 495 (2020), https://www.tandfonline.com/doi/full/10.1080/01944363.2020.1777891?fbclid=IwAR1TiLh4VKpSLVJTNS6tOctjFd6A9raU6zrTCdNWDw-_sKpbqRxr0ZXzPg [https://perma.cc/J8C7-FFYS].

130. *See id.*

131. *See* David P. Willis & Stacey Barchenger, *Lakewood 2030: This is the Future of the Fastest-Growing NJ Township*, APP., <https://www.app.com/story/news/investigations/watchdog/investigations/2019/04/15/lakewood-nj-growth-business-office/2701306002/> [https://perma.cc/3267-JH2U] (Dec. 30, 2019, 9:40 AM).

132. *Compare* Macaig, *supra* note 124 (stating that San Francisco has a population of 17,179.2 per square mile), *with* Willis & Barchenger, *supra* note 131 (explaining that Lakewood has 102,000 residents per 25 square miles).

133. *See Borough Park Neighborhood in Brooklyn, New York (NY), 11204, 11218, 11219, 11220 Detailed Profile*, CITY-DATA.COM, <http://www.city-data.com/neighborhood/Borough-Park-Brooklyn-NY.html> [https://perma.cc/24JT-22CX] (last visited July 14, 2021); *Williamsburg–South Side Neighborhood in Brooklyn, New York (NY), 11206, 11211 Detailed Profile*, CITY-DATA.COM, <http://www.city-data.com/neighborhood/Williamsburg---South-Side-Brooklyn-NY.html> [https://perma.cc/D9T7-WCJ3] (last visited July 14, 2021); *see* discussion

Similarly, Israel has high-density Haredi settlements.¹³⁵ Modi'in Illit, one of these Haredi cities,¹³⁶ has just over 47,000 people per square mile.¹³⁷ Because Modi'in Illit is so compact, most of its residents do not own cars.¹³⁸ Another Haredi city, Bnei Brak,¹³⁹ is even more dense than Borough Park or Williamsburg.¹⁴⁰

Second, even if larger households want large houses, Haredi towns have a significant number of smaller households. A quarter of all Lakewood households have two or fewer occupants,¹⁴¹ as do about

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- supra* note 26 and accompanying text (stating Borough Park and Williamsburg are among New York's leading Haredi neighborhoods). It could be argued that residents of Lakewood or other suburban neighborhoods prefer less density than residents of Borough Park. On the other hand, as long as Lakewood is less expensive than city neighborhoods, people who want more land can still purchase it there.
134. See Macaig, *supra* note 124 (stating New York City has just over 27,000 people per square mile).
135. See Stuart Winer, *Haredi Population Growing Twice as Fast as Overall Israeli Population – Report*, THE TIMES OF ISRAEL (Dec. 31, 2020, 5:34 PM), <https://www.timesofisrael.com/haredi-population-growing-twice-as-fast-as-total-israeli-population-report/> [<https://perma.cc/8AUV-RML7>] (stating that the Haredi population in Israel numbers around 1.175 million, showing an annual growth rate of 4.2% over the past decade).
136. See, e.g., *Modi'in Illit (Kiryat Sefer)*, NEFSH B'NEFESH, <https://www.nbn.org.il/aliyahpedia/community-housing-aliyahpedia/community-profiles/modiin-elite-kiryat-sefer/> [<https://perma.cc/4J59-9AKH>] (last visited July 14, 2021) (describing city as "Litvish-oriented").
137. See *Israel*, CITY POPULATION, <https://www.citypopulation.de/en/israel/cities/> [<https://perma.cc/AB47-HPA4>] (last visited July 13, 2021) (stating Modi'in Illit has 73,000 people in 4 square kilometers, or just over 1.5 square miles); THE WORLD ALMANAC AND BOOK OF FACTS 2020 357 (Sarah Janssen, ed.) (2019) (explaining that a square kilometer is 0.386 square miles).
138. See *Modi'in Illit (Kiryat Sefer)*, *supra* note 136 (stating most residents of Modi'in Illit do not own cars).
139. See Israel Kasnett, *Israel's Haredi Population: Is it Growing or Shrinking?*, S. FLA. SUN-SENTINEL (June 5, 2018, 10:27 AM), <https://www.sun-sentinel.com/florida-jewish-journal/fl-jjps-haredi-0613-20180605-story.html> [<https://perma.cc/7AHG-DL85>] (discussing birthrates in Bnei Brak and Modi'in Illit in context of an article about Haredi birthrates, thus implicitly suggesting that these are Israel's leading Haredi towns).
140. Bnei Brak has just over 198,000 people in 7.4 square kilometers, or just over 2.8 square miles. See *Israel*, *supra* note 137 (outlining the data for town); THE WORLD ALMANAC AND BOOK OF FACTS, *supra* note 137, at 357. Thus, Bnei Brak has about 79,000 people per square mile. See *Convert Km to Miles*, UNITCONVERTERS, <https://www.unitconverters.net/length/km-to-miles.htm> [<https://perma.cc/T4D5-RU73>] (last visited July 14, 2021) (stating that the conversion rate between kilometers and miles is .62 miles per 1 km).
141. See U.S. CENSUS BUREAU, *supra* note 84 (stating Lakewood has 10,298 housing units; 1,119 have one person and 1,669 have two).

fifteen percent of Kiryas Joel households.¹⁴² Third, even larger households might be willing to pay for less land than zoning codes typically require—for example, a condominium with multiple bedrooms instead of a single-family house, or a detached house on a smaller lot than current zoning might require.¹⁴³ So, even if the largest households need amounts of space typically associated with suburbia, they might not need to consume the amount of land typically required by zoning codes.

III. HOW TO GET THERE: A SMART GROWTH AGENDA

As explained above, Haredim can minimize land use conflicts with neighboring municipalities if more housing is built in existing Haredi-dominated towns.¹⁴⁴ Under a smart growth policy, mid- and high-rise apartments might ring downtown, and smaller houses and apartment buildings could be scattered through quieter neighborhoods.¹⁴⁵

The high growth rate of Haredi towns suggests that zoning is not extremely restrictive by national standards,¹⁴⁶ but they still have many sprawl-producing restrictions, such as (A) density regulation, (B) single-use zoning, (C) setback rules, and (D) minimum parking requirements.¹⁴⁷ Each of these will be addressed in turn. Because Lakewood is larger and less densely populated than other Haredi communities such as Kiryas Joel,¹⁴⁸ this Article focuses particularly on Lakewood as a case study. However, many of the zoning regulations common in Lakewood are common in other municipalities as well; thus, the analysis below could be relevant to most suburbs and small towns.

142. *See id.* (finding out of 4,169 housing units, 108 have one occupant and 578 have two).

143. *See infra* Section III.A. (describing density limits in Lakewood). *Cf.* Michael Lewyn, *Explaining Market Urbanism*, 46 REAL EST. L.J. 589, 591 n.14 (2018) (stating typical zoning codes require houses to consume one quarter of an acre of land).

144. *See supra* notes 55–69, 79–81 and accompanying text.

145. *See supra* notes 105–07 and accompanying text.

146. *See* Willis & Barchenger, *supra* note 131 (stating that Lakewood fastest-growing municipality in New Jersey); *Kiryas Joel, New York*, CITY-DATA.COM, *supra* note 34 (explaining that Kiryas Joel grew by 83.9% since 2000).

147. *See infra* Sections III.A.–D.

148. Lakewood is only one-fifth as dense as Kiryas Joel. *See supra* notes 133–34 and accompanying text (showing that Lakewood has just over 4,000 people per square mile); *Kiryas Joel, New York*, CITY-DATA.COM, *supra* note 34 (showing that Kiryas Joel has just under 22,000 people per square mile); *supra* notes 141–42 and accompanying text (showing that Lakewood has twice as many households as Kiryas Joel).

A. *Density Regulation*

Zoning codes generally limit housing supply by limiting the number of housing units per acre, or by requiring each house to occupy X number of square feet;¹⁴⁹ Lakewood is no exception. Lakewood has a wide variety of residential zoning districts, each with its own housing supply caps. For example, in the town's R-40 zoning district, each house must consume 40,000 square feet, equal to almost one full acre of land,¹⁵⁰ or one-fifth the size of a New York City block.¹⁵¹ Only a few small portions of the city are zoned R-40; however, other low-density zones are common on the town's outskirts,¹⁵² including R-20 (requiring 20,000 square feet of land per house), R-15 (15,000 square feet per house), and R-12 (12,000 square feet per house).¹⁵³

Because downtowns tend to be more dense than other areas,¹⁵⁴ one might argue that low-density zoning makes sense at the edge of town. But this argument does not justify lower densities near downtowns; instead, downtowns should be as dense as the market will support, so that as many people as possible can walk to downtown amenities such as government facilities and restaurants.¹⁵⁵ This is especially

149. See Lewyn, *supra* note 143.

150. See LAKEWOOD, N.J., UNIFIED DEVELOPMENT ORDINANCE ch. 18, art. IX, § 902(B)(4)(a) (2005); see also *Square Feet and Acres Converter*, CALCULATOR SITE, <https://www.thecalculatorsite.com/conversions/area/square-feet-to-acres.php> [<https://perma.cc/TQD3-LCGX>] (last visited July 10, 2021) (enter 40,000 in the "Value to convert" field and click "Convert" to yield an answer of 0.92 acres) (showing that each acre is 43,560 square feet).

151. See *How Many Acres Are in a City Block?*, REFERENCE*, <https://www.reference.com/geography/many-acres-city-block-c2e3daa4355c15a2> [<https://perma.cc/B2EB-F9MW>] (Mar. 26, 2020, 8:59 AM).

152. See Township of Lakewood, *Amended Zoning Ordinance Map - 2017*, ECODE360 (Apr. 2020), <https://ecode360.com/attachment/LA4064/LA4064-018h%20Amended%20Zoning%20Map.pdf> [<https://perma.cc/D3VM-LPYF>] (showing that these zones are especially common at the edge of town).

153. See LAKEWOOD, N.J., UNIFIED DEVELOPMENT ORDINANCE ch. 18, art. IX, § 902(B)(4)(a), (D)(4)(a), (E)(4)(a) (2005) (showing requirements for R20, R15, and R12 zones).

154. See, e.g., *Cafua Mgmt. Co. v. Sherman*, No. 13 MISC 478544(GHP), 2016 WL 1178352, at *3 (Mass. Land Ct. Berkshire County Mar. 28, 2016) (noting that downtown Pittsfield, Ma. "features high density, mixed-use buildings, and a pedestrian-oriented streetscape"); *Albuquerque Commons P'ship v. City of Albuquerque*, 149 P.3d 67, 71 (Ct. App. N.M. 2006), *rev'd on other grounds*, 248 P.3d 856 (N.M. Supreme Ct. 2011) ("[An] urban center . . . is an area containing the highest densities . . .").

155. Despite downtown Lakewood's problems, it nevertheless is a significant shopping district. See DiUlio, *supra* note 74; see *Commute Map of 231 3rd Street, Lakewood, NJ, 08701*, WALK SCORE, <https://www.walkscore.com/score/231-3rd-st-lakewood->

true in Lakewood because the town's major Jewish civic institution (BMG) is a short walk from downtown;¹⁵⁶ thus, BMG students or employees could live downtown and walk to school or work.

However, Lakewood's zoning code significantly restricts housing downtown. Downtown Lakewood is in the Central Business—or B-2—zone.¹⁵⁷ One might think that a downtown of a growing city should be full of taller-than-average buildings—but Lakewood limits housing to twenty-two units per acre.¹⁵⁸ Buildings with this level of density will usually have only two or three stories.¹⁵⁹

Similarly, Lakewood's major yeshiva and employer are subject to restrictive density rules. BMG is in the city's Residential Office Park (ROP) zone.¹⁶⁰ In this zone, the city allows only fifteen apartments per acre,¹⁶¹ and only 4.3 houses per acre.¹⁶² Thus, zoning limits the amount of housing within walking distance of BMG. The city's largest private sector employer, Georgian Court University,¹⁶³ is less

township-nj-08701 [https://perma.cc/NE7H-9GBF] (last visited June 25, 2021) (showing fourteen restaurants of all types within half a mile of City Hall in downtown Lakewood, as well as two grocers, two Judaica stores, and about a dozen other retail stores). Of course, not every suburb has a downtown – but even in such suburbs, there might be an area where dense development makes more sense, such as an area with a concentration of shops or schools.

156. See *Lakewood, NJ*, GOOGLE MAPS, *supra* note 71 (follow “Directions” hyperlink; then search starting point field for “Beth Medrash Govoha” and search destination field for “Lakewood Municipal Office”) (BMG is only an 0.6 mile walk from City Hall.); *supra* notes 29–32 and accompanying text (describing BMG).
157. See Township of Lakewood, *Amended Zoning Ordinance Map - 2017*, ECODE360 (Apr. 2020), <https://ecode360.com/attachment/LA4064/LA4064-018h%20Amended%20Zoning%20Map.pdf> [https://perma.cc/L88H-A8EF]; LAKEWOOD, N.J., UNIFIED DEVELOPMENT ORDINANCE ch. 18, art. IX, § 903(B) (2005).
158. LAKEWOOD, N.J., UNIFIED DEVELOPMENT ORDINANCE ch. 18, art. IX, § 903(B)(5)(g) (2005).
159. See Bob Bengford, *Visualizing Compatible Density*, THE URBANIST (May 4, 2017), <https://www.theurbanist.org/2017/05/04/visualizing-compatible-density/> [https://perma.cc/5D2U-42VY] (showing development with 15 units per acre dominated by two- and three-story buildings).
160. See Township of Lakewood, *supra* note 152.
161. LAKEWOOD, N.J., UNIFIED DEVELOPMENT ORDINANCE ch. 18, art. IX, §§ 903(I)(1)(e), 902(H)(4)(b) (2005) (stating that multi-family housing is allowed, but only “in accordance with the design regulations of the R-M District as specified in § 18-902H4b” which sets a 15-unit limit).
162. *Id.* § 903(I)(2)(a), (I)(3)(a) (showing that single family houses and duplexes must consume at least 10,000 square feet of land, or just under one fourth of an acre).
163. See Dave Lansing, *Leading Employers in Ocean County*, OCEAN CNTY. SCANNER NEWS (July 16, 2019, 10:23 PM), <https://ocscanner.news/2019/07/16/leading-employers-in-ocean-county/> [https://perma.cc/NF5Y-HWYT].

than a mile from City Hall and several blocks from BMG,¹⁶⁴ yet is in an R-12 zone,¹⁶⁵ where each house must occupy 12,000 square feet of land,¹⁶⁶ and multifamily housing is prohibited.¹⁶⁷

Lakewood's density caps may serve some public purpose. Often, courts have justified such regulations as reducing traffic¹⁶⁸ or somehow preserving a community's rural or suburban atmosphere.¹⁶⁹ But such benefits may be outweighed by a variety of costs. As noted above, sprawling development means that people have to drive or bus their children across greater distances and have fewer opportunities

164. See *Lakewood, NJ*, GOOGLE MAPS, *supra* note 71 (follow "Directions" hyperlink; then search starting point field for "Beth Medrash Govoha" and search destination field for "Georgian Court University"); *id.* (follow "Directions" hyperlink; then search starting point field for "Lakewood Municipal Office" and search destination field for "Georgian Court University").

165. See Township of Lakewood, *supra* note 152; LAKEWOOD, N.J., UNIFIED DEVELOPMENT ORDINANCE ch. 18, art. IX, § 900(A)(5) (2005).

166. LAKEWOOD, N.J., UNIFIED DEVELOPMENT ORDINANCE ch. 18, art. IX, § 902(E)(4)(a) (2005).

167. *Id.* § 902(E)(1)-(2) (showing that multifamily housing not on list of allowed uses).

168. See *Padover v. Twp. of Farmington*, 132 N.W.2d 687, 695 (Mich. 1965) ("More freedom from noise and traffic might result" from large minimum lot sizes.) (citation omitted). The *Padover* court listed a variety of other possible benefits from minimum lot sizes, such as "safety from fire and other dangers . . . [and] transportation, water, light, sewer and other necessities." *Id.* However, the court did not cite any evidence for its suggestion that large houses somehow prevent fire, because high-density places do not necessarily have high levels of fire damage. See MARTY AHRENS, NAT'L FIRE PROT. ASS'N, US FIRE DEATH RATES BY STATE 4 (Sept. 2019), <https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/US-Fire-Problem/osstate.pdf> [<https://perma.cc/56WU-N9V6>] (noting death rates from fires higher in rural areas than in small towns, and higher in either than in large cities). In fact, low-density development actually reduces the availability of transportation by making public transit impossible, because such development means that fewer people can live within walking distance of bus stops. Cf. Margaret E. Byerly, *A Report to the IPCC on Research Connecting Human Settlements, Infrastructure, and Climate Change*, 28 PACE ENV'T. L. REV. 936, 943-44 (2011) (arguing frequent transit service is only practical in areas with fifteen or more dwelling units per acre; areas with four or five units per acre suitable for minimal transit service). Moreover, low-density development actually makes public utilities more expensive and thus more difficult to provide, because where development expands into the countryside, more infrastructure is necessary than would otherwise be the case. See Daniel J. Hutch, *The Rationale for Including Disadvantaged Communities in the Smart Growth Metropolitan Development Framework*, 20 YALE L. & POL'Y REV. 353, 360 (2002) ("Sprawling development patterns require expensive investments in sewer, water and road extensions . . . it may cost twice as much to service utilities in low-density developments.").

169. See, e.g., *Agins v. Tiburon*, 447 U.S. 255, 261-62 (1980) (zoning ordinance allowing only one house per acre justified by need to protect suburb's residents "from the ill effects of urbanization" and by the need to provide for "open-space areas").

to walk.¹⁷⁰ As a result, such development leads to more car crashes, less exercise, more pollution, and increased costs for vehicle use and school busing.¹⁷¹

Moreover, density restrictions near downtown create negative side effects that sprawl-producing regulation in suburbs do not. Anti-density zoning contributes to downtown Lakewood's limited supply of shops, jobs, and other amenities. If more people lived downtown, more consumers could support more downtown shops, and downtown Lakewood would come to resemble the bustling business districts of Brooklyn's Haredi neighborhoods, which have dozens of Judaica stores and kosher supermarkets.¹⁷² Thus, towns like Lakewood should substantially revise their zoning codes to allow taller, denser residential buildings downtown. Similarly, cities should allow small-lot housing and more multifamily housing near major universities and employers, such as BMG and Georgian Court, so that students and employees can walk to school and work.¹⁷³

Even anti-density regulation at the edge of town is not harmless. Such regulation restricts the amount of available housing within Lakewood's city limits and, as a result, such rules are likely to both raise housing costs in Lakewood¹⁷⁴ and shift development to suburbs near Lakewood, thus increasing Haredi/non-Haredi conflict in those towns.¹⁷⁵ As people move from Lakewood to communities farther away from Lakewood, they have to spend more money and time driving, their children have to spend more time on school buses, and

170. See *supra* notes 83–89, 94–96 and accompanying text.

171. See *supra* Section II.A.

172. For example, Google Maps searches revealed that Borough Park has about fifteen Judaica shops and fifteen grocers, while downtown Lakewood has just two of each. See *Lakewood, N.J.*, GOOGLE MAPS, *supra* note 71; *Borough Park, Brooklyn, NY*, GOOGLE MAPS, <https://www.google.com/maps> [<https://perma.cc/6H7S-D6RE>] (last visited October 8, 2021).

173. Lakewood and Kiryas Joel residents tend to have low incomes, and as a result, they suffer more than other people by having to own a car to get to school. See *supra* notes 82–84 and accompanying text.

174. See Scott Beyer, *More Building, Lower Prices: Census Data Makes the YIMBY Case*, MKT. URBANISM REP. (June 2, 2020), <https://marketurbanismreport.com/blog/more-building-lower-prices-census-data-make-the-yimby-case> [<https://perma.cc/6C76-2UEB>] (showing places with fewer building permits tend to have higher housing prices).

175. See *supra* notes 41–60 and accompanying text (discussing this argument in more detail).

their towns have to spend more money on busing their children to school.¹⁷⁶

As noted above, much of Lakewood is zoned for between one and four houses per acre.¹⁷⁷ Where houses are so thinly spread, almost nothing is within walking distance of shops or jobs; the U.S. Environmental Protection Agency has suggested that a neighborhood must have at least seven houses per acre (or roughly one house per 6,000 square feet) to support a corner store within walking distance, and eighteen houses per acre (or roughly one house per 2,400 square feet) to support a supermarket within walking distance.¹⁷⁸ It follows that zoning codes that mandate such low densities may actually increase traffic congestion and pollution, by forcing residents of low-density zones to drive to most destinations.¹⁷⁹

So, what should towns do instead? First of all, if towns like Lakewood wish to revive their downtown, they should, at a minimum, eliminate density restrictions downtown, or at least alter those restrictions to allow more dwelling units. Second, if keeping regional growth within town limits is a priority, cities should also liberalize density restrictions in other parts of the city.

B. *Single-Use Zoning*

The most walkable places tend to have mixed uses—that is, housing is on the same block, or even in the same building, as shops and offices.¹⁸⁰ Mixed-use buildings increase walkability by enabling their residents to walk to more commercial spaces.¹⁸¹

176. *See supra* notes 84–88 and accompanying text (discussing these arguments in more detail).

177. *See supra* notes 150–53 and accompanying text.

178. *See* LOCAL GOV'T COMM'N, CREATING GREAT NEIGHBORHOODS: DENSITY IN YOUR COMMUNITY 4 (Sept. 2003), https://www.epa.gov/sites/production/files/2013-12/documents/density_0.pdf [<https://perma.cc/FTV6-3G9S>] (stating on the front page that it is in “cooperation with U.S. EPA”). Obviously, many areas with far fewer than eighteen housing units per acre have supermarkets, but those groceries are likely to be supported by people driving from a variety of places, as opposed to neighborhood foot traffic.

179. *See supra* note 93 (making similar points).

180. *See* Nolan Gray, *Mixed Up Priorities for Mixed-Use Buildings*, STRONG TOWNS (Jan. 9, 2018), <https://www.strongtowns.org/journal/2018/1/8/mixed-up-priorities-for-mixed-use-buildings> [<https://perma.cc/HHM2-CZ7K>] (emphasis added) (Sometimes “major cities *require* ground floor retail for apartments and offices.”).

181. *Cf.* Brent Pace, *Advantages and Disadvantages of Mixed-Use Development*, RES. FOR ENTREPRENEURS, <https://www.gaebler.com/Advantages-And-Disadvantages-Of-Mixed-Use-Development.htm> [<https://perma.cc/RE6V-QPYP>] (last visited July 13, 2021) (mixed-use development allows people to “live, work and play all in close proximity”).

By contrast, the Lakewood code states that in the downtown B-2 zone, “[c]ombined business and residential uses are hereby expressly prohibited”¹⁸² In other words, businesses and residential uses can both be in downtown Lakewood, but they cannot share a building.¹⁸³ This law both discourages housing downtown (since it precludes commercial landlords from adding housing) and keeps business out of downtown (because it precludes residential landlords from adding shops or offices).¹⁸⁴ Thus, this law may reduce downtown Lakewood’s population and job base, and thus creates the same negative consequences as other regulations discussed above.¹⁸⁵ It logically follows that this provision should simply be eliminated from the zoning code.

Single-use zoning also affects the rest of the city. Although there may be a case for limiting traffic in low-density residential zones, areas with major employers by definition already have a significant amount of visitors and traffic; thus, such areas should accommodate a wide variety of uses. But commercial uses are not allowed in R-12 zones, such as the zone including Georgian Court,¹⁸⁶ which reduces the ability of Georgian Court’s hundreds of students and employees to easily walk to shops or jobs.¹⁸⁷ Thus, towns should allow a broader mix of uses near downtown and major employers such as Georgian Court.

C. *A Setback for Pedestrians*

Generally, the Lakewood zoning code, like many zoning codes, often requires that both housing and nonresidential uses be set back far from the street. For example, BMG is in the R-OP zone, where structures must be set back twenty-five feet from the street, and no structure may encompass more than twenty-five percent of a lot.¹⁸⁸ In other parts of town, these rules are more restrictive: for example, in a “highway business zone,” buildings must be fifty feet away from the

182. LAKEWOOD, N.J., UNIFIED DEVELOPMENT ORDINANCE ch. 18, art. IX, § 903(B)(1)(a) (2020).

183. *See id.*

184. *See id.*

185. *See supra* Section III.A.

186. ch. 18, art. IX, §§ 902(E)(1)–(2) (neither multifamily housing nor commerce is on list of allowed uses). As noted above, Georgian Court is the city's largest private employer. *See* Lansing, *supra* note 163.

187. Similarly, BMG is, as noted above, in the R-OP zone, where retail is not on the list of permitted uses— though a wide variety of professional occupations are allowed. *See* ch. 18, art. IX, § 903(I)(1); Township of Lakewood, *supra* note 152.

188. ch. 18, art. IX § 903(I)(2).

street.¹⁸⁹ Even downtown, housing must be set back twenty feet from the street (if multifamily)¹⁹⁰ or twenty-five feet otherwise.¹⁹¹ Land that is set back from the street is typically used for lawns or parking rather than being attractively landscaped.¹⁹²

Although the land used for setbacks is not entirely wasted, it is nevertheless land that could be used for housing, and thus plays a minor role in reducing citywide housing supply. In addition, setback regulations inconvenience pedestrians by forcing them to walk through a parking lot or similar buffer zone to reach their apartments, shops, and jobs. Although a twenty-five-foot setback may only take a few seconds to walk through, these sometimes-empty spaces may be less appealing than a quick walk from sidewalk to store.¹⁹³ Defenders of setbacks argue that setbacks make streets seem less crowded,¹⁹⁴ but pedestrians actually benefit from the shade and the sense of enclosure created by buildings that are near a sidewalk.¹⁹⁵

Admittedly, some buildings, especially in automobile-oriented blocks on the fringe of the city, need large amounts of parking, and

189. *Id.* § 903(C)(3)(c).

190. *Id.* § 903(B)(5)(d).

191. *Id.* § 903(B)(4)(c). Similarly, structures must be set back twenty feet from other buildings on the rear and side as well. *Id.* § 903(B)(3)(a)–(b) (for commercial structures, rear yard setback of ten feet, side yard setback of seven feet); *id.* § 903(B)(5)(e), (f) (for multifamily structures, twenty-foot rear and side yard setbacks). Although rear and side setbacks arguably waste land, they do not degrade the pedestrian environment to the same extent as do front setbacks. *See infra* notes 192–95 and accompanying text (explaining why front setbacks create environments that are unappealing for pedestrians).

192. *See* JOSH STEPHENS, *THE URBAN MYSTIQUE: NOTES ON CALIFORNIA, LOS ANGELES, AND BEYOND* 154 (2020); Chad D. Emerson, *Making Main Street Legal Again: The SmartCode Solution to Sprawl*, 71 *MO. L. REV.* 637, 645 n.36 (2006). Under conventional American zoning codes “front setbacks must be either a 25-foot grass yard or a paved parking lot.” *Id.*

193. *Cf.* 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 without setbacks more aesthetically appealing because, if properly designed, they “provide more interesting scenery . . . and create a feeling of connection between the buildings and the public spaces bordering them”).

194. *See* STEPHENS, *supra* note 192, at 154 (“Received wisdom holds that setbacks make urban spaces feel less crowded. They supposedly ensure that buildings do not overshadow streets and sidewalks.”).

195. *Id.* at 155; *see, e.g., The Haredi Neighborhoods of Zikhron Moshe and Meah Shearim*, IN AND AROUND JERUSALEM, https://inandaroundjerusalem.com/summary_of_walks_in_jerusalem/the_haredi_neighborhoods_of_zikhron_moshe_and_meah_shearim [<https://perma.cc/L4G8-EBH6>] (last visited July 8, 2020) (referencing photo of Malchei Israel, a shady Jerusalem Haredi neighborhood with no setbacks).

thus will be set back from the street as long as the law allows it. This choice, however, should be left up to individual landowners because of the unpleasant side effects of setback rules.

D. Minimum Parking Requirements

The Lakewood code requires businesses to provide significant amounts of off-street parking. For example, most retail activities must provide one space for every 200 square feet of floor area,¹⁹⁶ that is, 5 per 1,000 square feet. Because a parking space can take up 330 square feet of land,¹⁹⁷ this means that retail businesses must devote more land to parking than to their stores. By contrast, some American municipalities require two or fewer spaces.¹⁹⁸ Residential developments typically require between 0.8 and two parking spaces per bedroom.¹⁹⁹ Such “minimum parking requirements” are widespread in the United States, and often require far more parking than renters or customers actually use.²⁰⁰

196. See LAKEWOOD, N.J., UNIFIED DEVELOPMENT ORDINANCE ch. 18, art. VIII, § 807(B)(1).

197. See DONALD SHOUP, PARKING AND THE CITY 9 (2018).

198. See, e.g., Sara Schindler, *The Future of Abandoned Big Box Stores: Legal Solutions to the Legacies of Poor Planning Decisions*, 83 U. COLO. L. REV. 471, 482 (2012) (Seattle requires two parking spaces per 1,000 square feet of retail); see also Michael Lewyn, *Sprawl in Canada and the United States*, 44 URB. LAW. 85, 121 (2012) (two Atlanta suburbs require two spaces per 1000 feet or fewer).

199. See N.J. ADMIN. CODE § 5:21-4.14 (2021) (referencing Table 4.4 illustrating that in New Jersey, parking standards for housing are set by state government, for a garden apartment, 1.8 spaces are required for one-bedroom apartments, and 2.0 are required for two-bedroom apartments, and for high-rise apartments, only 0.8 spaces are required for a one-bedroom apartment and 1.3 for a two-bedroom apartment). Two municipalities have obtained state permission for differing standards; however, Lakewood is not one of them. See *Residential Site Improvement Standards*, STATE OF N.J. DEP'T OF CMTY. AFFS., <https://nj.gov/dca/divisions/codes/offices/rsis.html> [<https://perma.cc/6KZV-X7YU>] (last visited July 13, 2021).

200. See METRO BOSTON PERFECT PARKING FIT INITIATIVE, METRO. AREA PLAN. COUNCIL 20–21 (Feb. 2017), https://perfectfitparking.mapc.org/uploads/FINAL_Metro%20Boston%20Perfect%20Fit%20Parking%20Initiative%20Report_2-3-17.pdf [<https://perma.cc/Q5E6-JV34>] (charting a survey of apartments in several Boston suburbs showed that parking demand per unit was consistently below parking supply; roughly one in four spaces were unused); Alan Durning, *Wide Open Spaces: How Unused Parking Adds Up*, GRIST (July 28, 2013), <https://grist.org/cities/wide-open-spaces-how-unused-parking-adds-up/> [<https://perma.cc/87CZ-77JK>] (In one Oregon suburb, “barely half of legally required spaces had cars in them”); cf. Donald C. Shoup, *Truth in Transportation Planning*, 6 J. TRANSP. & STAT. 1, 4 (2003), <http://shoup.bol.ucla.edu/TruthInTransportationPlanning.pdf> [

These regulations make driving more convenient, and arguably are not particularly harmful in the least walkable places, where every conceivable errand involves a car. But in more foot-friendly areas such as downtowns, parking requirements have several negative side effects.

First, parking requirements reduce the land available for housing, thus reducing the housing supply and increasing housing costs. This is the case because every inch of land used for parking cannot be used for housing. For example, if a landowner creates a building with 22 two-bedroom units per acre (the maximum allowed in Lakewood's downtown zone)²⁰¹ and each unit has two parking spaces,²⁰² this means that 14,520 square feet of the acre must be devoted to parking—about one-third of the land.²⁰³ Admittedly, a landowner can use the same land for both housing and parking if they build a parking garage above or below the housing. However, parking garages are more expensive than surface parking lots. A downtown underground parking lot typically costs a landowner \$40,000 per space in capital costs, eight times the cost of a surface parking lot.²⁰⁴

Second, these costs make every kind of good or service more expensive. For example, the cost of required parking increases the cost of building a shopping center in Los Angeles by sixty-seven percent.²⁰⁵ These costs may be passed on to homebuyers, renters, and customers through higher residential and commercial rents.²⁰⁶

PYBE] (criticizing technical assumptions used to justify number of parking spaces required by municipal codes).

201. See *supra* note 158 and accompanying text.

202. See *supra* note 199 and accompanying text (stating that the state requires two parking spaces per two-bedroom garden apartment).

203. I calculate as follows: if each space consumes 330 square feet, and each unit requires two spaces, that means each unit requires 660 square feet of parking. See SHOUP, *supra* note 197, at 9 (parking spaces require 330 square feet of land). Six hundred sixty square feet multiplied by twenty-two units equals 14,520 square feet of parking, or one-third of an acre. See THE WORLD ALMANAC AND BOOK OF FACTS, *supra* note 137, at 360 (noting an acre is 43,560 square feet).

204. See Eric Bethany, *Read: Richard Willson, "Case Against Minimum Parking Requirements"*, KRONBERG URBANISTS ARCHITECTS (July 7, 2015), <https://www.kronbergua.com/post/read-richard-willson-case-against-minimum-parking-requirements> [https://perma.cc/D59V-UTZR].

205. See SHOUP, *supra* note 197, at 6 (adding that if parking spaces underground, costs increase by ninety-three percent).

206. *Id.* It could be argued that because demand for housing and office space is not unlimited, costs are not in fact passed on to consumers. This claim overlooks the fact that a regulation that raises costs might eliminate the cheapest houses or offices from a market. For example, suppose that construction and land costs for an apartment are

Third, minimum parking requirements reduce business activity; just as every inch of land used for surface parking cannot be used for housing, such land also cannot be used for shops or other land uses. In a suburban part of town where land is cheap or undeveloped, a landowner might be able to easily comply with parking requirements and still build whatever they want. This is less likely in a downtown, where buildings are more likely to be surrounded by other buildings whose occupants might not wish them to be knocked down.²⁰⁷ Admittedly, parking lots provide some economic value; however, there is no reason to believe that municipal planners know more than businesses do about the “right” amount of parking for each individual shop or apartment building.²⁰⁸

Fourth, landowners often comply with minimum parking requirements by placing parking in front of buildings, either to place something useful in the setback area required by municipal setback regulations,²⁰⁹ or to make their business more appealing to motorists.²¹⁰ But large surface parking lots force walkers to waste time walking through car-filled parking lots to reach their ultimate

\$900 per apartment per month with minimum parking requirements, and \$800 without such requirements. Even if the requirements do not affect what tenants are willing to pay, they ensure that apartments costing less than \$900 are unprofitable to construct, and thus not placed on the market. See Alan Durning, *Apartment Blockers*, STREETS BLOG USA (Sept. 16, 2013), <https://usa.streetsblog.org/2013/09/16/apartment-blockers/> [<https://perma.cc/KH4M-WRAJ>].

207. See Clinton Edminster, Opinion, *Clinton Edminster Column: Parking Regulations Stunt Commercial Growth*, SAVANNAH MORNING NEWS (Mar. 4, 2020, 1:31 PM), <https://www.savannahnow.com/opinion/20200304/clinton-edminster-column-parking-regulations-stunt-commercial-growth> [<https://perma.cc/3U28-AE54>] (citing example of landowner who would like to turn offices into restaurant, but to change use and comply with law, he would “need to provide over 16 off-street parking spaces” which in turn would require him to “buy the two-story house behind the property, tear it down, and turn the entire lot into parking”); *Millburn Courtyard Assocs. v. Planning Bd. of Millburn*, 2006 WL 1413698, at *2–4 (N.J. Super. Ct. Law Div. May 23, 2006) (complying with minimum parking requirements meant the business would have had to destroy nearby buildings to establish restaurant).

208. See Bethany, *supra* note 204. It could be argued that minimum parking requirements prevent businesses from “free riding” on each other’s parking; for example, in the absence of such requirements, business A might provide lots of parking and business B may refuse to provide any because its customers will walk from business A to business B. As a result, business A would spend money on parking that business B benefits from. Although this scenario seems harmful to business A, it may still be less harmful to A than the negative side effects discussed above. *Id.*

209. See *supra* note 192 and accompanying text.

210. See Bethany, *supra* note 204.

destination—a task that might be boring and unpleasant at best.²¹¹ Thus, minimum parking requirements reduce a downtown’s appeal to walkers, which in turn might make it less desirable generally.

By making walking more unpleasant and increasing driving, minimum parking requirements might increase air pollution from motor vehicles.²¹² In addition, every inch of land devoted to parking also increases water pollution. Parking spaces collect runoff, such as leaking oil from cars and fluids.²¹³ Rain causes this runoff to travel from parking spaces into rivers and streams, thus impeding water quality.²¹⁴

If municipal parking requirements create so many economic and environmental harms, why should they exist at all? One traditional argument for such rules is that by giving drivers a guaranteed place to park, they prevent “cruising”—drivers wasting time and fuel searching for an on-street parking space.²¹⁵ Thus, one might argue that minimum parking requirements make downtowns less congested and polluted. On the other hand, by encouraging driving and discouraging walking, these regulations might create more congestion than they eliminate.

Moreover, minimum parking requirements are not the only way to prevent cruising. If on-street parking is priced at a rate that deters the least motivated drivers, there will usually be one or two spaces available per block, and cruising will be unnecessary.²¹⁶ Although appropriately priced parking might deter a few motorists from

211. *See id.*

212. *Id.*

213. *Id.*

214. *See* Douglas A. Miltenberger, Comment, *Development on the Banks of the Letort Spring Run: What Can Be Done to Save Pennsylvania’s Waterways from Post Construction Stormwater Runoff*, 11 PENN ST. ENV’T L. REV. 127, 127–30 (2002) (describing water impairment from runoff); *cf.* Chanapa Tantibanchachai, *More Pavement, More Problems*, HUB (Mar. 5, 2020), <https://hub.jhu.edu/2020/03/05/urbanization-increases-annual-flooding/> [<https://perma.cc/LQ72-F4DX>] (explaining how increases in roads, parking lots, and other paved surfaces increase flooding).

215. *See* Stroud v. City of Aspen, 532 P.2d 720, 723 (Colo. 1975) (Municipal parking requirements prevent motorists from “moving slowly around block after block seeking a place to park . . . clog[ging] the streets, air and ears of our citizens.”).

216. *See* Donald Shoup, *Pricing the Curb: Taking the Lottery Feel Out of Curb Use by Finding the Right Prices*, PARKING & MOBILITY, Apr. 2020, at 24, 25–26, https://issuu.com/theparkingprofessional/docs/pm_2020_04_issuu [<https://perma.cc/T272-RT4G>].

visiting, it also would eliminate cruising without creating the anti-development side effects of minimum parking requirements.²¹⁷

The modern trend has been to abolish minimum parking requirements—mostly downtown and occasionally citywide.²¹⁸ This does not mean that all parking would be eliminated; developers could still build enough parking to meet customer and resident demand but would not be forced by the government to build more than that amount. This trend is not limited to large cities with huge mass transit systems. For example, Hartford, Connecticut (a city roughly the size of Lakewood)²¹⁹ eliminated minimum parking requirements for its downtown in 2015 and extended this change to the rest of the city in 2017.²²⁰

Although it is too early to see how successful these experiments have been, there is at least some evidence that more modest experiments with parking reform might be good for development. In 1999, Los Angeles enacted an “adaptive reuse ordinance” that exempted downtown buildings from minimum parking requirements as long as their owners converted vacant commercial spaces into

217. *Id.* at 25. It could be argued that turning free parking into paid parking is politically unpalatable. One solution to this problem is creating “parking benefit districts” in which parking meter revenue could be used to fund public services in the metered areas, so that residents and visitors of these areas could easily see their meter money at work. Donald Shoup, *Parking Benefit Districts*, ACCESS, Fall 2016, at 35, <https://www.accessmagazine.org/wp-content/uploads/sites/7/2016/11/access49-web-almanac.pdf> [<https://perma.cc/T272-RT4G>].

218. See *Ending Parking Minimums*, STRONG TOWNS, <https://www.strongtowns.org/parking> [<https://perma.cc/XLS9-P7AH>] (last visited July 28, 2021) (referencing crowd-sourced map showing the removal of parking minimums across the country); Jeffrey Spivak, *People Over Parking: Planners are Reevaluating Parking Requirements for Affordable Housing*, AM. PLANNING ASS’N (Oct. 2018), <https://www.planning.org/planning/2018/oct/peopleoverparking/> [<https://perma.cc/3R7W-GVL5>]; Henry Grabar, *San Francisco Legalizes Itself*, SLATE (Dec. 18, 2018, 5:10 PM), <https://slate.com/business/2018/12/san-francisco-eliminates-parking-minimums-its-a-trend.html> [<https://perma.cc/9SMT-CDF3>]; Paul Barter, *Which Cities Have Abolished Parking Minimums*, REINVENTING PARKING (Sept. 9, 2013), <https://www.reinventingparking.org/2013/09/which-cities-have-abolished-parking.html> [<https://perma.cc/KY7L-J3XK>] (citing numerous examples in Europe and Asia).

219. See Sara C. Bronin, *Comprehensive Rezonings*, 2019 BYU L. REV. 725, 737 (2019) (showing Hartford population of 123,000); Willis & Barchenger, *supra* note 131 (Lakewood population just over 100,000).

220. Angie Schmitt, *Hartford Eliminates Parking Minimums Citywide*, STREETS BLOG USA (Dec. 13, 2017), <https://usa.streetsblog.org/2017/12/13/hartford-eliminates-parking-minimums-citywide> [<https://perma.cc/U895-K6G5>].

housing.²²¹ Developers used this ordinance to build 6,900 housing units downtown between 1999 and 2008—more than seventy-five percent of downtown’s new housing supply.²²² Thus, it appears that when freed from minimum parking requirements, landowners might build more housing than they otherwise would.

Thus, a town that (like Lakewood) wishes to increase its housing supply might wish to eliminate its minimum parking requirements, especially in downtown and commercial areas near downtown.²²³

IV. CONCLUSION

Many of the goals of the smart growth movement are important for all municipalities, because all towns benefit when walking is easier and traffic injuries are reduced.²²⁴ However, Haredi-dominated towns have a greater interest than most municipalities in funneling population growth into their current borders, because the alternative to this form of development is for Haredim to spread into nearby towns, creating costly (though often ultimately successful) conflict and litigation with their new neighbors.²²⁵

These towns can concentrate new housing within their borders by eliminating regulations that limit new housing, such as density regulations,²²⁶ minimum parking and setback requirements,²²⁷ and rules that exclude mixed-use development.²²⁸ If they follow these policies, there will be fewer conflicts between Haredim and other municipalities.²²⁹

221. Michael Manville, *Parking Requirements and Housing Development: Regulation and Reform in Los Angeles*, ACCESS, Spring 2014, at 2, 4, <http://www.accessmagazine.org/spring-2014/parking-requirements-housing-development-regulation-reform-los-angeles/> [https://perma.cc/95KH-FB99].

222. *Id.*

223. In more vehicle-dependent areas far from downtown, most landowners would probably build large parking lots even if government did not require it. Thus, some of the costs of minimum parking requirements (such as a degraded pedestrian environment) are less relevant. Even so, these requirements might require developers to use somewhat more land than necessary, thus driving up the cost of doing business—so I favor parking deregulation even outside downtown. However, the impact of such development in suburban areas may be quite small, so deregulating downtown parking is a more valuable reform.

224. *See supra* Section II.B.2.

225. *See supra* notes 108–09 and accompanying text.

226. *See supra* Section III.A.

227. *See supra* Section III.C.–D.

228. *See supra* Section III.B.

229. *See supra* text accompanying notes 6–10.