Bringing Judaism Downtown: A Smart Growth Policy for Orthodox Jews

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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. As the price of living in New York increased and the Haredi population grew, many Haredi Jews (known collectively as “Haredim”) 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.

As Haredi populations continue to grow, their communities are seeking more undeveloped land to expand existing Haredi enclaves. 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. This article suggests that Haredi communities can avoid such conflicts through a “smart growth” strategy: 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. 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).
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. Part III suggests some zoning reforms that would promote this smart growth strategy.

I. BACKGROUND: HAREDIM AND THEIR GROWTH

The leading denominations of American Jewry are Orthodox, Conservative, and Reform Judaism. Orthodox Jews follow traditional Jewish law, as interpreted by rabbis for centuries. For example, Orthodox Jews who follow these laws do not work, drive, write, or make phone calls on the Jewish Sabbath. 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.” The term “Haredim” is a Hebrew term, meaning “those who tremble before God.” 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. They are also less likely to attend secular universities, and they often wear distinctive attire.

9. See infra Part II.
10. See infra Part III.
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).
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. Hasidic Jews are divided into a variety of sects, all of which arise from an eighteenth century mystical movement that emphasized fervent prayer. Yeshivish (or “Litvish”) Jews are the intellectual heirs of other European rabbis who emphasized Jewish scholarship more than the Hasidim. Most Hasidic sects are led by a rabbi known as a “rebbe”; the most prestigious Litvish leaders often head yeshivas (institutions of advanced Jewish study).

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

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 “rebbes”).
25. See id.
Park.\textsuperscript{28} Some of the Haredim priced out of Brooklyn have moved to create their own towns at the edge of suburbia and beyond.\textsuperscript{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.\textsuperscript{30} A few decades later, Satmar Hasidim created their own village in Orange County, New York, named Kiryas Joel.\textsuperscript{31} The boundaries of this municipality are drawn to include 320 acres owned entirely by

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

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32. Id. at 691.
33. Id.
36. See Olsen, supra note 35, at 326.
37. See Gilmore, supra note 35, at 477.
38. See FADER, supra note 15, at 13.
40. Id. at 478.
41. See Olsen, supra note 35, at 326.
relational uses.\textsuperscript{42} The town responded by rezoning the land for residential use and purchasing the land from the developer.\textsuperscript{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.\textsuperscript{44} Even where government does not preempt development by Haredim, homeowners try to discourage each other from selling to Haredim.\textsuperscript{45} For example, in the part of Toms River nearest to Lakewood, front lawns often have signs saying, “Don’t Sell! Toms River Strong.”\textsuperscript{46}

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

\begin{itemize}
\item \textsuperscript{42} Gilmore, \textit{supra} note 35, at 479.
\item \textsuperscript{43} \textit{Id.}
\item \textsuperscript{44} \textit{Id.}
\item \textsuperscript{45} \textit{See id. at} 481.
\item \textsuperscript{46} \textit{Id. at} 480.
\item \textsuperscript{47} \textit{See Olsen, \textit{supra} note 35, at} 325–26.
\item \textsuperscript{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[.]”).
\item \textsuperscript{49} \textit{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.”).
\item \textsuperscript{51} \textit{See Lorin Geitner, \textit{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.”).}
\item \textsuperscript{52} \textit{See Olsen, \textit{supra} note 35, at} 324–25.
\end{itemize}
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...


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).

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.
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. § 2000ce(b) (stating that the government must treat religious institutions on “equal terms” with nonreligious institutions and may not discriminate against any particular religion).
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.”).

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

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 Brooklyn—despite the fact that downtown is less than a mile from the enormous Beth Midrash Godova (BMG) yeshiva. 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. By contrast, if

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


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 neighborhoods—a significant hardship for households without cars (a category that includes over forty percent of Kiryas Joel households).

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. Because many Lakewood children cannot walk to school, that district spends $27 million yearly on busing—more than it spends on instruction. Government supports private school busing even for children who live in one town and go to school in another; as a result, Toms River has to pay to bus its Orthodox children who go to school in Lakewood. While Toms River paid to bus 150 students five years ago, it now pays to bus...
1,100 students, contributing to a $1.1 million busing bill.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{92} This correlation is not limited to the most polluted cities but applies even to areas with low levels of overall pollution.\textsuperscript{93} Because automobile-oriented sprawl causes more people to drive more miles, it is likely to increase pollution and the resulting health risks.

\textsuperscript{89} Id.


\textsuperscript{91} Id. at 167–68.

\textsuperscript{92} See Janice J. Kim \textit{et al.}, \textit{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”).

\textsuperscript{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, \textit{The Environmentalist Case for Sprawl—And Why It Fails}, 46 REAL EST. L.J. 92, 101 (2017) (citing Wendell Cox, \textit{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. \textit{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. \textit{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, \textit{e.g.}, Rioux \textit{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

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95. Id.


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).


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

If (as in Lakewood and its neighbors) suburban development skips over municipal boundaries,\footnote{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,\footnote{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.\footnote{104}

**B. Smart Growth Benefits (and Possible Costs)**

The leading alternative to sprawl is commonly referred to as “smart growth.”\footnote{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.\footnote{106} In the context of a small city like Lakewood or Kiryas Joel, that means adding

\begin{itemize}
\item See supra notes 35–45 and accompanying text (describing Haredi-oriented development in towns near Lakewood).
\item 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).
\item 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.”).
\item 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”).
\end{itemize}
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).\textsuperscript{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.\textsuperscript{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,\textsuperscript{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.

\textsuperscript{107} See infra notes 113–16 (describing Israeli towns). Seventy-seven percent of Israeli
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.

\textsuperscript{108} See supra notes 41–46 and accompanying text (describing conflicts).

\textsuperscript{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
Selected Housing Characteristics, New York City, New York, tbl.DP04, U.S. Census
And as noted above, sprawl maximizes both household expenses for car use and municipal expenses for school busing; 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. Lakewood’s median household income is less than two-thirds of the New Jersey average, and Kiryas Joel is even poorer than Lakewood. Second, Haredim have large families, 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. 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. Similarly, car crashes and illnesses related to lack of

110. See supra notes 83–86 and accompanying text.
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.
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.
119. See Kotkin, supra note 118.
fewer than any of the four outer boroughs, and also fewer than suburban Bergen, Passaic, Hudson, Orange, Nassau, and Suffolk Counties.\footnote{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. \textit{Id.}} Within Manhattan, the three least heavily infected zip codes have above-average levels of population density.\footnote{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). \textit{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. \textit{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/PDSB-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).}} 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.\footnote{See COVID-19: Data, supra note 124; New York Population Density Zip Code Rank, supra note 124; Macaig, supra note 124.} But as of early August 2020, San Francisco had 784 cases per 100,000 residents.\footnote{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. \textit{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).} 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,\footnote{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 100,00 residents while Los Angeles County has just over 2,000 infections: more than twice that of San Francisco).} despite the fact that the latter county has less than one-
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

130. See id.
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).
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...
fifteen percent of Kiryas Joel households. 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. 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. 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.

The high growth rate of Haredi towns suggests that zoning is not extremely restrictive by national standards, 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. Each of these will be addressed in turn. Because Lakewood is larger and less densely populated than other Haredi communities such as Kiryas Joel, 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).
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.\(^\text{149}\) 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,\(^\text{150}\) or one-fifth the size of a New York City block.\(^\text{151}\) Only a few small portions of the city are zoned R-40; however, other low-density zones are common on the town’s outskirts,\(^\text{152}\) 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).\(^\text{153}\)

Because downtowns tend to be more dense than other areas,\(^\text{154}\) 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.\(^\text{155}\) 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).
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, N.J, 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, 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. 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. Buildings with this level of density will usually have only two or three stories.

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


158. 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).

159. 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).

160. See Dave Lansing, Leading Employers in Ocean County, OCEAN CNTY. SCANNER NEWS (July 16, 2019, 10:23 PM), [https://oescanner.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, yet is in an R-12 zone, where each house must occupy 12,000 square feet of land, and multifamily housing is prohibited.

Lakewood’s density caps may serve some public purpose. Often, courts have justified such regulations as reducing traffic or somehow preserving a community’s rural or suburban atmosphere. 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”).


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

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. 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.

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 Lakewood and shift development to suburbs near Lakewood, thus increasing Haredi/non-Haredi conflict in those towns. 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

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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.
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

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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.
By contrast, the Lakewood code states that in the downtown B-2 zone, “[c]ombined business and residential uses are hereby expressly prohibited . . . .” In other words, businesses and residential uses can both be in downtown Lakewood, but they cannot share a building. 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). Thus, this law may reduce downtown Lakewood’s population and job base, and thus creates the same negative consequences as other regulations discussed above. 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, which reduces the ability of Georgian Court’s hundreds of students and employees to easily walk to shops or jobs. 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. 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. LAKWOOD, 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

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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.
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.”).
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, that is, 5 per 1,000 square feet. Because a parking space can take up 330 square feet of land, 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. Residential developments typically require between 0.8 and two parking spaces per bedroom. Such “minimum parking requirements” are widespread in the United States, and often require far more parking than renters or customers actually use.

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


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).

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) and each unit has two parking spaces, this means that 14,520 square feet of the acre must be devoted to parking—about one-third of the land. 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.

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. These costs may be passed on to homebuyers, renters, and customers through higher residential and commercial rents.

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).
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. 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.

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, or to make their business more appealing to motorists. 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, STREETSBLOG 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{213} Rain causes this runoff to travel from parking spaces into rivers and streams, thus impeding water quality.\textsuperscript{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.\textsuperscript{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.\textsuperscript{216} Although appropriately priced parking might deter a few motorists from

\begin{itemize}
  \item \textsuperscript{211} See id.
  \item \textsuperscript{212} Id.
  \item \textsuperscript{213} Id.
  \item \textsuperscript{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.”).
  \item \textsuperscript{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, \url{https://issuu.com/theparkingprofessional/docs/pm_2020_04_issuu} [https://perma.cc/T272-RT4G].
\end{itemize}
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].


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).

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. 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.

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. 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.

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


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.