LEGAL NEIGHBORHOODS

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Political and legal tools have emerged since the 1970s, and especially in the last two decades, that provide political and legal power to neighborhoods. However, these tools are often used in an ad hoc fashion, and there has been scant analysis of how these tools might work together effectively. This Article asserts that those locations in cities that evoke a "sense of place" are created not just with architectural or landscape design, but by the operation of neighborhood legal tools as well. This Article argues that cities consciously overlay the panoply of emergent neighborhood legal tools as a means of place-building. This approach is referred to in the Article as creation of a de facto "legal neighborhood." This approach does not call for secession of neighborhoods from cities or for the wholesale privatization of public functions, as have others that argue for neighborhood empowerment. Rather, the Article asserts that the collective operation of these neighborhood tools is greater than the sum of their parts, providing a method for civic engagement at a level city-wide politicians feel comfortable serving, in which residents feel comfortable participating, and which is proven to assist the kind of place-making that makes densely settled areas attractive. These features of the neighborhood make understanding legal neighborhoods a necessary component to any effort to address the built environment's social, political, and especially its environmental effects, such as climate change. The Article provides approaches for linking the neighborhood to city and regional affairs, and a history and theory of the concept of the neighborhood as an argument for the important role and function of neighborhoods in American life.

I. Introduction

"On the whole we Americans are poor at handling city neighborhoods," Jane Jacobs wrote a half century ago.[1] Much has changed in the American landscape since that time;[2] however, Jacobs' lament — that we are bad at neighborhoods — remains as true today as it was when she wrote it.

For many, the idea of "neighborhoods" conjures a nostalgia-laden image of a suburban idyll; no doubt, this is in part because the majority of Americans now live in suburbs.[3] Maintaining that idyllic suburban vision — and increasingly, even the most basic of services — falls more and more to private agreements, such as homeowners associations ("HOAs").[4] Currently, twenty percent of Americans live in private homeowners associations, some sixty million people, and sixty percent of new housing in California is built in a community subject to an HOA.[5] In addition, many of the suburban idylls, especially inner-ring suburbs, were initially formed by migration from inner cities.[6] Municipal separation has loomed large in the last fifty years as an alternative to fixing systemic urban problems in large cities.[7]

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[1] Jane Jacobs, The Death and Life of Great American Cities 146 (Modern Library Edition, 2011) (1961) [hereinafter Death and Life].

[2] Thomas J. Nechyba & Randall P. Walsh, *Urban Sprawl*, 18 J. of Econ. Perspectives 177, 180 (2004) [hereinafter *Urban Sprawl*] (noting that city land area has remained constant since 1950 while suburban land area has nearly tripled since 1950).

[3] *Id.* at 179–80 (noting that city population has remained constant since 1950 while suburban population has nearly doubled since 1950).

[4] *See generally* Robert C. Ellickson, *Cities and Homeowners Associations*, 130 U. Pa. L. Rev. 1519 (1982) (reviewing private HOAs as a legal tool for decentralized power); Hannah Wiseman, *Public Communities, Private Rules*, 98 Geo. L. J. 697 (2010) (exploring public entities' use of legal tools modeled on HOAs' private agreements).

[5] Robert H. Nelson, *The Puzzle of Local Double Taxation: Why Do Private Community Associations Exist?*, 13 Indep. Rev. 345, 345 (2009).

[6] *See generally* Robert H. Freilich et al., From Sprawl to Sustainability: Smart Growth, New Urbanism, Green Development, and Renewable Energy 4 (2010) (describing federal and state policies that promoted suburban development).

[7] *See* Gary Miller, Cities By Contract (1981) (discussing the Lakewood Plan in Los Angeles, which encouraged county-dwellers to form cities as enclaves of wealth and privilege, contract for services from the county, and externalize social costs to county government).

This Article, however, will argue against the secession and mass privatization of services and uses and will instead focus on giving form to another trend of the last few decades, which provides a potential alternative to private suburban enclaves. This trend is for local governments, especially urban cities, to augment city-wide regulatory power with intra-city legal and policy tools focusing on a particular geographic area of the city.[8] These places are already familiar to many of us, and often are the very spots that give a city what Wallace Stegner once called a "sense of place":[9] New York's commercial Times Square; San Francisco's residential Noe Valley; and even in mid-sized cities, places like Boise's Eighth Street promenade. Underlying all of these places, however, is a design of legal entities that is necessary to creating that sense of place as much as any architectural or landscape design. The complexity of legal structures necessary to create and maintain such places is seldom discussed. It is true that a number of scholars have addressed specific intra-city tools individually;[10] for instance, Richard Briffault has identified these intracity tools as "sublocal governance,"[11] and other scholars have used other terms.[12] However, this Article builds on that scholarship by exploring techniques for overlaying these intra-city legal tools and exploring the effect of overlaying intra-city legal tools for the neighborhood, city, and region.[13]

This Article asserts that such intra-city tools, when used effectively, are overlaid upon each other, usually in residential neighborhoods that are serviced by a neighborhood-serving business district, but also potentially in purely commercial areas. These tool overlays operate collectively in a manner that exceeds the sum of their parts. First, the leadership of each such neighborhood tool, where administrative oversight is required, is typically varied, which empowers multiple voices on key neighborhood issues, limiting Madisonian concerns of faction.[14] Second, the areas of influence of each neighborhood tool, as well as the types of properties over which it has power and the regulatory power invested in each neighborhood tool, often overlap but differ. The result is that a number of legal neighborhood tools work to empower a neighborhood's vision for itself in a fine-grained manner that a city-wide government is unlikely to accomplish, but without rising to a collective desire or intent to

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[8] *See* discussion *infra* Part IV.

[9] *See generally* WALLACE STEGNER, THE SENSE OF PLACE (1986).

[10] *See* discussion *infra* Parts IV, V, and VI.

[11] Richard Briffault, *The Rise of Sublocal Structures in Urban Governance,* 82 MINN. L. REV. 503, 509 (1997) [hereinafter *Rise of Sublocal Structures*].

[12] Wiseman, *supra* note 4, at 701 (referring to such intra-city tools as "rule-bound communities").

[13] *See generally* Georgette C. Poindexter, *Legal Empowerment of the Neighbourhood*, 33 URB. STUD. 1821, 1827 (1996) (inviting scholarship into the nascent area of research on neighborhoods); Georgette C. Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607, 609–11 (1997) [hereinafter *Collective Individualism*] (arguing for "deconstruction" of city and secession of neighborhoods to promote both collective individualism and addressing regional concerns).

[14] *See generally* THE FEDERALIST NO. 10 (James Madison) (discussing factions in local governments).

secede from the city. This Article argues that this loose affiliation of tools operating simultaneously in a neighborhood, but without the intent to secede, is a successful, and proven, approach to building strong neighborhoods currently available in a few urban areas, and which could be used in more urban areas as well as newly urbanizing areas. This Article will use the term "legal neighborhood" to refer to this overlaying approach.

Legal neighborhoods have great promise and potential perils, for a number of reasons that will be described in this Article. They provide a flexibility to address neighborhood-specific issues that city government may otherwise be reluctant to address.[15] They are flexible and can morph with population changes that are inevitable in urban neighborhoods.[16] On the other hand, legal neighborhoods may not be responsive to city- or region-wide concerns; their multiplicity of structures may create multiple levels of review, lack transparency, and exact high costs on the neighborhood itself; and they may raise tensions with adjacent neighborhoods with which the neighborhood's territory, and approach, may be in dispute.[17] Working through such potential challenges, however, is worth the effort given the effectiveness that such legal neighborhoods have shown in the last few decades: Most of the successful urban centers in the last decade have substantially deployed legal neighborhood strategies to a greater or lesser degree.[18]

Local governments, and legal scholars, should no longer view individual "sublocal government" structures independently, but begin to imagine new ways in which such sublocal structures may be paired together around the concept of a neighborhood.[19] Doing so has several advantages. First, the neighborhood is a unit of urbanization that most Americans relate to, and which politicians feel comfortable serving.[20] Second, a number of policy priorities, from reducing transportation costs to reducing carbon emissions, rely upon a more densely settled environment.[21] One of the most effective means of changing American perceptions about living in more densely settled areas is to

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[15] *See* discussion *infra* Part IV(A).

[16] *See* discussion *infra* Part II(C). *See also* ELIJAH ANDERSON, STREETWISE: RACE, CLASS AND CHANGE IN AN URBAN COMMUNITY (1990) (evaluating an urban African-American community's response to an influx of middle-class whites).

[17] *See* discussion *infra* notes 88–100. A key issue here is the role of race and ethnicity in creating neighborhoods and tension between them. *See* GERALD D. SUTTLES, THE SOCIAL ORDER OF THE SLUM: ETHNICITY AND TERRITORY IN THE INNER CITY 97 (1968) ("Within each territorial-ethnic section there are certain variations, some of them due to ethnic traditions and others resulting directly from population size or minor ecological differences."); Ronald van Kempen & A. Şule Özüekren, *Ethnic Segregation in Cities: New Forms and Explanations in a Dynamic World*, 35 URB. STUD. 1631 (1998).

[18] *See* discussion *infra* Part IV.

[19] *Id.*

[20] *See* discussion *infra* Part II(A) (noting social prominence of concept of "neighborhood"); note 278 (noting city council members seek to represent neighborhoods over other constituencies by two-to-one margin).

[21] *See generally* KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES (1987) (detailing rise of suburban development and American attitudes toward same in post-World War II period).

change their sense of powerlessness that they ascribe to urban living.[22] Legal neighborhoods provide such a mechanism. Third, conceiving of various "sub-local" structures collectively as a legal neighborhood also provides a powerful retort to those who argue that only secession or private neighborhood associations, such as HOAs, provide Americans the flexibility of living options they desire.[23] Structures embodied in legal neighborhoods are mostly public and thus maintain a level of accountability to the city, and region, at large that private neighborhood associations do not.[24] As a result, legal neighborhoods illustrate that effective and responsive government can retain its public character while remaining responsive to residents. Fourth, because legal neighborhoods provide mechanisms that make densely settled areas more appealing, they are important tools for efforts that seek to address regional issues, such as environmental concerns over air and water quality and supply, as well as carbon emissions and transportation costs.[25] Development of legal neighborhoods should become a part of the structure of regional policy decisions because only by creating densely populated neighborhoods in which people desire to live can any regional goals be met.

    To give a fuller appreciation of the potential of legal neighborhoods, some history of the construct of the neighborhood, in both legal and non-legal fields, is warranted. Therefore, Section II provides a history of the idea of the neighborhood, primarily as it has evolved over the past century. Section III provides a brief interlude linking the history and theory of neighborhoods to the practice of legal neighborhoods. Section IV provides a review of constituent legal tools presently used in the legal neighborhood addressing, in particular, political representation, the relation between business and residential uses, zoning and planning, allocation and delivery of services, funding and taxation, and how the neighborhood relates to its residents. Section V reviews example neighborhoods in an effort to show how different collections of legal tools have been used in neighborhoods to build different forms of legal neighborhoods that respond to neighborhood needs. Section VI considers strengths and weaknesses of the legal neighborhood, how the legal neighborhood relates to its city and region, the legal neighborhood compared to private neighborhood associations,

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[22] *See* JOHN MCILWAIN, URBAN LAND INST., HOUSING IN AMERICA: THE NEXT DECADE 12 (2010) [hereinafter HOUSING IN AMERICA] (noting baby boomers seek more urban settings, but do not want to move to "central cities"); *id.* at 16 (noting Gen Xers want to live in urban areas, but may still leave for suburbs for their children's safety and schooling).

[23] *See generally* ROBERT H. NELSON, PRIVATE NEIGHBORHOODS AND THE TRANSFORMATION OF LOCAL GOVERNMENT (2005) (arguing for widespread use of private neighborhood associations in urban and suburban neighborhoods).

[24] *See* discussion *infra* Part VI (arguing that legal neighborhoods can effect city-wide and regional change). Some studies have shown that neighborhoods, especially neighborhood associations, do not express concern for the city as a whole or the region. *See* Karen N. King, *Neighborhood Associations and Urban Decision Making in Albuquerque*, 14 NONPROFIT MGMT. & LEADERSHIP 391–92 (2004) ("Studies indicate that neighborhood associations are not concerned about the long term goals of the city or region of which they are a part, nor do the associations work in any substantial way to advance those goals.").

[25] *See* discussion *infra* Part II(G).

and relevant use of the legal neighborhood as a tool for regional growth in urbanizing areas. This Article will use the City and County of San Francisco, California ("San Francisco") as an example of how some cities are already implementing the legal neighborhood approach, even if it is not referred to in this manner or consciously organized around this theme. In this approach, legally empowered neighborhoods become the basic unit to grow cities and regions.[26]

II. The Concept of the Neighborhood

Before evaluating legal neighborhoods and individual neighborhood-level legal tools, an investigation into the concept of the neighborhood itself is warranted, as well as a discussion of a variety of approaches to the neighborhood that have emerged over the last century and that remain relevant today. This investigation will inform the rise of legal tools at the neighborhood level, giving context as to why this approach is taking hold now, and why it is likely to grow in the future.

A. *Pervasive But Without Clear Definition*

The desire to be a part of a neighborhood is so essential to our culture that an invitation to neighborliness — "won't you be my neighbor?" — introduced the opening sequence of one of the country's most popular children's shows for decades.[27] The neighborhoods we physically inhabit are an ancient invention that remains ubiquitous, one which is pervasively portrayed in both utopian and dystopian forms.[28] The idea of the neighbor is all around us, forming the basis for biblical commandments ("love thy neighbor as thyself"),[29] moral pro-

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[26] This is not the first call for legally empowered neighborhoods. However, previous efforts focused almost exclusively upon lower-income neighborhoods or granting a specific power to neighborhoods. *See*, *e.g.*, Nat'l Comm'n on Neighborhoods, People, Building Neighborhoods: Final Report to the President and the Congress of the United States 6–10 (1979) [hereinafter People, Building Neighborhoods] (discussing history of 1970s neighborhood movement in low-income communities). While the concept of legal neighborhoods is valuable for low-income neighborhoods, it is more broadly conceived here as a means of organizing that would also be amenable to interests of middle-class and elite neighborhoods. *See also* Kenneth A. Stahl, *Empower the Neighborhood and Save the City: Why Courts Should Permit Neighborhood Control of Zoning*, U. Pa. L. Rev. (forthcoming), *available at* http://ssrn.com/abstract=1870337 (arguing for neighborhood control of zoning).

[27] Fred M. Rogers, *Won't You Be My Neighbor?* (1967) ("I've always wanted to have a neighbor just like you. I've always wanted to live in a neighborhood with you.").

[28] *Compare*, *e.g.*, *The Andy Griffith Show* (CBS television broadcast 1960-1968) (utopian depiction of small town life in fictitious Mayberry, North Carolina), *with Desperate Housewives* (ABC television broadcast 2004-2011) (dystopian depiction of fictitious Wisteria Lane in town of Fairview).

[29] *Romans* 13:9 (King James). The Jewish and Christian bibles are replete with references to the neighbor. *See, e.g.*, *Proverbs* 27:10 (King James) ("Better is a neighbor that is near than a brother far off."); *Proverbs* 14:20-21 (King James) ("The poor is hated even of his own neighbor: but the rich hath many friends. He that despiseth his neighbor sinneth: but he that hath mercy on the poor, happy is he."); *Proverbs* 3:28 (King James) ("Say not unto thy neighbor, Go, and come

nouncements ("good fences make good neighbors"),[30] and exploration in song, art, and rhetoric.[31]

Despite this inheritance, the very idea of a neighborhood remains as elusive as it is intuitive. What makes a person, or an entity, a neighbor? Moreover, what makes a neighborhood, and what are its outer bounds? Is a neighborhood defined by its geography?[32] Is it defined by shared class,[33] racial,[34] ethnic,[35] or religious[36] identity? Can a name alone create, or change, a neighborhood's identity?[37] Can a neighborhood be defined by the limits of a suburban subdivision and its governing homeowners association?[38] Such questions elicit few concrete answers, for neighborhoods have been defined on all of these bases, but none are clearly sufficient or necessary to define a neighborhood. Surely it is this difficulty in defining a neighborhood that led Gerald Frug to argue:

> [T]he concept of neighborhood provides no stable basis for either personal or group identity. The image of neighborhood conjures up the ideal of community, but it is a fantasy community — a (comm)unity that is never achievable. One can succeed in maintain-

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again, and tomorrow I will give; when thou hast it by thee."). *But see* Friedrich Nietzsche, Thus Spake Zarathustra, Bk. I, Ch. 16 (1883) (deploring trope of the neighbor in religious thought).

[30] Robert Frost, *Mending Wall*, *in* Robert Frost: Collected Poems, Prose, and Plays 39 (Library of America ed., 1995) (1914).

[31] *See, e.g.*, John Cougar Mellancamp, *Pink Houses*, *on* Uh-Huh (Riva Records 1983) ("There's a black man with a black cat living in a black neighborhood / He's got an interstate runnin' through his back yard / You know he thinks that he's got it so good."); Martin Luther King, Jr., *On Being a Good Neighbor*, *in* Strength to Love 25 (1963) ("The good neighbor looks beyond the external accidents and discerns those inner qualities that make all men human and, therefore, brothers."); Edward Hopper, *Portrait of Orleans* (1950) (portraying rise of automobile culture in small neighborhood).

[32] One example is the Mount Adams neighborhood in Cincinnati, Ohio, which is located on a large hill.

[33] *See, e.g.*, U.S. Dep't of the Interior, The Mill Girls *available at* http://www.nps.gov/lowe/planyourvisit/upload/mill%20girls.pdf (discussing Lowell, Massachusetts during the era of the Lowell Girls) (last visited Jan. 23, 2013) (on file with the Harvard Law School Library).

[34] The Harlem neighborhood of New York City during the Harlem Renaissance demonstrates such a shared racial identity.

[35] The Lower East Side of New York City is an example of a neighborhood with a shared ethnic identity.

[36] *See generally* Gerald Gamm, Urban Exodus: Why the Jews Left Boston and the Catholics Stayed (1999) (discussing how religious culture towards neighborhoods affected suburbanization); *see also Judges* 12:6 (King James) (using the word "shibboleth" to determine tribal identity).

[37] *See* Diane K. Levy, Jennifer Comey & Sandra Padilla, *In the Face of Gentrification: Case Studies of Local Efforts to Mitigate Displacement*, 16 J. of Affordable Hous. & Cmty. Dev. L. 238, 247–48 (2007) (neighborhood name changed after riots to spur development).

[38] *See, e.g.*, Andres Duany et al., Suburban Nation 80–81 (2000) (discussing housing subdivisions and suburban "sprawl"); *see also* Mark S. Davies, *Understanding Sprawl: Lessons from Architecture for Legal Scholars*, 99 Mich. L. Rev. 1520 (2001) (reviewing and responding to Duany from a legal perspective).

ing an inside/outside distinction that delimits a neighborhood only by failing to see people who are there but do not fit in. . . .[39]

The U.S. Supreme Court has also expressed doubt about using the neighborhood as a legal term. In a 1999 gang-injunction case, *City of Chicago v. Morales*,[40] the Court found that "neighborhood" as a standard in a criminal statute was too vague to give notice to where the injunction applied. The *Morales* Court relied upon a 1926 work-day length case, *Connally v. General Constr. Co.*[41] In *Connally*, the court held that "neighborhood" was "elastic and, dependent upon circumstances" and "may be equally satisfied by areas measured by rods or by miles."[42] The *Connally* Court also cited to nineteenth-century cases, including an 1830 Massachusetts case, *Thomas v. Marshfield*, which held that "a grant of common to the inhabitants of a certain neighborhood was void because the term 'neighborhood' was not sufficiently certain to identify the grantees."[43] For nearly two centuries, in other words, courts have found the neighborhood to be too ambiguous for use as a legal concept.

While the legal difficulty in defining neighborhoods' limits does strain the task of delineating the inside/outside distinction,[44] as Frug terms it, such limitations have not stopped people from deriving their primary sense of place as the neighborhood in which they believe themselves to live.[45] It is within that neighborhood that most people define a sense of "community" and "belonging,"[46] and as this Article's later analysis will show, people are seeking ways to engage both politically and legally based upon their perceptions of belonging to neighborhoods.

The concept of the neighborhood has the potential to address larger civic and environmental issues that cities have long sought to address. For instance, cities have sought a way to encourage suburban dwellers back to the city, and environmental planners have sought a way to reduce the rapid growth of

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[39] GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS 101–02 (1999).

[40] 527 U.S. 41, 52 (1999).

[41] 269 U.S. 385 (1926).

[42] *Id.* at 395.

[43] *Id.* (citing Thomas v. Marshfield, 10 Pick. (Mass.) 364, 367 (1830)). *Connally* also cited Woods v. Cochrane, 38 Iowa 484, 485 (1874) ("It is true that the word neighborhood is a relative and indefinite term. In a very sparsely settled community, a person residing in a town thirty-five miles distant, might be 'of the neighborhood.' But prima facie he is not, and if the vicinity of the land is so sparsely settled as to extend the neighborhood to thirty-five miles, these facts should be shown, and the prima facie condition should be thus rebutted.").

[44] *See* Michel de Certeau, *Walking in the City*, *in* THE PRACTICE OF EVERYDAY LIFE 158 (Steven Rendall trans., 1988 ed.) (1984) ("The ordinary practitioners of the city live 'down below,' below the thresholds at which visibility begins. They walk — an elementary form of this experience of the city; they are walkers, *Wandersmänner*, whose bodies follow the thicks and thins of an urban 'text' they write without being able to read it.")

[45] *See* Lewis Mumford, *The Neighborhood and the Neighborhood Unit*, 24 TOWN PLAN. REV. 256, 269 (1954) [hereinafter *Neighborhood and the Neighborhood Unit*] ("The neighborhood is a social fact; it exists in an inchoate form even when it is not articulated on a plan or provided with the institutions needed by a domestic community.").

[46] ROBERT PUTNAM ET AL., BETTER TOGETHER: RESTORING THE AMERICAN COMMUNITY (2004) (providing examples of civic engagement at the neighborhood level).

America's, and the world's, urban footprint. If the concept of legal neighborhoods can provide meaningful civic engagement, as this Article will argue, and the promise of that civic engagement draws people back to cities, the commensurate environmental gains from reducing the urban footprint would be substantial. As such, redefining and retooling the neighborhood is not solely a matter of civic affairs, but equally an environmental concern where efforts to control greenhouse gas emissions will largely depend upon the scale of the infrastructure we build in this century.[47]

Cities are increasingly providing political and legal power to neighborhoods, and so the difficulties of definition must be put aside — temporarily — to contemplate fully the extent of the movement and what it entails. Such an understanding requires a review of how the idea of a neighborhood has evolved in the past century, especially in the prominent strains of thought that have had the most influence in how neighborhoods are envisioned and created.

This section will proceed to investigate the idea of the neighborhood through Charles Tiebout's 1956 article[48] asserting that residents' preferences for services and taxes can best be met by providing a number of jurisdictions;[49] a school of thought seeking to address "social impoverishment" of neighborhoods segregated by race, class, and ethnicity;[50] a school of thought seeking to re-build the neighborhood through careful attention to its physical attributes;[51] the evolution of the suburb;[52] the neighborhood empowerment movement of the 1960s and '70s, led in differing manners by such varied leaders as Jane Jacobs and the federal War on Poverty efforts; the contemporary shift in preference of middle-class and wealthier individuals for urban housing choices; and the increased awareness of the climate effects of suburban living, resulting in both legislative and market-driven efforts to reduce development's carbon footprints. The following sections outline prominent historical figures in each movement, as well as the contemporary focus of each strand.

B. *Tiebout and the Economics of Neighborhoods*

Charles Tiebout's 1956 article, *A Pure Theory of Local Expenditures*,[53] provided a model for analyzing the mix of services and taxes that people prefer. Tiebout's article proved immensely influential in the last half-century,[54] even

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[47] *See generally* Angel Schlomo et al., The Dynamics of Global Urban Expansion (2005), *available at* http://siteresources.worldbank.org/INTURBANDEVELOPMENT/Resources/dynamics_urban_expansion.pdf.

[48] Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. Pol. Econ. 416 (1956).

[49] *Id.* at 418.

[50] *Neighborhood and the Neighborhood Unit*, *supra* note 45, at 259–60.

[51] *Id.*

[52] *Id.*

[53] Tiebout, *supra* note 48.

[54] Tiebout's theory has been the subject of tens, if not hundreds, of law review articles. Among the most relevant to this Article's focus on neighborhoods are The Tiebout Model at Fifty: Essays in Public Economics in Honor of Wallace Oates (William A. Fischel ed., 2006); *Rise of Sublocal Structures*, *supra* note 11, at 526–30; Richard Briffault, *Our Localism, Part II*, 90 Colum. L. Rev. 346, 399–403 (1990) [hereinafter *Our Localism, Part II*]; Ellickson,

though the presumptions on which it was based are unlikely to occur, a fact Tiebout acknowledged.[55]

Tiebout sought a way to create a "market solution"[56] to people's desires for services and their willingness to pay taxes. According to the model, more jurisdictions in a region were preferable because that permitted an increased number of service-tax options for the "consumer-voter."[57] Richard Briffault, in analyzing Tiebout's model in relation to certain sublocal governments,[58] notes that sublocal structures may help large urban cities act more like a number of smaller jurisdictions, and thus be more responsive to those in a particular area of a city that are willing to pay more taxes for particular services.[59] On the other hand, as sublocal governments do not have true autonomy, they are not new local governments and thus they do not exhibit the externalities that a Tieboutian system typically shows with one local government seeking to externalize costs onto other local governments.[60]

A recent study is notable in that it used a unique set of facts to test Tiebout's model. The study was based on a Grand Rapids, Michigan "high-quality 1920s subdivision" that was subsequently split such that half of the subdivision was located in a suburban jurisdiction while half remained in the central-city jurisdiction. From the 1930s to the 1960s, central-city municipal and school district services declined and subdivision housing prices in the central-city jurisdiction declined accordingly. By the late 1990s, the "boundary differential" was approximately 41 percent of the housing price of the central-city side of the subdivision, or approximately $100,000.[61] After examining other variables — housing conditions and tax rates — the study suggested that the difference

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supra note 4, at 1547–54; Matthew J. Parlow, *Civic Republicanism, Public Choice Theory, and Neighborhood Councils: A New Model for Civic Engagement*, 79 U. Colo. L. Rev. 137, 150–151 (2008) [hereinafter *Civic Republicanism*]; *Collective Individualism*, *supra* note 13, at 613–16; Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 Geo. L.J. 1985, 1991–2001 (2000); Richard C. Schragger, *Mobile Capital, Local Economic Regulation and the Democratic City,* 123 Harv. L. Rev. 482, 496 (2009) [hereinafter *Mobile Capital*]; Nelson, *supra* note 5, *at* 348–50; *Urban Sprawl*, *supra* note 2, at 183–85.

[55] Tiebout, *supra* note 48, at 419 (noting model is "extreme").

[56] *Id*. at 421.

[57] *Id*. at 418 ("The consumer-voter may be viewed as picking that community which best satisfies his preference pattern for public goods. This is a major difference between central and local provision of public goods. At the central level the preferences of the consumer-voter are given, and the government tries to adjust to the pattern of these preferences, whereas at the local level various governments have their revenue and expenditure patterns more or less set. Given these revenue and expenditure patterns, the consumer-voter moves to that community whose local government best satisfies his set of preferences. The greater the number of communities and the greater the variance among them, the closer the consumer will come to fully realizing his preference position.").

[58] *Rise of Sublocal Structures, supra* note 11, at 526–30 (evaluating business improvement districts, special zoning districts, tax increment financing districts, and enterprise zones).

[59] *Id*. at 527.

[60] *Id*. at 528.

[61] Paul Thorsnes & John W. Reifel, *Tiebout Dynamics: Neighborhood Response to a Central-City/Suburban House-Price Differential*, 47 J. of Regional Sci. 693, 707 (2007).

in price was "public services capitalization."[62] Local and state laws made de-annexation or moving of school boundaries difficult, if not impossible.[63]

Interestingly, the demographics of residents on both sides of the boundary were essentially the same; but in the late 1990s, the key determinant in whether a person chose to live on the suburban side was whether he valued a strong public school environment.[64] The cost differential did not stem from any preference for other public services, but rather the cost of private school education.[65] In other words, even with generally sub-standard municipal services on the central-city side, there was no reflection in the housing price compared to the suburban side.

How could that be? The reason was that the central-city side had created what this Article calls a legal neighborhood: a set of overlaid legal tools that, in essence, gave it the same services it might have obtained if its residents had lived on the suburban side but that were not available from the central-city government generally. For instance, an active neighborhood association operated on the central-city side of the subdivision, but no such formal association operated on the suburban side.[66] The association organized efforts towards improving neighborhood security and environmental quality, as well as a "neighborhood party."[67] Crime rates were comparable on both sides.[68] The central-city neighborhood also lobbied for "prompt and quality" delivery of services; for instance, persuading the city to put up ornamental street lighting it did not otherwise provide in other neighborhoods, and also providing several tuition-free "magnet" schools available to more able students.[69] As a result, graduation rates were similar across the boundary.[70] The key difference, however, appeared to be a preference among those in the central city for sending children to parochial schools, both Protestant and Catholic, which were located in the neighborhood.[71]

The unique facts of this study illustrate what is often hard to prove: that neighborhood-specific legal tools can equally supply the level of municipal services that residents might otherwise seek from a suburban jurisdiction. If this overlay of legal tools can become routine in the arsenal of urban neighborhoods, it may be able to make city boundary distinctions irrelevant, or at least less significant. Such legal neighborhoods may be able to eliminate, or at least reduce the scale of, Tieboutian choices, especially the Tieboutian-perceived necessity of a jurisdictional boundary altogether.[72] This is especially important in

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[62] *Id.* at 708.
[63] *Id.* at 709–10.
[64] *Id.* at 717.
[65] *Id.*
[66] *Id.* at 711.
[67] Thorsnes & Reifel, *supra* note 61, at 711–12.
[68] *Id.* at 712.
[69] *Id.*
[70] *Id.*
[71] *Id.* at 717.
[72] *Rise of Sublocal Structures*, *supra* note 11, at 527–28.

urban areas where inner-city jurisdictions tend to be large.[73] If legal neighbor-
hoods can provide the experience of similarly-situated suburban environments,
then urban areas may be able to re-write the way potential residents view loca-
tional choices that, in turn, profoundly affect not only social and environmental
policies, but also the viability of urban inner cities.

C.   Residents' Effects on Neighborhoods, Neighborhood's Effects on Residents

The origin of the contemporary effort to conceive of the neighborhood as a
unit for social change was the publication of *Hull-House Maps and Papers* in
1895.[74] Jane Addams had started Hull-House in the "sweaters' district" of Chi-
cago. At Hull-House, around 15 to 25 "residents"[75] — mostly wealthy women
like Addams[76] — lived in the neighborhood for purposes of organizing the
trades of those living in the neighborhood, and in particular, the sewing
trades.[77] Hull-House also offered significant educational opportunities and in-
formal meeting opportunities for the neighborhood.[78]

Hull-House Maps and Papers focused on just one-third of a square mile, a
densely populated[79] area surrounded by major thoroughfares interspersed by
numerous small streets and alleys and a few strips of shops, including "a rather
cheap collection of tobacco-stands, saloons, old-iron establishments, and sordid
looking fancy-shops," as well as "several factories" and "a few rather preten-
tious brick store fronts."[80] The nationality map showed house-by-house distri-
bution of nationalities, including clustered "little colonies" of Irish, "negroes,"
Bohemians, "Scandinavians," Russians, Poles, Germans, and Dutch: eighteen
nationalities in total.[81] The wage map showed clusters of those earning $5 a

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[73] *Id.* at 506.

[74] RESIDENTS OF HULL HOUSE, HULL-HOUSE MAPS AND PAPERS: A PRESENTATION OF NA-
TIONALITIES AND WAGES IN A CONGESTED DISTRICT OF CHICAGO (Richard T. Ely ed. 1895) [here-
inafter HULL-HOUSE MAPS AND PAPERS] *available at* http://homicide.northwestern.edu/pubs/
hullhouse/; *see* ELEANOR J. STEBNER, THE WOMEN OF HULL HOUSE: A STUDY IN SPIRITUALITY,
VOCATION, AND FRIENDSHIP 19 (1997) (noting important role of Hull-House in "nascent discipline
of sociology") [hereinafter THE WOMEN OF HULL HOUSE].

[75] HULL-HOUSE MAPS AND PAPERS, *supra* note 74, at app. (listing twenty-four residents in
residence for longer than six months); *see* THE WOMEN OF HULL HOUSE, *supra* note 74, at 107
(1997) (noting stated variance in number of residents).

[76] *See, e.g.,* THE WOMEN OF HULL HOUSE, *supra* note 74, at 69–104 (providing biographies of
initial founders).

[77] HULL-HOUSE MAPS AND PAPERS, *supra* note 74, at 185. The Hull-House settlement, as
well as the Hull-House Maps and Papers were consciously modeled upon the reformer Charles
Booth, who had started a comparable settlement and published similar nationality and wage maps
in a low-income section of London. *See id.* at vii–viii.

[78] *See id.*

[79] *Id.* at 3. *Hull-House Maps and Papers* did not attempt to measure population density,
though through observation alone, the area was deemed one of the most densely settled areas of
Chicago.

[80] *Id.* at 3–4.

[81] *Id.* at 16–17.

week or less (black); $5 to $10 (blue), which was "probably the largest class in the district"; $10 to $15 (red); $15 to $20 (green); and over $20 (yellow).[82]

The detailed maps required investigators to visit "each house, tenement, and room" in the study area,[83] and conduct countless interviews asking questions that would have been deemed probing for the day,[84] a process that took a year.[85] The detailed results were elaborately colored maps, one showing the nationality of residents in each unit of each house or tenement, and another map showing the wages of each resident.[86]

The importance of *Hull-House Maps and Papers* was that it presented information about a low-income community in a matter-of-fact manner.[87] In this way, *Hull-House Maps and Papers* established that detailed, "scientific" study of a single neighborhood could prove valuable in understanding the long-term outcome of a neighborhood on an individual. Of course, with it taking a year to produce just one map, Addams and her group were not able to produce the kind of rigorous, multi-year longitudinal analysis we expect of today's researchers seeking to speak of a neighborhood's impact on an individual. However, they did establish what would become the "sociological" method of evaluating individuals in neighborhoods, an approach they showed could have real impact in effecting social change.[88]

Subsequent researchers, with more resources and better technology, were able to take up the mantle of *Hull-House Maps and Papers*' data-driven approach to studying the neighborhood. Foremost among them was the Chicago School of sociological research headed by Robert Park and Ernest Burgess. But the Chicago School did not follow Addams' approach *carte blanche*. Rather, the Chicago School changed the focus of research to "social forces" of cities and neighborhoods, which the contemporary literature calls the study of "neighborhood effects."

In their "ecological" approach to the city, Park, Burgess, and their colleagues at the Chicago School produced not only a number of detailed studies of individual neighborhoods in Chicago, but also attempted to develop a theory

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[82] *Id.* at 21–22.

[83] HULL-HOUSE MAPS AND PAPERS, *supra* note 74, at 11.

[84] *Id.* at 14.

[85] *Id.* at 12.

[86] *Nationalities Map No. 1 — Polk Street to Twelfth, Halsted Street to Jefferson, Chicago*, HULL-HOUSE MAPS AND PAPERS, *supra* note 74, *available at* http://homicide.northwestern.edu/docs_fk/homicide/HullHouse/NATMAP1.pdf; *Wage Map No. 1 — Polk Street to Twelfth, Halsted Street to Jefferson, Chicago*, HULL-HOUSE MAPS AND PAPERS, *supra* note 74, *available at* http://homicide.northwestern.edu/docs_fk/homicide/HullHouse/WAGEMAP1.pdf.

[87] HULL-HOUSE MAPS AND PAPERS, *supra* note 74, at 9 ("[T]he partial presentation here offered is in more graphic and minute form; and the view of each house and lot in the charts, suggesting just how members of various nationalities are grouped and disposed, and just what rates of wages are received in the different streets and sections, may have its real as well as its picturesque value.").

[88] *Id.* at 14 ("Merely to state symptoms and go no farther would be idle; but to state symptoms in order to ascertain the nature of disease, and apply, it may be, its cure, is not only scientific, but in the highest sense humanitarian.").

of city growth and, ultimately, decay.[89] Foremost in this theory was the idea
that the city was not "merely a physical mechanism and an artificial construc-
tion. It is involved in the vital processes of the people who compose it; it is a
product of nature, and particularly of human nature."[90] The habits and customs
of the city's people shaped and changed the city,[91] and in time, the inhabitants
"stained" their quarter of the city with their "peculiar sentiments."[92] The re-
sult, Park and Burgess devised,

> is to convert what was at first a mere geographical expression into a
> neighborhood, that is to say, a locality with sentiments, traditions,
> and a history of its own. Within this neighborhood the continuity of
> the historical process is somehow maintained. The past imposes it-
> self upon the present, and the life of every locality moves on with a
> certain momentum of its own, more or less independent of the larger
> circle of life and interests about it.[93]

A chief question of Park and Burgess' analysis was how to approach and
understand the effect of the neighborhood resulting from individuals' "peculiar
sentiments" on the city, and, conversely, how the neighborhood affected indi-
viduals. One aspect of this evaluation was an effort to determine systematically
how land values operated within the neighborhood.[94] Given their era and loca-

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[89] Robert E. Park et al., The City 50 (1925) [hereinafter The City] ("The typical
processes of the expansion of the city can best be illustrated, perhaps, by a series of concentric
circles, which may be numbered to designate both the successive zones of urban extension and the
types of areas differentiated in the process of expansion. This chart represents an ideal construc-
tion of the tendencies of any town or city to expand radially from its central business district — on
the map 'The Loop' (I). Encircling the downtown area there is normally an area in transition,
which is being invaded by business and light manufacture (II). A third area (III) is inhabited by
the workers in industries who have escaped from the area of deterioration (II) but who desire to
live within easy access of their work. Beyond this zone is the "residential area" (IV) of high-class
apartment buildings or of exclusive "restricted" districts of single family dwellings. Still farther,
out beyond the city limits, is the commuters' zone — suburban areas, or satellite cities — within a
thirty- to sixty-minute ride of the central business district. This chart brings out clearly the main
fact of expansion, namely, the tendency of each inner zone to extend its area by the invasion of the
next outer zone. This aspect of expansion may be called *succession*, a process which has been
studied in detail in plant ecology.").
[90] *Id.* at 1.
[91] *Id.* at 4 ("The fact is, however, that the city is rooted in the habits and customs of the
people who inhabit it. The consequence is that the city possesses a moral as well as a physical
organization, and these two mutually interact in characteristic ways to mold and modify one
another.").
[92] *Id.* at 6.
[93] *Id.*
[94] *Id.* at 148–49 ("The centers of local communities are to be found at the point of highest
land value in the intersection of two business streets. These local community centers are also
characterized by the concentration of retail business, of banks, of restaurants, and of the large and
magnificent palaces of amusement, like motion picture houses and public dance halls. If high land
values indicate the center of the community, the lowest land values generally define its periphera.
But if the intersection of two business streets determine the trade center, these same streets divide
it into neighborhoods.").

tion in political machine-dominated Chicago, they were particularly interested in how these "local interests" became the basis of political control.[95]

The Chicago School was at odds with Hull-House on this point, however, because Park and Burgess believed that political control arose from social factors, which they conceived of as naturally arising out of the social conditions of the neighborhood.[96] Hull-House, by contrast, had actively sought to introduce to the neighborhood an organizing and educational component that its founders did not believe would naturally arise there.[97] Perhaps the most salient of Park and Burgess' observations in this discourse was their realization that neighborhoods seldom were able to exact a political will within the city equal to the neighborhood's individual interests:

> It follows that the boundaries of local areas determined ecologically, culturally, and politically, seldom, if ever, exactly coincide. In fact, for American cities it is generally true that political boundaries are drawn most arbitrarily, without regard either to ecological or cultural lines, as is notoriously the case in the familiar instance of the gerrymander. Therefore it is fair to raise the question: How far are the deficiencies in political action through our governmental bodies and welfare action through our social agencies the result of the failure to base administrative districts upon ecological or cultural communities?[98]

The impact of theories developed by Park and Burgess waned over time, especially as their "ecological" models failed to hold up when used to analyze

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[95] THE CITY, supra note 89, at 7 ("Proximity and neighborly contact are the basis for the simplest and most elementary form of association with which we have to do in the organization of city life. Local interests and associations breed local sentiment, and, under a system which makes residence the basis for participation in the government, the neighborhood becomes the basis of political control. In the social and political organization of the city it is the smallest local unit.").

[96] *Id.* at 143–46 (noting, in opposition to Hull-House's "factors", that, "[i]f neighborhood work can have a scientific basis, it is because there are social forces in community life — forces like geographical conditions, human wishes, community consciousness — that can be studied, described, analyzed, and ultimately measured . . . . First of all, there is the community viewed almost exclusively in terms of location and movement . . . . In the second place, the community may be conceived in terms of the effects of communal life in a given area upon the formation or the maintenance of a local culture . . . . There remains a third standpoint from which the relation of a local area to group life may be stated. In what ways and to what extent does the fact of common residence in a locality compel or invite its inhabitants to act together?").

[97] *See supra* notes 74–78.

[98] THE CITY, *supra* note 89, at 147; *see also* Vieth v. Jubelirer, 541 U.S. 267, 359 (2004) (Breyer, J., dissenting) ("Given the resulting need for single-member districts with nonrandom boundaries, it is not surprising that 'traditional' districting principles have rarely, if ever, been politically neutral. Rather, because, in recent political memory, Democrats have often been concentrated in cities while Republicans have often been concentrated in suburbs and sometimes rural areas, geographically drawn boundaries have tended to 'pac[k]' the former. [Citation omitted.] Neighborhood or community-based boundaries, seeking to group Irish, Jewish, or African-American voters, often did the same. All this is well known to politicians, who use their knowledge about the effects of the 'neutral' criteria to partisan advantage when drawing electoral maps. And were it not so, the iron laws of mathematics would have worked their extraordinary volatility-enhancing will.").

cities other than Chicago. However, their efforts launched a field of study around neighborhood change and neighborhood effects that was revived in the 1960s[99] and is still active to this day.[100] Much of this literature, stemming from its roots, focuses upon neighborhoods of poverty, as well as neighborhoods that have high levels of racial or ethnic concentration.[101]

Two large studies conducted on behalf of the Housing and Urban Development Agency ("HUD"), are of particular note due to the size and length of the studies. The first study, *The Behavioral Foundations of Neighborhood Change*, was published in 1979, and sought not only to create an analytical model of "neighborhood evolution," but also to provide detailed information about how Americans felt about, and behaved with respect to, neighborhoods.[102] Over the course of the five-year period from 1971 to 1976, researchers conducted a first round of detailed interviews with 600 Boston residents, 300 residents of the Greater Kansas City area, 100 residents of Houston, and a second round of 300 residents in Houston; Dayton, Ohio; and Rochester, New York.[103] The report found that the top reasons why residents left a neighborhood were, in order, to own a home; for a larger housing unit or more space; because of family circumstances; or for access to a job.[104]

The report also asked residents to define what "neighborhood" meant to them qualitatively. The report reached two conclusions: There are "three or four definite gradations" of how an individual defines neighborhood geographically, each level with a different social and symbolic meaning, and single-family and apartment dwellers vary significantly in this geographic view.[105]

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[99] Suttles, *supra* note 17, at 5–7 (looking at "territorial aggression" as means of neighborhood formation in slum, looking in particular at area focused on by Addams).

[100] *See, e.g.*, Robert J. Sampson et al., *Assessing "Neighborhood Effects": Social Processes and New Directions in Research*, 28 Ann. Rev. of Soc. 443 (2002) (reviewing and summarizing numerous articles studying neighborhood effects); Robert D. Dietz, *The Estimation of Neighborhood Effects in the Social Sciences: An Interdisciplinary Approach*, 31 Soc. Sci. Res. 539 (2002) (same); Yannis M. Ioannides & Giorgio Topa, *Neighborhood Effects: Accomplishments and Looking Beyond Them*, 50 J. of Regional Sci. 343 (2010).

[101] *See infra* notes 102–19; *see also* Michael Vaden-Kiernan et al., *Neighborhoods as a Developmental Context: A Multilevel Analysis of Neighborhood Effects on Head Start Families and Children*, 45 Am. J. Cmty. Psychol. 49 (2010); George Galster, *Investigating Behavioural Impacts of Poor Neighbourhoods: Towards New Data and Analytic Strategies*, 18 Housing Stud. 893 (2003); Jurgen Friedrichs & Jorg Blasius, *Social Norms in Distressed Neighbourhoods: Testing the Wilson Hypothesis*, 18 Housing Stud. 807 (2003).

[102] Housing & Urban Dev., The Behavioral Foundations of Neighborhood Change 1–2 (1979) [hereinafter Foundations of Neighborhood Change].

[103] *Id.*

[104] *Id.* at 8.

[105] *Id.* at 35–36. The differences in relative interests between single-family residents and apartment-dwellers has long been at issue. *Compare* Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 394-95 (1926) ("With particular reference to apartment houses, it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; that in such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district. Moreover, the coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes, and bringing, as their necessary

Single-family occupants defined neighborhood in the following gradations, from smallest to largest: the immediate neighborhood ("It's a circle with a radius equal to one block with my home in the center"); the area up to which a different market value of housing appears or there suddenly becomes an apparent mix in housing types; some artificial boundary, such as an arterial road, a school boundary line, or a civic association; and whole suburbs or townships ("southwest section of Greater Houston").[106]

In contrast, apartment dwellers defined neighborhood in the following gradations, from smallest to largest: their own building or complex, and if the building was large enough, sometimes their floor; a series of adjacent apartment buildings; and a "part of town" that includes where they conduct their personal shopping.[107] Apartment dwellers did not consider single-family homes that surrounded or abutted their apartment building as part of their neighborhood.[108] For both single-family home and apartment dwellers, the idea of neighborhood also conjured up a "wish level" of ideas such as "companionship and help in time of trouble, of tranquility and security, of homogeneity in the character of homes and their residents, and of a village-like self-sufficiency."[109]

The second study, *Moving to Opportunity for Fair Housing*, released its final report in 2011 on a large, long-term study authorized in 1992 to determine whether living in a less economically and socially distressed neighborhood could improve well-being and long-term life chances.[110] It was the first random-assignment social science experiment designed to identify the causal ef-

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accompaniments, the disturbing noises incident to increased traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities — until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed. Under these circumstances, apartment houses, which in a different environment would be not only entirely unobjectionable but highly desirable, come very near to being nuisances."), *with* City of Memphis v. Greene, 451 U.S. 100, 127 (1981) ("The interest in privacy has the same dignity in a densely populated apartment complex . . . or in an affluent neighborhood of single-family homes.").

[106] FOUNDATIONS OF NEIGHBORHOOD CHANGE, *supra* note 102, at 36–37.

[107] *Id.* at 37.

[108] *Id.*

[109] *Id.* at 39. The report also conducted interesting analysis of how the desired neighborhood characteristics varied by class. This data is likely dated to some degree, as discussion *infra* Part II(F) on current trends in housing will show, but is of sufficient historic value to report here. Those in the "upper status" group wanted a "neighborhood in the right part of town" populated with professionals, typically a suburban location a "good distance from town," with "no traffic," "lots of privacy," and "good public schools for the children." *Id.* at 43. The "middle class" group wanted essentially the same type of neighborhood as the upper status group — "definitely suburban — not inside the city" — but instead of focusing on the prestige element of the neighborhood, they focused on seeking out "friendly people, mostly of the same socioeconomic bracket, with similar values and interests." *Id.* at 46. The "working class" group tended to define their preferred neighborhood in terms of what they did not want, such as "no rubbish in yards," "no muggings and robberies," "a strictly all-white neighborhood," "no welfare families," and so on. *Id.* at 49. Among the "lower class," the ideal neighborhood was typically framed in terms of safety, as crime tended to be their primary concern. *Id.* at 50–51.

[110] HOUSING & URBAN DEV., MOVING TO OPPORTUNITY FOR FAIR HOUSING DEMONSTRATION PROGRAM: FINAL IMPACTS EVALUATION xii (2011) [hereinafter MOVING TO OPPORTUNITY].

fects of moving from a high-poverty to a low-poverty neighborhood.[111] From 1994 to 1998, the program enrolled 4,604 low-income households in Baltimore, Boston, Chicago, Los Angeles, and New York, and was limited to households with children that were living in public or government-subsidized, project-based housing in high-poverty areas.[112] Enrolled families were assigned randomly to one of three groups: the experimental group, which received Section 8 rental assistances that could only be used in census tracts with poverty rates below ten percent, and received mobility counseling to assist in leasing a new unit; the Section-8-only group, which received regular Section 8 vouchers they could use anywhere and no special mobility counseling; and the control group, which received no certificates or vouchers, but remained eligible for project-based housing.[113] Forty-eight percent of the experimental group moved to a lower-poverty neighborhood, and sixty-three percent of the Section-8-only group moved to a non-project location.[114]

Long-term findings regarding mobility found that the experimental and Section 8 groups were more likely than the control group to "live in lower-poverty neighborhoods; live in higher-quality homes; reside in slightly less racially segregated neighborhoods," though most remained in majority-minority neighborhoods; "have more social ties with relatively more affluent people; [and] feel safer in their neighborhoods."[115] Long-term findings regarding physical health found that adults in the experimental and Section 8 group had "a lower prevalence of extreme obesity, a lower prevalence of diabetes, fewer self-reported physical limitation[s]," and similar rates of hypertension and health-related risk behaviors.[116] Long-term findings regarding mental health found that, compared with the control group, adults in the experimental or Section 8 group had "lower levels of psychological distress; lower prevalence of depression" or anxiety, and "similar rates of most other mental health problems."[117] Mental health of children ages 10 to 20, however, varied by gender. Female youth ages 10 to 20 in the experimental group, relative to the control group, had "a lower prevalence of any lifetime mood disorder, fewer serious emotional or behavioral difficulties, fewer panic attacks in the past year, less psychological distress, lower prevalence of oppositional defiant disorder," and "similar rates of other mental health problems." When compared to the control group, male youth ages 10 to 20 in the experimental group showed "increased lifetime post-traumatic stress disorder," and "prevalence of [this] disorder among male youth in the Section 8 group [was] about 3 percentage points higher than in the control group."[118] With regard to economic

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[111] *Id.* at xiii.
[112] *Id.* at xiv. The study group included 4,604 adults who were heads of households at the beginning of the program; 6,308 youth who were ages 10 to 20 as of December 31, 2007; and 4,643 grown children who were ages 20 to 30 at the end of 2007. *Id*. at xv.
[113] *Id*. at xiii.
[114] *Id*. at 50.
[115] *Id*. at xvi.
[116] *Id*. at xvii.
[117] *Id*.
[118] *Id*. at xvii-xviii.

self-sufficiency, compared with the control group, experimental and Section 8 group adults had: "similar employment levels and earnings; similar incomes; less food insufficiency; [and] somewhat higher use of food stamps" in the experimental group.[119]

The results of the HUD *Moving to Opportunity* study provide a level of detail about neighborhood effects for which Jane Addams and her collaborators on the *Hull House Papers and Maps* could have only dreamed. In the intervening century, a discipline emerged — through Park and Burgess, Suttles, and others attempting to establish a quantitative rubric that could explain how neighborhoods affect people's identities. *Moving to Opportunity* does not answer all of those questions, but it makes clear that neighborhood effects can be studied in a rigorous, scientific manner, and in doing so, can implicate policy decisions in fields as broad as physical and mental health, children's services, housing, recreation, transportation, and the workplace.

D. Design of Neighborhoods

The design of neighborhoods in American cities has a number of ancient antecedents. A sketch of this history is worthwhile because it makes clear that the American densely settled neighborhood is not a new invention, and in many ways, the current trends in neighborhood planning are built on centuries-old strategies re-configured for the car-dependent contemporary culture seeking alternative transportation modes.

Ancient antecedents of planned neighborhoods arose due to colonization efforts. For instance, one scholar speculated that the first planned "neighborhood unit" occurred in a Greek plan for the city of Thurium in 443 B.C.E.[120] Thurium's neighborhood units were based on the "Milesian" city plan for dividing land in a new city formed for colonization.[121] The Milesian city plan introduced to Greek city planning a rectangular *agora*, or marketplace, surrounded by walls of shops on three sides, as well as uniform street widths and city blocks of uniform dimensions.[122] The Milesian plan superimposed a gridiron onto the landscape without regard to topography or environmental concerns. The virtue of such a plan was that each city laid out under such an arrangement was identical and easily navigable by strangers to the newly colonized city, such as sailors and foreign merchants. In Thurium, the city was divided by four longitudinal and three transverse arteries into ten large neighborhood units, each of which was dedicated to a different tribe.[123] Thus two aspects of planned neighborhoods arose that would repeat in American cities

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[119] *Id.* at xxvii.
[120] Lewis Mumford, The City in History: Its Origins, Its Transformations, and Its Prospects 193 (Mariner 1968) (1961) [hereinafter City in History].
[121] *Id.* at 192.
[122] *Id.*
[123] *Id.* at 193.

centuries later: the use of large roads to define neighborhood boundaries and purposeful segregation of races and ethnicities by neighborhood.[124]

The Roman *castra*, or military encampment, similarly became an important model for the evolution of neighborhoods in Roman colonies.[125] The Roman *castra*, a gridiron military encampment with pre-determined use locations and road hierarchies, was used across the empire and often developed into towns and cities.[126] Where Roman forces planned to develop a new civil city, they simply adopted the *castra* plan for the colonial city.[127] This planning of the Roman *castra*, known as castrametation, contributed to the first planning legislation to govern New World development: the Spanish *Laws of the Indies*, issued in 1573.[128] While the *Laws of the Indies* is typically considered as instructions for "new towns," it provided a framework for how to build a community that we would recognize as a neighborhood today.

The minimum population size for a new settlement under the *Laws of the Indies* was "thirty neighbours, each one with his own house" and assorted supplies of livestock.[129] The instructions began with how to locate and directionally place a plaza, the location of the church within the plaza, where streets were to enter the plaza, and arcades that were to line the plaza to facilitate merchant activity. However, the *Laws* also established lot sizes for individual homeowners and instructed that the "buildings [should be] all of one type for the sake of the beauty of the town,"[130] that slaughterhouses should be located at places convenient for disposal of filth,[131] that there should be open space retained nearby for the recreation of the citizens,[132] that public buildings should be located near the main plaza,[133] that hospitals should be located to take advantage of winds,[134] and a number of other details.[135] A city built according to the *Laws* provided for all aspects of life within a densely packed, pedestrian-oriented center. Cities that retain their original *Laws* squares include Sonoma, California; Santa Fe, New Mexico; and a number of cities in Central America and South America.

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[124] *Id.*

[125] John W. Reps, The Making of Urban America: A History of City Planning in the United States 5 (1965) [hereinafter Making of Urban America].

[126] *Id.* at 32.

[127] *Id.*

[128] *Id.* at 29, 32. The *Laws of the Indies* has not been published, to the author's knowledge, in its entirety. A translation of the most pertinent sections was first published as Zelia Nuttall, *Royal Ordinances Concerning the Laying Out of New Towns*, 4 Hisp. Am. Hist. Rev. 743 (1921) [hereinafter 1921 *Laws* Edition]. Subsequently, another translation reinterpreting sections of the Nuttall translation, and also translating additional sections, was published in Axel I. Mundigo & Dora P. Crouch, *The City Planning Ordinances of the Laws of the Indies Revisited. Part I: Their Philosophy and Implications*, 48 Town Plan. Rev. 247, 253 (1977) [hereinafter 1977 *Laws* Edition].

[129] 1977 *Laws* Edition, *supra* note 128, at 253 (*Laws* § 89), 262.

[130] *Id.* at 257 (*Laws* § 134).

[131] *Id.* at 255 (*Laws* § 122).

[132] *Id.* at 256 (*Laws* § 129).

[133] *Id.* (*Laws* § 124).

[134] *Id.* at 255.

[135] 1977 *Laws* Edition, *supra* note 128, at 262; *see generally id.* at 247–68.

Most American urban cities did not grow according to the *Laws*; however, they did grow up with a similarly rigid structure.[136] Perhaps the most important, and certainly most prevalent, development in early American planning was the adoption of the gridiron or checkerboard street plan, which through the late eighteenth century and nineteenth century found its way into eastern cities (such as New York City and Philadelphia); Midwestern railroad towns and homesteader towns, which found a grid complementary to the rectangular platting of lands in the country's interior; and western cities (such as San Francisco and Portland).[137] Other cities grew according to more elaborate, even "baroque," designs (such as Washington, D.C. and Detroit).[138] The idea of a "neighborhood" per se was not heavily discussed in any of these plans, nor does the concept itself appear to have had substantial weight as a measure of planning at that time. The result was that American nineteenth-century cities, especially the majority planned on gridirons, failed to exhibit characteristics typically associated with neighborhoods.[139] Residential areas of the late nineteenth century identified around business districts, a pattern that intensified as trolleys and subways were introduced into cities, and stops along those inner-city commuter lines began to agglomerate businesses nearby.[140] More than an-

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[136] Perhaps the most notable exception was the New England village and town structure. The township was typically platted in a large field, home sites were selected in the middle of the field, and lots were drawn from the back of the house to the end of the field. *See* MAKING OF URBAN AMERICA, *supra* note 125, at 120. The villages, on the other hand, were planned to accommodate a limited population. Many centered on central open space, such as a village green or common, and the church was typically located on the green. Homes were typically built in compact manner and creating a sharp divide between city and country. *See id.* at 124–25.

[137] *See id.* at 294–324.

[138] *See id.* at 263–93.

[139] *Neighborhood and the Neighborhood Unit*, *supra* note 45, at 259 ("The development of transportation caused the traffic avenue to become the dominant component in nineteenth century design: the emphasis changed from facilities for settlement to facilities for movement. By means of the traffic avenue, often ruthlessly cutting through urban tissue that had once been organically related to neighborhood life, the city as a whole became more united perhaps; but at the cost of destroying, or at least of seriously undermining, neighborhood life. Where, as in the big American metropolises the gridiron plan forestalled or over-rode neighborhood development, the subordinate parts of the city came more and more to lack any character of their own. Though the successive times of building and the diversity of human purposes might still give a certain residual color to the growing urban extensions, in general the traffic avenue, abetted by other means of mechanical transportation, tended to break up, not just the rituals of local attachment, but the very sense, conveyed by street plans and architecture, of being part of an identifiable and often lovable whole. Even when the neighborhoods of the nineteenth century city were identifiable, they were usually not lovable; so that, in a sense, it was only in the older quarters of the city or in the better suburbs that the neighborhood, as a cluster of visible and conscious domestic relationships, survived. Otherwise, the long uniform avenue, the random placing of public buildings, created a nightmare of the indefinable. It was easier to lose oneself in the city as a whole than to find oneself in the neighborhood.").

[140] The evidence of this pattern can still be seen in many cities across the country. For instance, the Key System once ran trolleys throughout the East Bay and into the central city of San Francisco, California. Although these trolleys no longer operate, a number of compact business districts remain where the trolley stops once were, such as the Elmwood District of Berkeley and the Rockridge District of Oakland. *See generally* HARRE W. DEMORO, THE KEY ROUTE: TRANS-BAY COMMUTING BY TRAIN AND FERRY (1985) (discussing Key System routes).

ything else, this business agglomeration along transit stops provided late nine-
teenth-century gridiron cities their sense of community.

By the early twentieth century, as it became increasingly clear that the
automobile would replace the railroad as the common means of transportation,
new schools of thought emerged as to how to plan the new suburban communi-
ties. It was at this time that the idea of the "neighborhood" rose to the fore,
and no one was more influential in that development than Clarence Perry.
Perry did not mince words on the radicalism of his idea: "[o]nce the neighbor-
hood-unit scheme is adopted, it becomes possible to approach from a new angle
a number of vital questions in the field of community organization. For one
example: The neighborhood community, as tentatively described in this
scheme, does not center upon a business district. The traditional idea of a local
community is one with a business district."[141]

Perry thought businesses were a problem in potentially ruining the resi-
dential character of the neighborhood, as the "filaments" of business with their
"blighting effects" could penetrate a non-vigilant neighborhood. His proposed
neighborhood unit would limit business to shopping districts confined by cove-
nants and municipal zoning to "the areas where they were first located."[142]

Despite inverting the late nineteenth-century development around business
districts, Perry's plan is reminiscent of many of the earliest American town
planning documents, including the *Laws of the Indies*, which, coincidentally,
were re-discovered around the same time as Perry was publishing.[143] Perry's
most direct influence was Forest Hills Gardens, a *faux* Tudor-style subdivision
built into the dense urban fabric of the Queens borough of New York City.[144]
Perry's proposed neighborhood plan placed neighborhood institutions at the
community center, relegated shopping districts to the periphery of traffic junc-
tions, and required 10 percent of the area to be set aside for recreation and park
space.[145] Interior streets were not to be wider than required for a specific use,

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[141] Clarence Arthur Perry, *City Planning for Neighborhood Life*, 8 Soc. Forces 98, 100
(1929) [hereinafter *City Planning for Neighborhood Life*].

[142] *Id.* ("[T]hen the local community features begin gradually to disappear and are all wiped
out. The neighborhood-unit scheme on the other hand supplies remedies for many of these de-
fects. In the first place, its common open spaces and definite residential character supply a basic
need of association that is permanent. Its special street system and main highway boundaries give
it a conspicuous and lasting unitary character which, McKenzie has pointed out, constitutes the
physical basis which is favorable for the existence of neighborhood sentiment. The local shopping
districts being exactly adapted to population needs can be and are sometimes confined by cove-
nants in deeds and by municipal zoning to the areas where they were first located.").

[143] The *Laws* were largely lost to history until rediscovered in a Madrid library and re-pub-
lished in English, in part, in 1921. *See generally* 1921 *Laws* Edition, *supra* note 128, at 743
(describing discovery of documents in Madrid library).

[144] *See* Clarence Arthur Perry, *The Rehabilitation of the Local Community*, 4 Soc. Forces
558, 559 (1926) [hereinafter *Rehabilitation of the Local Community*] (praising Forest Hills Gar-
dens); *see also* Making of Urban America, *supra* note 125, at 525 (discussing influence of
Forest Hills Gardens on Perry). Also relevant to this discussion, which focuses on American
planning efforts, was the British thinker Ebenezer Howard, whose influential work was credited
with being the inspiration for Forest Hills Gardens, and who was certainly an influence on Perry.
See Ebenezer Howard, Garden Cities of Tomorrow (Attic Books 1985) (1902).

[145] *See* Andres Duany et al., The Smart Growth Manual § 6.1 (2009) [hereinafter
Smart Growth Manual].

should give easy access to shops, and should be bordered by arterial streets and "main highways."[146]

Perry once defined the neighborhood as "the district — in those cities where it still exists — next larger than a block to which a man can say he 'belongs.' Its radius is the local acquaintance range of the ordinary citizen."[147] Perry varied slightly in his estimation of neighborhood size, though, stating at one time that "[f]requently it corresponds to a school district and embraces a population of from 3,000 to 5,000 persons,"[148] and in another instance that it requires "a population of 5,000 or 6,000 people and 800 or 1,000 children of elementary school age."[149] In a neighborhood of single-family homes, he estimated this would require approximately 160 acres, or a square with sides of one-half mile.[150] With apartment buildings, the neighborhood unit could "shrink in proportion to density."[151] The neighborhood's "cardinal social characteristic," Perry noted, was "facility in the formation of face-to-face groupings."[152]

Moreover, Perry also realized that the then-emergent notion of "home beautiful" was based upon a "homogeneous" social, cultural, class, and ethnic milieu,[153] and he realized that it could be obtained through creating neighborhood units separated by the new, large arterial roads necessary for automobiles. As Perry once noted, "[t]he great foe to community life is heterogeneity,"[154] and the neighborhood unit

> illustrates a method of producing homogeneity. When the real estate plan is dangled before the public, automatically it draws together a group of people of similar living standards and similar economic ability to realize them. McKenzie has pointed out that the segregation of a city population 'along racial, economic social and vocational lines'

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[146] *See id.*

[147] *Rehabilitation of the Local Community*, *supra* note 144, at 558.

[148] *Id.*

[149] *City Planning for Neighborhood Life*, *supra* note 141, at 98; *see also Our Localism, Part II*, *supra* note 54, at 427–28. *See generally* RHODRI WINDSOR LISCOMBE, THE IDEAL CITY (The World Urban Forum 2006: Vancouver Working Group Discussion Draft) *available at* http://www.cscd.gov.bc.ca/lgd/intergov_relations/library/wuf_the_ideal_city.pdf (reviewing history and force of ideal city planning).

[150] *City Planning for Neighborhood Life*, *supra* note 141, at 98.

[151] *Id.*

[152] *Rehabilitation of the Local Community*, *supra* note 144, at 558.

[153] *Id.* at 559 ("The ideal of the 'home beautiful' which the American public has so wholeheartedly accepted embraces, however, more than a piece of ground and a structure. In addition to a satisfying interior and well-appointed premises, it requires vistas of trees and shrubbery; clean pavements; nearby schools and ample playgrounds; accessible churches, and shopping centers; streets properly repaired, lighted and policed; and an assured freedom from offensive industries and unsightly structures. For a 'quality' home there must be a 'quality' environment. A gem is of little use without the right setting. The surroundings must not only be appropriate in the beginning, but they must stay so. The residential atmosphere may be all you desire when you buy but you want assurance that your neighbor will not sell out next year to a grocer. And yet you want a grocery in the neighborhood. The situation is one that can be met only in a large development that has been comprehensively planned and built up as a unit.").

[154] Clarence Arthur Perry, *The Tangible Aspects of Community Organization*, 8 SOC. FORCES 558, 563 (1930) [hereinafter *Tangible Aspects of Community Organization*].

is a normal process and one which is constantly at work. Already cooperation in housing schemes is being taken up by various occupational groups . . . . The use of a neighborhood formula in suburban building and slum rebuilding schemes is going to promote this grouping process. Whether we favor the tendency or not, a situation is arising that will require a fresh study and revaluation of this fundamental social phenomenon.[155]

Perry realized the automobile was the cause of this change: "[t]o accommodate the ever growing stream of cars the engineers, in practically all our large cities, are building boulevards, parkways and super-highways. These wide, deep channels are cutting up residential sections into irregularly-shaped islands around which raging streams of traffic will soon flow. Should we not take some steps to formulate the size and the contents of these residential islands?"[156] For Perry, the ideal scenario was to use these arterials to create pockets of livability, neighborhoods, "within which the principal destinations of normal families — schools, playgrounds and local shops — can all be reached without crossing a single main highway."[157] Thus, Perry's efforts to turn the traditional business district-centered neighborhood inside out and place the business districts on the exterior were based in his efforts to address the automobile age's arterial division of the city and create "islands" of livability, which were not interrupted by the flow of automobile traffic.[158] In this way, Perry's vision remained a deeply urban vision commensurate to his work and experience primarily in New York City.

Writing in the 1950s, Lewis Mumford approved of Perry's notion that residential quarters should be created on such a scale that local shops and markets and public restaurants and taverns were no more than a quarter mile apart,[159] though he was against neighborhoods that were segregated by class and age.[160] He noted that Perry's proposed neighborhood size was similar to a medieval city's quarter,[161] and that "[n]eighbors are people united primarily not by common origins or common purposes but by the proximity of their dwellings in space."[162]

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[155] *City Planning for Neighborhood Life*, *supra* note 141, at 99.

[156] *Id.* at 99.

[157] *Id.*

[158] *Tangible Aspects of Community Organization*, *supra* note 154, at 563–64 ("The new major street systems now being drawn upon our city maps are dividing our dwelling districts into islands which will soon be surrounded by streams of dangerous traffic. Both safety and convenience will demand that each of these enclosed areas be replete with school, play, and other neighborhood services.").

[159] *Neighborhood and the Neighborhood Unit*, *supra* note 45, at 261–62 ("Each area in which it is intended to develop a localised life must of course be provided with every facility for all the different branches of life that it is practicable to localise.").

[160] *Id.* at 267–68.

[161] *Id.* at 257 ("The very word 'quarter' reminds us that, typically, the medieval city, up to the sixteenth century, though it usually contained fewer than 25,000 inhabitants, was divided into quarters: each quarter had its own section of the walls to defend, along with its own churches, workshops and minor markets.").

[162] *Id.* at 257.

Mumford was less willing to imagine the neighborhood as a stand-alone unit. He noted that "[t]he only functions with respect to which the neighborhood unit is relatively self-contained are the domestic functions or those activities that spring from them."[163] Beyond those requirements, the neighborhood was still connected to the larger city, and moreover, the provision of neighborhood institutions called "for the continued activity of a public authority."[164]

Of course, twentieth-century America did not develop in accordance with Perry's model. Suburbs "sprawled," a term first coined in 1937, and the connections of sprawl to income and transportation were already in place by the end of World War II.[165] The American population has dramatically urbanized over the past two hundred years. In 1790, "[o]nly slightly more than 5 percent of the U.S. population lived in urban areas." That figure "tripled by 1850," and "[b]y the 2000 Census, 79 percent of all Americans lived in areas designated as urban by the Census Bureau."[166] The geographic extent of that urbanization, however, has radically changed since the 1950s. For example, the proportion of the urban population that lived in central cities shrank from sixty-five percent in 1950 to thirty-five percent in 1990.[167]

The U.S. Supreme Court itself came to support — even extol — the virtues of suburban living. For instance, in *Village of Belle Terre v. Boraas*,[168] the Court noted:

> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs . . . . The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.[169]

Similarly, in *City of Memphis v. Greene*, the Court noted, "[t]he residential interest in comparative tranquility is also unquestionably legitimate. That interest provides support . . . for the accepted view that a man's home is his castle."[170] In the classic urban renewal case, *Berman v. Parker*, the Court held that "[t]he values [the concept of the public welfare] represents are spiritual as well as physical, aesthetic as well as monetary."[171]

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[163] *Id.* at 265. Mumford added: "For neighborhood units are built around the home and they should be so designed as to give the fullest advantages of housewifely and parental cooperation and result in the greatest measure of freedom, pleasure, and effectiveness in meeting the needs of family life at every stage of growth." *Id.*

[164] *Id.* at 266.

[165] *Urban Sprawl*, *supra* note 2, at 177.

[166] *Id.* at 179.

[167] *Id.* at 180.

[168] 416 U.S. 1 (1974) (upholding an ordinance limiting single-family dwellings to families of not more than two unrelated residents).

[169] *Id.* at 9.

[170] 451 U.S. 100, 127 (1981).

[171] 348 U.S. 26, 33 (1954). The breadth of *Berman*'s language was later adopted in *Penn. Central Transp. Co. v. City of New York*, 438 U.S. 104, 129 (1978) ("Because this Court has recognized, in a number of settings, that States and cities may enact land-use restrictions or con-

But perhaps no one gave voice to this era of development better than Frank Lloyd Wright, who had, for all practical purposes, given up on the city.[172] In a series of manifestos, Wright proclaimed the future as belonging to what he called "Broadacre City."[173] The scale of Wright's vision was "the man seated in his motor car . . . rather than the man standing on his legs or his limitations in a trap hitched to a horse."[174] Wright proclaimed, "In the City of Yesterday ground space was reckoned by the square foot. In the City of Tomorrow ground space will be reckoned by the acre: an acre to the family."[175] Wright imagined that, instead of tenement living, the poor should be given an acre each, and that upon that land, each family could build a home and plant crops.[176] "Integration by way of neighborhood schools, entertainments, hospitals for sickness, insurance for old age, all take from the machine-slave the anxieties that bore him down and out at an early age."[177] Wright glorified a type of shopping that seems a high-brow take on strip malls and megastores, even lauding the genius of a convenience store paired with a gas station.[178]

While today Wright's inspirational rhetoric seems out-of-touch in light of the banal realities of strip malls in most suburbs, the newness of the openness provided by the automobile was foremost in his thought. To Wright, operating without the benefit of hindsight, the suburb would provide an individual a sense of freedom, and pleasure would come primarily from family life, not within the community.[179] In Wright's vision for Broadacre City, it is hard to envision

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trols to enhance the quality of life by preserving the character and desirable aesthetic features of a city . . . appellants do not contest that New York City's objective of preserving structures and areas with special historic, architectural, or cultural significance is an entirely permissible governmental goal.").

[172] Frank Lloyd Wright, *The Disappearing City*, *in* THE ESSENTIAL FRANK LLOYD WRIGHT 235 (Bruce Brooks Pfeiffer ed. 2008) (1932) [hereinafter *Disappearing City*] ("The value of this earth, as man's heritage, is pretty far gone from him now in the cities centralization has built. And centralization has over-built them all.").

[173] *Id.* at 242.

[174] *Id.* at 258.

[175] *Id.* at 253; *see also* Frank Lloyd Wright, *Broadacre City: A New Community Plan*, ARCHITECTURAL REC. 345 (1935), *available at* http://www.mediaarchitecture.at/architekturtheorie/broadacre_city/2011_broadacre_model_en.shtml.

[176] *Disappearing City*, *supra* note 172, at 261–63.

[177] *Id.* at 263.

[178] *Id.* at 265 ("This integration of mercantile distribution as it will be natural to the Broadacre City would occur upon the great arteries of mobilization, or traffic. This feature of the future city is already appearing neglected and despised — but as the roadside service station the distributing centers, in embryo, of the future are appearing. In the gasoline service station may be seen the beginning of an important advance agent of decentralization by way of distribution and also the beginning of the establishment of the Broadacre City . . . . With the service station would be found generous parking facilities and various schemes for automatic parking; beguiling entertainments; cabarets, cafes, and restaurants, and comfortable overnight accommodations for transients . . . . From every stream of traffic one might turn aside and pick up, at these stations, in natural to and fro, anything needed or desired at home.").

[179] *Id.* at 271 ("This new standard of space measurement — the man seated in this automobile — affects him everywhere he goes, but most of all the new sense of space affects him here where he lives his family life."). Wright did envision community centers, but the vision seems an afterthought in his writing. *Id.* at 267 ("[C]ommunal centers" as "quiet places for study, reflection and introspection, in comradeship" amidst "golf courses, racetrack, zoo, aquarium and planeta-

where the neighborhood exists; if it does exist, it certainly requires a car to access it.

The reality of suburban isolation and its resultant complexities has increasingly turned attention back to the design standards set forth by Perry at the early part of the century. For instance, Andres Duany and Elizabeth Plater-Zyberk, along with other architects such as Peter Calthorpe, sought to apply design principles similar to Perry's through the "new urbanism" movement. In their books and articles, Duany and Plater-Zyberk have systematically defined "neighborhoods" as an antithesis to "suburbs."[180] In the recently published *Smart Growth Manual*, they specifically cite to Perry's neighborhood unit model as an archetype and opine that neighborhood size corresponds to the "five-minute walk, or 'pedestrian shed,' averaging one-quarter mile from edge to center."[181]

They focus on a neighborhood as being defined by its center and its edge. They note that "a clear center is a necessity," while a "well-defined edge could be considered a luxury."[182] The neighborhood center should be a plaza, square, or green.[183] In cities, the edge is often marked by boulevards or parkways.[184] Playgrounds and pocket parks should be located within two minutes' walk of most households, each about a quarter-acre in size;[185] zoning law should regulate buildings by type rather than use;[186] there should be access to small farms of one to five acres on the edge and community gardens;[187] and transportation networks should limit pedestrian trips to and from transit to no more than five to ten minutes.[188] Furthermore, they state that "[n]eighborhoods are urbanized areas containing a balance of human activity: a variety of housing, adequate shopping, a range of workplaces, and the facilities for elementary education. These are integrated to other neighborhoods by a network of small streets. Neighborhoods aggregate to form towns and cities, while a single neighborhood standing free in the landscape is a village."[189]

Similar to Duany and Plater-Zyberk's designs, a popular modular concept tool for planning neighborhood design has been created by the U.S. Green Building Council in collaboration with the Congress for a New Urbanism and the Natural Resources Defense Council. Dubbed "LEED for Neighborhood Development," the tool's proposals for land use not only cite Perry, but also offer a technocratic and point-based approach to achieving aims similar to his

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rium will naturally be found at these places grouped in architectural ensemble with a botanical garden.").

[180] Andres Duany & Elizabeth Plater-Zyberk, *Neighborhoods and Suburbs*, 164 DESIGN Q. 10 (1995) [hereinafter *Neighborhoods and Suburbs*].

[181] SMART GROWTH MANUAL, *supra* note 145, at § 6.1.

[182] *Id.* at § 6.2.

[183] *Id.*

[184] *Id.*

[185] *Id.* at § 6.3.

[186] *Id.* at § 6.5.

[187] *Id.* § 6.7.

[188] *Id.* at § 6.6.

[189] *Neighborhoods and Suburbs*, *supra* note 180, at 10.

proposals with an updated emphasis on environment and without the emphasis on homogeneity.[190]

E. *Neighborhood Empowerment and Fighting City Hall*

In the 1960s and 1970s, two separate movements arose regarding neighborhoods. While separate, they are presented together here because they occurred simultaneously and were perhaps the first serious modern efforts to empower the neighborhood with legal tools. The first movement was a series of federal programs aimed at reducing poverty and its effects arising from President Johnson's War on Poverty program and continuing through the Carter administration. The second movement began with Jane Jacobs' *The Death and Life of Great American Cities* in 1962, which sought a way to empower neighborhoods to "fight city hall."[191]

The Economic Opportunity Act of 1964 ("EOA")[192] and the 1966 Demonstration Cities and Metropolitan Development Act (the "Model Cities" program)[193] were two hallmarks of President Johnson's War on Poverty,[194] which focused on providing pockets of urban poverty the tools of community organization, work training, education, health programs, housing, and legal services.[195] Some of the programs' most lasting legacies were Head Start, the preschool education program for low-income households, and the foundation for what became the Legal Services Corporation,[196] which today is the "largest funder of civil legal aid for low-income Americans."[197] While such programs provided money directly to poverty-stricken neighborhoods, they did not provide — and could not provide — those neighborhoods legal tools to fight for their interests within the local structure in which they found themselves. Moreover, the tools for fighting poverty were, from the beginning, centralized in the federal government, far from the people in the neighborhoods served by these programs.[198]

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[190] CONGRESS FOR THE NEW URBANISM ET AL., LEED 2009 FOR NEIGHBORHOOD DEVELOPMENT RATING SYSTEM at xvii (updated Nov. 2011) [hereinafter LEED-ND 2009 RATING SYSTEM]; *see also id.* at 1 (describing requirements for "SLL 1: Prerequisite 1: Smart Location").

[191] DEATH AND LIFE, *supra* note 1, at 159.

[192] Pub. L. No. 88-452, § 201, 78 Stat. 508 (1964) (repealed 1981).

[193] *Id.*; *see also* ROBERT HALPERN, REBUILDING THE INNER CITY: A HISTORY OF NEIGHBORHOOD INITIATIVES TO ADDRESS POVERTY IN THE UNITES STATES (1995).

[194] Some scholars have noted that the War on Poverty actually began under President Kennedy, and particularly within his Council of Economic Advisers who had argued that the War on Poverty must include a jobs program, but no such program was included under President Johnson. *See* Stephanie A. Bell & L. Randall Wray, *The War on Poverty after 40 Years: A Minskyan Assessment*, LEVY ECON. INST. OF BARD COLL., at 3 (2004), *available at* http://www.levyinstitute.org/pubs/ppb78.pdf.

[195] SANDRA PERLMAN, NEIGHBORHOODS THAT WORK: SOURCES FOR VIABILITY IN THE INNER CITY 22 (1980) [hereinafter NEIGHBORHOODS THAT WORK].

[196] *History*, LEGAL SERVS. CORP., http://www.lsc.gov/about/what-is-lsc/history (last visited Jan. 23, 2013) (on file with the Harvard Law School Library).

[197] *Fact Sheet on the Legal Services Corporation*, LEGAL SERVS. CORP., http://www.lsc.gov/about/what-is-lsc (last visited Jan. 23, 2013) (on file with the Harvard Law School Library).

[198] NEIGHBORHOODS THAT WORK, *supra* note 195, at 14.

In 1979, the National Commission on Neighborhoods, which was convened by President Carter, issued a massive report advocating the revival of neighborhoods as a key governing institution in American life.[199] The report provided:

> Neighborhoods are human in scale, and they are immediate in people's experience. Since their scale is manageable they nurture confidence and a sense of control over the environment. Neighborhoods have built in "coping mechanisms" in the form of churches, voluntary associations, formal and informal networks. The neighborhood is a place where one's physical surroundings become a focus for community and a sense of belonging.[200]

Not only did the report criticize the federal government's top-down approach, it also suggested that neighborhoods be given legal tools to manage their own environments. The Commission noted, for instance, "neighborhood government can deal better with problems such as juvenile crime with which larger social institutions deal badly, if at all."[201] The report's findings were largely ignored with the ensuing change in presidential administrations.

At roughly the same time as the War on Poverty, Jane Jacobs was redefining a role for the neighborhood as a tool for battling against the archetype of modernist urban planning, New York City's planning director Robert Moses. Moses' "genius for getting things done"[202] in modernizing New York — and also his tyranny and reckless disregard for the urban fabric — has become legendary.[203] It was Jacobs' evocative writing about her Greenwich Village neighborhood, which Moses wanted to tear down, that helped galvanize a movement against Moses' wrecking machine, but also a wider reconsideration of the role of fine-grained neighborhoods, and what it is that makes a neighborhood cohesive other than its architecture or nostalgia that might be associated with the term.[204] Jacobs suggested we might have something "solid to chew on" if neighborhoods were contemplated as "mundane organs of self-government," noting that the failure or success of neighborhoods was largely our degree of success in self-government, which she took to mean "both the informal and formal self-management of society."[205]

Jacobs envisioned neighborhoods as existing at three sizes: the city as a whole; street neighborhoods; and in the case of large cities, a "subcity size" of 100,000 people or more.[206] Though not typically thought of as a neighborhood,

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[199] People, Building Neighborhoods, *supra* note 26; *see also* Neighborhoods That Work, *supra* note 195, at 14.

[200] People, Building Neighborhoods, *supra* note 26, at 276.

[201] *Id.* at 9; *see also* Neighborhoods That Work, *supra* note 195, at 14.

[202] Death and Life, *supra* note 1, at 171.

[203] *See generally* Robert Caro, The Power Broker (1974).

[204] Death and Life, *supra* note 1, at 148 ("To hunt for city neighborhood touchstones of success in high standards of physical facilities, or in supposedly competent and nonproblem populations, or in nostalgic memories of town life, is a waste of time.").

[205] *Id.* at 149.

[206] *Id.* at 153.

Jacobs thought the city itself was a neighborhood of sorts, a level at which people who enjoyed a "special interest" such as theater, the arts, or other entertainment might come together around their specific passions, or even to seek advancement of their professional obligations, without regard to where they lived.[207] Jacobs believed that American cities did reasonably well in creating these types of city-wide special-interest neighborhoods.[208] The street neighborhood, on the other hand, was the smallest of neighborhoods where the self-government functions are "all humble" but "indispensible," including "networks of small-scale, everyday public life" that create "trust and social control."[209] Street neighborhoods were not often discrete units, but rather were "physical, social and economic communities — small scale to be sure, but small scale in the sense that the lengths of fibers making up a rope are small scale."[210]

Jacobs was most concerned, however, about the third level of neighborhood, the "district," which was where she felt American cities were "typically most weak and fail most disastrously."[211] The role of the district, Jacobs asserted, was to mediate between the "indispensable, but inherently politically powerless, street neighborhoods, and the inherently powerful city as a whole."[212] The district needed to be of the proper size to "fight city hall" — a size she valued at 100,000 in New York but could vary depending on the size of the city[213] — to achieve its function of bringing city resources to bear on street neighborhoods and to translate the experience of the street neighborhoods into policies for the larger city.[214] In geographic size, districts appeared to be functionally "roughly about a mile and a half square,"[215] but the important question in defining district boundaries was not their edges, but rather whether the district had "cross-links" of the people who lived there.[216] Such cross-links included organizational relations,[217] and "hop-skip people," or people who could

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[207] *Id.* at 154; *see also id.* at 155 ("A city's very wholeness in bringing together people with communities of interest is one of its greatest assets, possibly the greatest.").

[208] *Id.* at 155.

[209] *Id.* at 155–56.

[210] DEATH AND LIFE, *supra* note 1, at 157.

[211] *Id.* at 158.

[212] *Id.*

[213] *Id.* at 170.

[214] *Id.* at 159. *But see id.* at 168 ("The 'ideal' neighborhood of planning and zoning theory, too large in scale to possess any competence or meaning as a street neighborhood, is at the same time too small in scale to operate as a district. It is unfit for anything. It will not serve as even a point of departure."). The planning unit to which she referred was the "modernist" unit of the "superblock" for tower designs emanating from European schools of thought that largely failed in practice, most notably in the derelict St. Louis Pruitt-Igoe public housing block, which was such a failure it had to be blown up. *See* Joseph D. McGoldrick, *The Super-Block Instead of Slums,* N.Y. TIMES MAG., Nov. 19, 1944, at 54–55 (arguing for super-block housing projects). For a pithy review of these modernist schools and their approach, see TOM WOLFE, FROM BAUHAUS TO OUR HOUSE (1981).

[215] DEATH AND LIFE, supra note 1, at 172.

[216] *Id.* at 174–75.

[217] *Id.* at 174. Jacobs included in this list of organizational relations, "churches, P-TAs, businessmen's associations, political clubs, local civic leagues, fund-raising committees for health campaigns or other public causes, sons of such-a-such a village (common clubs among Puerto

interface between the different groups and bring them together.[218] To build a district, three requisites existed: "a start of some kind; a physical area with which sufficient people can identify as users; and Time."[219] While there would always be a "float" of transient people in a neighborhood, for a "district" to form that was capable of self-government, there needed to be a "continuity of people who have forged neighborhood networks."[220] Without this continuity, neighborhood accommodations would remain "forever way stations" for real people, and the area itself only able to identify itself with "statistical people," which Jacobs saw as a recipe for instability and an inability to form a true district neighborhood.[221]

F.   Contemporary Preference for Urban Living

The Great Recession of the late 2000s has taken a toll on the homebuilding industry. Home construction in the 2000s was lower than in nearly every 10-year period since 1974, even with the mid-decade surge.[222] Real estate industry experts expect that the next few years will continue to bring a high rate of foreclosures, and estimates are that over one in four mortgages in the United States is underwater.[223] With credit expected to be difficult to obtain for many buyers into the near future,[224] the real estate market finds itself considering long-term demographic trends.

Notably, a 2010 study by the Environmental Protection Agency reviewed residential building permit data for the 50 largest metropolitan regions from 1990 to 2008.[225] The data showed a "dramatic increase in the share of new construction built in central cities and older suburbs."[226] In fifteen regions, the central city more than doubled its share of permits in that time frame.[227] Data in 2008 showed an increasing shift towards central cities and older suburbs.[228]

Marketing data for future development support these historical trends. Seventy-five percent of older baby boomers (ages 55 to 64) say they want to live in urban mixed-age and mixed-use communities, though most do not want to move to the central city, so walkable, urbanized suburban town centers ap-

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Ricans today, as they have been with Italians), property owners' associations, block improvement associations, protesters against injustices, and so on ad infinitum."

[218] *Id*. at 175–76.

[219] *Id*. at 178.

[220] *Id*. at 180.

[221] DEATH AND LIFE, *supra* note 1, at 181–82.

[222] JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV., STATE OF THE NATION'S HOUSING 9 (2011).

[223] HOUSING IN AMERICA, *supra* note 22, at 5–6.

[224] *Id.* at 7.

[225] EPA, RESIDENTIAL CONSTRUCTION TRENDS IN AMERICA'S METROPOLITAN REGIONS 1 (2009).

[226] *Id*.

[227] *Id*. In the 1990s, New York City issued fifteen percent of the residential building permits in the region, but over the period from 2002 to 2008, New York City issued forty-four percent. Chicago's share rose from seven percent to twenty-seven percent over the same period; Portland from nine percent to twenty-two percent; Atlanta from four percent to thirteen percent.

[228] *Id*.

peal to them.[229] Younger baby boomers (mid-40s to mid-50s) are facing flat income growth, lost equity in homes, and are more urban-leaning,[230] and thus are not likely to purchase large suburban homes like their parents did in this age bracket.[231] Generation Y (late teens to early 30s) is likely to be "income-constrained"[232] and is more likely to rent by choice after witnessing the foreclosure crisis.[233] Seventy-seven percent report wanting to live in an urban core, though marketers believe they will either stay in such urban areas and work to improve schools as they have children, or move to older, closer-in suburbs, or else to more affordable compact suburban town centers on the urban fringe.[234]

Over the coming decades, scholars expect that fewer urban residents will move to the surburbs, as the younger generations would miss the community and amenities of urban life.[235] Immigrant families may fill a gap for large suburban homes, as some prefer larger families and multi-generational living arrangements, though it is unclear if they would accept the isolation of the suburbs.[236] Thus, two distinct development types emerge: inner ring suburbs offering a walkable lifestyle and access to the city; and new outer-edge communities with real town centers and urban amenities with a walkable lifestyle and transportation options that are attractive to income-constrained young families.[237]

The new inner-ring suburbs are increasingly seeking to add density by developing in accordance with transit-oriented development strategies, but larger developers often want larger parcels assemblages than can be purchased, and face a number of other issues long-common to urban development.[238] The outer-edge "urban" communities replicate the urban, walkable experience, but typically are otherwise not connected to any other urban environment, are surrounded by large parking lots, and generally are accessed by cars.[239]

The kind of "amenities" sought are surprisingly in line with those originally offered by traditional community planning, as well as modern invocations of it, such as that of Perry and the "new urbanists."

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[229] Housing in America, *supra* note 22, at 12.

[230] *Id.* at 13.

[231] *See id.*

[232] *Id.* at 16.

[233] *Id.* at 15.

[234] Housing in America, *supra* note 22, at 16.

[235] *Id.*

[236] *Id.* at 17.

[237] *Id.* at 16, 26.

[238] *Id.* at 26 (citing "hard-to-assemble and expensive land; intense opposition to development from community leaders; overly democratized development review processes; complex and often out-of-date planning, zoning, and building codes; and more complex and expensive construction types needed to obtain economic densities").

[239] *See* Urban Land Inst., Retail Development 314 (2008) (discussing "neotraditional" Belmar suburban development in Lakewood, Colorado based on nineteenth-century street grids); *id.* at 342 (discussing Fairfax Corner suburban development in Fairfax, Virginia, with traditional plaza, street parking, and urban street pattern-design); *id.* at 360 (discussing The Grove suburban development in Los Angeles, California, with urban-style plaza, pedestrian street design and urban public art).

G.   Neighborhoods and Climate Change

The trend towards more dense, urban neighborhoods is also driven by efforts to reduce carbon emissions associated with climate change. In fact, the importance of legal neighborhoods may ultimately rest on the extent to which such legal mechanisms can assist in efforts to address reduction in greenhouse gas ("GHG") emissions. This relationship plays out in several ways. First, a number of policies seeking to address climate change are already seeking to build more dense settlement patterns, thereby reversing long-term reductions in development density.[240] However, building long-term acceptance of densely settled development has had an uphill battle in most jurisdictions. This intransigence leads to the second, and potentially most impactful role of legal neighborhoods in climate change: To the extent that legal neighborhoods can make more densely settled development patterns not only palatable but also desirable, they have the potential to make climate change policy less regulation-focused and instead more market-driven.

First, we must consider the role of neighborhoods in the regulatory approaches. While federal efforts to address climate change appear stalled and politicized, California has set forth a framework for GHG emissions reduction in its Scoping Plan[241] for implementation of the California Global Warming Solutions Act of 2006,[242] commonly called AB 32. The subsequent passage of the Sustainable Communities and Climate Protection Act of 2008,[243] or SB 375, explicitly placed a framework for addressing GHG emissions by linking land use and development to transportation planning.[244] The Scoping Plan estimates SB 375 could save five million metric tons CO_2 equivalent ("$MMTCO_2E$") over "business as usual" by 2020, a relatively small amount.[245] By 2050, however, reports estimate SB 375's impact could reduce GHG emissions by thirty-

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[240] *See* Gregory K. Ingram, *Patterns of Global Expansion: Implications for the Future*, LINCOLN INST. OF LAND POL., https://www.lincolninst.edu/pubs/1868_Patterns-of-Global-Urban-Expansion (last visited Jan. 23, 2013) (on file with the Harvard Law School Library) (noting that, at current rate of expansion, world urban footprint is anticipated to expand from two to five times current footprint by 2050).

[241] CAL. AIR RES. BD., SCOPING PLAN (2008) [hereinafter SCOPING PLAN], *available at* http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf.

[242] CAL. HEALTH & SAFETY CODE § 38500 *et seq.* (West).

[243] 2008 Cal. Legis. Serv. Ch. 728 (S.B. 375) (West).

[244] The SB 375 planning process is complex. In summary, SB 375 requires the Air Resources Board to develop, in consultation with metropolitan planning organizations ("MPOs"), passenger vehicle GHG emissions reduction targets for 2020 and 2035. A Regional Targets Advisory Committee provides research and methodologies for setting the GHG emissions target. The process is conducted through the transportation planning process, which in California is done on a regional level in major urban areas, through the MPOs. The MPOs are required by the federal government to prepare regional transportation plans ("RTPs") in order to receive federal transportation dollars. These plans must reflect the land uses called out in city and county general plans. Regional planning efforts provide an opportunity for community residents to help select future growth scenarios that lead to more sustainable and energy efficient communities. *See* SCOPING PLAN, *supra* note 241, at 47; *see also Sustainable Communities,* CAL. AIR RES. BD., http://www.arb.ca.gov/cc/sb375/sb375.htm (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[245] SCOPING PLAN, *supra* note 241, at 17.

five MMTCO$_2$E,[246] making it one of the more significant long-term strategies to reduce carbon emissions.

Research associated with implementing SB 375 supports the conclusion that establishing neighborhoods promotes urban sustainability. For instance, a 2007 study found that 75 percent of pedestrians arriving at a rail transit station walked less than one mile or twelve minutes.[247] Planners generally assume that most transit users will not walk more than 0.25 miles to bus stops and 0.5 to 0.75 miles to rail stations.[248] Establishing compact neighborhoods is the only way to ensure that residents throughout an urban area will have reasonable access to public transit.

Another approach to reducing both GHG emissions and vehicle miles traveled ("VMT") is heterogeneous land use mix, which is a measure of the heterogeneity of land uses in a given area.[249] Reducing VMT reduces commute time and transportation infrastructure requirements. One study concluded that "each 1 percent increase in land use mix results in an average VMT decrease in a range from 0.02 to 0.11 percent."[250] Similarly, a model indicated that "per capita CO$_2$ emissions were approximately 13 percent lower in neighborhoods in the highest quintile (highest 20 percent) of land use mixing index values compared to those in the lowest quintile (lowest 20 percent)."[251]

Other studies compared VMT to residential density. The studies found that for a one percent increase in residential density, VMT was reduced by "less than or equal to .07%" up to .12%, depending on the study.[252] As a result, it became clear that density alone was not sufficient to dramatically affect VMT. Rather, changing a whole host of land use variables is likely necessary to reduce VMT.[253]

Finding a solution to VMT remains a dilemma that is important to resolve. "Between 1970 and 2001, total vehicle miles traveled increased 151 percent from 1.1 trillion miles to 2.8 trillion miles. Over the same period, miles traveled by passenger cars and motorcycles increased by over 75 percent (from 920 billion miles to 1.63 trillion)."[254] One way that density has been shown to assist VMT is through transit-oriented development. In 1996, Portland's average VMT was the same as the national average.[255] However, Portland nearly

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[246] *Id.* at 50.

[247] Gil Tal et al., CAL. AIR RES. BD., DRAFT POLICY BRIEF ON THE IMPACTS OF TRANSIT ACCESS (DISTANCE TO TRANSIT) BASED ON A REVIEW OF THE EMPIRICAL LITERATURE 1 (June 22, 2010), *available at* http://www.arb.ca.gov/cc/sb375/policies/transitaccess/transitaccess_brief.pdf.

[248] *Id.*

[249] Steven Spears et al., CAL. AIR RES. BD., DRAFT POLICY BRIEF ON THE IMPACTS OF LAND USE MIX BASED ON A REVIEW OF THE EMPIRICAL LITERATURE 1 (Dec. 15, 2010), *available at* http://arb.ca.gov/cc/sb375/policies/mix/landusemix_brief.pdf.

[250] *Id.* at 2.

[251] *Id.* at 3.

[252] Marlon G. Boarnet & Susan Handy, CAL. AIR RES. BD., DRAFT POLICY BRIEF ON THE IMPACTS OF RESIDENTIAL DENSITY BASED ON A REVIEW OF THE EMPIRICAL LITERATURE 2 (June 25, 2010) [hereinafter CARB RESIDENTIAL DENSITY WHITE PAPER], *available at* http://www.arb.ca.gov/cc/sb375/policies/density/density_brief.pdf.

[253] *Id.*

[254] *Urban Sprawl*, *supra* note 2, at 188.

[255] CARB RESIDENTIAL DENSITY WHITE PAPER, *supra* note 252, at 5.

tripled its residential density within the last ten years, and primarily around transit-oriented development sites.[256] By 2007, Portland's VMT was seventeen percent below the national average.[257]

A number of cities across the country have implemented plans to address climate change, sometimes integrating policies into their general plans, and in other cases, drafting separate climate action plans.[258] Some of these climate action plans specifically link themselves to neighborhoods. For instance, Berkeley, California's climate action plan notes that households in its existing neighborhoods, which are highly linked to transit through a regional rail line, BART, and a county-wide bus system, emit fifty-eight percent fewer transportation-related GHG emissions than the typical region's household.[259] This reduction is, in part, because households in Berkeley's compact neighborhoods are able to make at least some shopping and other non-work trips on foot or bicycle, thereby reducing overall automobile use.[260]

Much of Berkeley's planning for its neighborhoods is directly linked to reducing GHG emissions and VMT. At the same time, Berkeley notes that some existing residents are concerned about increased density, and many simply do not want to change the character of existing neighborhoods.[261] As a result, the plan seeks to strike a balance between existing neighborhoods and increasing density. For instance, implementation goals include "consider[ing] where in-fill neighborhood-serving retail, that is oriented to basic daily needs such as 'corner stores' and small markets, may be feasible";[262] supporting new and existing neighborhood gardens;[263] and implementing a number of programs to change transportation patterns in neighborhoods, such as car share pods[264] and a redesigned residential parking program.[265] The Berkeley plan also calls for workshops with neighborhood associations to work on reducing GHG emissions at the "neighborhood level,"[266] and a "Green Neighborhood Challenge" competition to encourage neighborhood-level climate protection activities through use of the Low Carbon Diet program and an online portal that could allow the neighborhood to track its GHG emissions reductions.[267]

Legal neighborhoods can have a second, "soft" legal effect in assisting with climate change efforts. The clear pattern for American development is to

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[256] *Id.* at 4–5.

[257] *Id*. at 4.

[258] *See generally* Patricia E. Salkin, *Sustainability and Land Use Planning: Greening State and Local Land Use Plans And Regulations To Address Climate Change Challenges and Preserve Resources for Future Generations*, 34 WM. & MARY ENVTL. L. & POL'Y REV. 121 (2009) (reviewing numerous state and local climate action plans).

[259] CITY OF BERKELEY, CAL., CLIMATE ACTION PLAN 23 (2009), *available at* http://www.cityofberkeley.info/climate/.

[260] *Id.* at 24.

[261] *Id.* at 27.

[262] *Id.* at 29.

[263] *Id.* at 33.

[264] *Id.* at 48.

[265] *Id.* at 36.

[266] *Id.* at 109.

[267] *Id.* at 110. For information regarding the Low Carbon Diet program, see generally David Gershon, *Low Carbon Diet: A 30 Day Program to Lose 5000 Pounds* (2006).

sprawl outward. There are locations that are environmentally conscious and that have sought to limit sprawl through land use regulations, such as California. However, on a national basis, such regulations have only served to move population growth away from those locations and to places, such as the American Southwest, where land use regulation is more permissive towards new development.[268] At the same time, studies have indicated that the climate change damage caused by suburban communities is substantially higher than that caused by central city locations.[269] The question then emerges: how to convince more people to live in cities? As convincing as it may be to planners, the rational analysis of climate action plans has seldom moved hearts and minds and does not appear to have moved anyone to live in a city. Rather, there is a social dimension to suburban life that a majority of the population prefers. Finding an approach to making the cities appealing to more people is a necessary means of achieving climate change-related ends. As the Harvard economist Edward Glaeser put it, "it might make sense for us to consider steps that would make it relatively more attractive to build up areas with a lower carbon footprint and less attractive to build more homes in places where emission rates are particularly high."[270] The legal neighborhoods approach provides precisely such a model for making cities more attractive.

Bolstering the desirability of city living is important not only in the United States, but in developing countries as well. For instance, a study of climate change and China's urban footprint determined that if its cities continue to grow along the public transit-friendly approaches that its cities have thus far used, then the country's emissions are expected to grow only "modestly;" however, if China invests in American-style infrastructure, its emissions will increase "dramatically."[271] The need to build cities that are places where people want to live, rather than what they seek to escape, is imperative to meeting climate change initiatives' goals. That requires not only rational climate change planning, but also an approach to city politics that empowers individuals to live in cities in a way that makes suburban living unappealing. That requires empowerment of those individuals to shape their immediate environment — the neighborhood — while providing the larger city a means to coordinate large-scale regional needs typically associated with metropolitan government. The legal neighborhood approach is already working in some cities, as discussed below. Its power is unleashed when implemented on a mass scale of intimate encounters — tens, hundreds, thousands of neighborhoods — each a fractal expression of community individuality and the whole of the city at once.

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[268] Edward L. Glaeser & Matthew Kahn, *Policy Briefs — The Greenness of Cities*, HARV. KENNEDY SCH., Mar. 2008, at 6, *available at* http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/centers/taubman/policybriefs/greencities_final.pdf.

[269] *Id.* at 1.

[270] *Id.* at 1–2.

[271] SIQI ZHENG ET AL., THE HARVARD ENVIRONMENTAL ECONOMICS PROGRAM, THE GREENNESS OF CHINA: HOUSEHOLD CARBON DIOXIDE EMISSIONS AND URBAN DEVELOPMENT 4, *available at* http://www.hks.harvard.edu/m-rcbg/heep/papers/HEEP%20Discussion%2012.pdf.

III.   Interlude: The Impetus of Neighborhood History and Theory

The above survey of the history and theory of neighborhoods serves as a gateway to detailed policy and legal tools that may be used to empower neighborhoods. Before reviewing legal tools, though, a brief moment to consider the link between history, theory, and the practice of legal neighborhoods may be valuable.

The varied strands of neighborhood research reviewed previously have largely remained isolated in their silos. Those studying the effects of neighborhoods on low-income residents are seldom offered the chance to think about how neighborhoods relate to carbon footprints; those in the urban real estate development industry are unlikely to come across Tieboutian analyses of neighborhoods, even though there is a correlation between these approaches. Certainly there are exceptional individuals who have stepped beyond the bounds of their disciplines to consider how other disciplines think about neighborhoods. However, no coherent, inter-disciplinary approach to neighborhoods has emerged that takes into account all of the factors laid out in the previous section, not to mention other factors and fields of research on neighborhoods that this Article does not address. This isolation is problematic, because collectively, this Article's survey illustrates the breadth of physical, social, and psychological effects of neighborhoods on residents, as well as the city and region. The lack of an overarching method of thinking about neighborhoods leaves even the best research isolated and without a way to influence or address neighborhood development generally.

At the same time, as the next section of this Article will illustrate, legal tools for neighborhoods have emerged by the dozens in the past few decades. These legal tools have also largely been considered in silos, analyzed for how they function independently of the other legal tools that may empower a particular neighborhood. While there is certainly need for additional research on individual neighborhood legal tools, this Article seeks to illustrate the panoply of legal tools developed in the previous decades to serve neighborhoods. In so doing, it encourages another line of research to emerge in the legal scholarship that will review how the varying legal tools of the neighborhood relate to each other, and how these tools might be optimized.

If there is a *gestalt* that emerges from the previous historical and theoretical survey it is, quite simply, that the neighborhood matters to its residents, and that it is a unit for living that residents feel is accessible, with which they can identify, and which politicians feel comfortable representing. This Article starts from the premise that such strong feelings are the basis of community life, that the goal of structuring neighborhoods is to enhance that feeling of community, and that this promise overrides the difficulty of definition that is endemic to the idea of the neighborhood. In other words, because the neighborhood is such a resonant institution in the minds of residents, failing to structure legal tools for the neighborhood is at best a missed opportunity, and

perhaps even perilous, for the long-term viability of a city, its region, and efforts to address urban-based environmental issues like climate change.

There is no doubt that the feeling of neighborhood identity can overlay judgments made as to how the neighborhood itself is composed. As the review in the previous section indicated, such notions of the neighborhood can be based on seemingly arbitrary factors: where single-family homes end and apartments begin; where an arterial road cuts through; where a race or ethnicity clusters; or geographic or landscape features, like a hill or a park — to name only a few. This Article asserts, however, that the legal viability of the concept of the neighborhood is not undermined by its malleability.

As the U.S. Supreme Court has noted, the concept of the neighborhood may be too vague to provide notice for criminal statutes, and perhaps it is too vague for many other legal purposes. Nonetheless, the concept of the neighborhood is not too vague to form the basis for overlaying legal tools that can, in the aggregate, empower the neighborhood as a whole, while individually each legal tool empowers only some subset of the neighborhood. For instance, imagine that a business improvement district empowers businesses in the business core of a neighborhood, while a neighborhood court provides a way to administratively adjudicate low-level code violations and non-criminal misdemeanors. The two tools work independently, they empower the neighborhood in different ways, and they empower different populations in the neighborhood. Nonetheless, the effect on the neighborhood of the overlay of even these two legal tools is a greater sense of neighborhood empowerment. The research cited previously indicates that the feeling of empowerment at the neighborhood level is likely one of the most important tools cities have to attract and retain residents, and, by doing so, ease environmental harms from sprawling cities. And, as a neighborhood is a constituency that politicians feel comfortable serving, empowering neighborhoods with legal and political tools may also lead to more effective political representation of residents in cities.

In an age disconcerted with government, such a vital spring of interest and engagement as the neighborhood provides should not be ignored. Rather, we should identify new ways of overlaying our ideas about neighborhoods, as well as overlaying legal tools that empower neighborhoods, as a means of making the legal neighborhood flourish.

Finally, should the concept of the legal neighborhood, with its concomitant overlaying of legal tools, evolve more fully, it should become incorporated into the research of other fields, such as the work of environmentalists, transportation planners and social workers, who are trying to address problems in their fields. Legal neighborhoods can, and should, become part of the interdisciplinary study of, and approach to, building neighborhood structures that align with and assist the fulfillment of broader civic values and the fight against environmental harms.

IV.   Approaches to the New Legal Neighborhood

A chief contention of this Article is that a de facto legal neighborhood emerges in the overlay of legal and political tools that empower the neighborhood. This section investigates a number of legal and political tools to empower neighborhoods that have arisen since the 1970s, and especially in the past two decades. An effort has been made to explain each concept sufficiently to permit an understanding of its rise and operation; however, space does not permit, and the Article's argument does not depend upon, describing each tool in depth. Where appropriate, references have been made to key articles that have discussed the pros and cons of each tool in a detailed manner.

The purpose of the presentation here, then, is to make clear the wide scope and breadth of legal neighborhood tools that have emerged in the past few decades. By doing so, this Article seeks to give form to this movement, making it a more conscious choice of cities and neighborhoods alike, with the hope that such conscious use of these tools will lead to better neighborhoods, cities, and regions, both more civically and more environmentally prepared for the future.

A.   *Political Representation of Neighborhoods*

A desire for political representation at the neighborhood level has been long-standing, with some even arguing that the optimal level for city government is the neighborhood.[272] Three types of political representation have emerged to serve neighborhoods. These include neighborhood, or "district," elections of members of the local government's political body, such as a city council; formalized, but advisory, neighborhood councils; and neighborhood associations, which are widely used as both a formal and informal means of political representation.

1.   *Neighborhood Elections*

A 2003 report commissioned by the National League of Cities, which reviewed two decades of data on the composition of and attitudes of city councils, details the prevalence of sublocal representation in cities.[273] The report illustrates that three types of election systems predominate in American cities: at-large, where each council member's constituency is the entire city; district-based, where each council member's constituency is a selected geographical section of the city, such as a neighborhood; and mixed-system, which uses some combination of at-large and district-based council members.[274] District-

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[272] *Collective Individualism*, *supra* note 13, at 649.
[273] James H. Svara, Nat'l League of Cities, Two Decades of Continuity and Change in American City Councils (2003) [hereinafter Continuity and Change in American City Councils].
[274] *Id.* at 13.

based council members were nearly twice as prevalent in large cities (populations over 200,000) than in small cities (populations between 25,000 and 69,999), with mid-sized cities (populations between 70,000 and 199,999) and small cities tending to favor at-large elections.[275] In large cities, district-based elections were used 45.5% of the time, a mixed system was used 38.2%, and an at-large system was used 16.4% of the time.[276]

These data show that larger cities, especially those over 200,000, have increasingly invested political representation at a district level. The survey found that district elections increased minority representation, with minorities sitting as council members 1.5 to 2 times more often in district-based elections than in at-large elections.[277] Notably, the survey also found that "neighborhoods" were consistently the number one group that city council members sought to represent while in office, beating out all other possible responses by an almost two-to-one margin.[278]

Whether a city chooses to have district elections appears to be influenced by issues in local politics. For instance, in San Francisco, California, district elections were first established in 1977, and led to the appointment of the city's first African-American supervisor, as well as its first openly gay supervisor, Harvey Milk.[279] However, voters repealed district elections in 1980, only to reinstitute them in 2000.[280] In 2010, an effort to establish a mixed system was floated by a number of local interests, but has yet to reach a vote.[281] This example indicates that the use of district elections likely depends on local political history as much as any intent to conform to, or buck, a national political trend in local governance.

2. *Neighborhood Councils and Neighborhood Associations*

As close as neighborhood elections may bring politics to the people, many in large cities still feel that city-wide government embodies the political estab-

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[275] *Id.* at 3, 13.

[276] *Id.* at 13.

[277] *Id.* at 7. In council-manager cities, twenty-one percent of district-based council members are minorities while eleven percent of at-large council members are minorities. In mayor-council cities, fifteen percent of district-based council members are minorities while eleven percent of at-large council members are minorities. *Id.*

[278] *Id.* at 16. Council members were permitted to choose more than one response. More than sixty percent of council members indicated that they represented neighborhoods. The next most common responses were elderly (36.9%); racial minorities (26.1%); women (24.4%); ethnic groups (21.4%); and business (20.5%). *Id.*

[279] *District Elections in San Francisco – A Brief History*, S.F. Chron., Nov. 7, 1999, http://articles.sfgate.com/1999-11-07/news/17707494_1_district-elections-at-large-elections-harvey-milk.

[280] *Id.*; *see also San Francisco Ballot Propositions Database*, S.F. Pub. Lib., Nov. 5, 1996, http://sfpl.org/index.php?pg=2000027201&propid=1577 (voting to restore district elections); Tom Ammiano & David Chiu, *Why District Elections?*, S.F. Chron., Feb. 28, 2010, http://articles.sfgate.com/2010-02-28/opinion/17959802_1_district-elections-san-francisco-supervisors (arguing for district elections).

[281] Rachel Gordon, *Hybrid District Elections Plan Gains Traction*, S.F. Chron., Feb. 4, 2010, http://articles.sfgate.com/2010-02-04/bay-area/17847160_1_district-elections-new-liberal-majority-hybrid-system (discussing interest in district elections).

lishment. As such, greater efforts have been made over the past decades to bring even more power to the neighborhood level. A number of programs initially started with efforts to organize low-income and underrepresented neighborhoods, but the approach has come to be relevant for all neighborhoods, especially in dense urban areas where additional local representation is often sought. Furthermore, some scholars have argued that such neighborhood associations are indicators of a healthy civic society,[282] and others have argued they are a valuable tool in promoting a civic republicanism.[283]

New York City established community boards in 1961 for the purpose of increasing meaningful neighborhood participation in city operations.[284] Since that time, a number of other cities have followed suit, but with different approaches. The variety of approaches is a testament to both the flexibility of the concept and the difficulties inherent in creating an organized structure that speaks for a neighborhood.

One fundamental question is how large a geographic region or population size the neighborhood council or association can represent. As noted previously, Jane Jacobs thought such organizations needed to be large enough to "fight City Hall," which she imagined as at least 100,000 persons in large urban cities, and commensurately sized in smaller cities.[285] Cities with formal neighborhood councils typically have between 25,000 and 125,000 residents represented by the councils, though studies have shown that between 2,000 and 16,000 residents is a more ideal number.[286] The latter number, in turn, is close to the number of residents originally hypothesized by Clarence Perry to inhabit the ideal neighborhood unit.[287]

Another fundamental question is whether the neighborhood council or association is officially sanctioned or "certified" by the city, or if the neighborhood associations are simply private affiliations of neighborhood residents. Cities as diverse as Los Angeles,[288] Portland,[289] New York City,[290] Honolulu,[291]

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[282] *See* PUTNAM ET AL., *supra* note 46.

[283] *See Civic Republicanism*, *supra* note 54.

[284] Richard Briffault, *The New York City Charter and the Question of Scale*, 42 N.Y.L. SCH. L. REV. 1059, 1064 (1988).

[285] *See supra* notes 191, 213.

[286] *Civic Republicanism*, *supra* note 54, at 168 (citing Jeffrey M. Berry et al., THE REBIRTH OF URBAN DEMOCRACY 49 (1993)).

[287] *See supra* notes 147–50.

[288] *See Empower LA*, CITY OF LOS ANGELES, CAL., DEPT. OF NEIGHBORHOOD EMPOWERMENT, http://done.lacity.org/dnn/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[289] *Office of Neighborhood Involvement*, PORTLANDONLINE, http://www.portlandonline.com/oni/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library); *see also* Amalia Alarcon de Morris & Paul Leistner, *From Neighborhood Association System to Participatory Democracy: Broadening and Deepening Public Involvement in Portland, Oregon*, 10 NAT'L CIVIC REV. 47 (2009); Matthew Witt, *Origins and Evolution of Conflict in Portland's Neighborhood Association System: A Case Study of North Portland's District Coalition Board*, 21 ADMIN. THEORY & PRAXIS 62 (1999).

[290] *Find Your Community Board*, NEW YORK CITY, N.Y., MAYOR'S CMTY. AFFAIRS UNIT, http://www.nyc.gov/html/cau/html/cb/cb.shtml (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

and Albuquerque[292] maintain formalized neighborhood council structures. Other cities, even those with strong neighborhood cultures, such as San Francisco, have chosen to maintain an informal relationship with neighborhood groups.

A similar issue is who has a stake in a community. For instance, one issue is whether property owners who do not live in the neighborhood should be able to participate in the neighborhood group.[293] Other issues include renters, those who work but do not live in an area, and those who frequent a neighborhood but do not live or work there.[294] Some cities, such as Los Angeles, permit those who have a "factual basis" for an interest in a neighborhood to be a part of a neighborhood council upon filing an application with sufficient proof.[295]

Once these foundational issues are addressed, then a city needs to decide whether such neighborhood councils or associations should have a formal role in decision making, or whether the neighborhood council or association's role is strictly advisory. For those cities that have formalized neighborhood councils, it may become difficult to oppose recommendations of a formal neighborhood council, even if its role is purportedly advisory.

In addition, cities must decide whether these neighborhood associations will be given funding, and if so, how much and for what purposes. For instance, Los Angles neighborhood councils are eligible for up to $50,000 a year in funding.[296] Minneapolis allocated approximately $6 million a year in funds accessible to its neighborhood councils as of 2005.[297]

Neighborhood councils and associations have not been without their problems. In many cases, residents are not aware that such entities exist or what they do, and where such knowledge does exist, questions of legitimacy of the organization to speak for the neighborhood can arise.[298] Other issues in-

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[291] *Neighborhood Comm'n Office*, City and Cnty. of Honolulu, HI, http://www1.honolulu. gov/nco/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[292] *Neighborhood Associations*, City of Albuquerque, NM, http://www.cabq.gov/planning/ residents/links/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[293] *See Civic Republicanism*, *supra* note 54, at 169 (discussing varied requirements for participation of Los Angeles, Portland, and Atlanta).

[294] *See id.* at 170.

[295] *Factual Basis Resolution, Policy No. 2011-02*, Bd. of Neighborhood Comm'rs (City of Los Angeles, CA), June 7, 2011, at 1, *available at* http://done.lacity.org/dnn/Portals/0/documents/ LEARN/About_the_commision/2011-02_Resolution_Factual_Basis_Stakeholders_060711.pdf.

[296] *Questions Regarding Neighborhood Councils Funding Programs*, City of Los Angeles, CA, Dept. of Neighborhood Empowerment, http://www.ci.la.ca.us/DONE/faq_funding.htm#2 (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[297] Matthew F. Filner, *The Limits of Participatory Empowerment: Assessing the Minneapolis Neighborhood Revitalization Program*, 38 St. & Local Gov't Rev. 67, 71 (2006).

[298] Juliet Musso et al., Neighborhood Councils in Los Angeles: A Midterm Status Report 22 (2004) (noting voter turnout for neighborhood councils in Los Angeles of 1.3% and difficulty in conducting fair elections).

clude difficulties in communication styles among neighborhood residents[299] and insularity.[300]

B.   Funding Neighborhood Improvements

The past few decades have seen an emergence of a variety of structures in which a neighborhood can raise funds at the neighborhood level, and also spend those funds in the same neighborhood. In fact, data show that there are nearly twice as many special districts in the United States as there are cities, and many of them are focused on serving particular neighborhoods.[301] The following discussion touches on several prominent, as well as up-and-coming, approaches to neighborhood finance.

Arguably the most popular neighborhood revenue-raising tool emerged in 1952 in California and was called tax increment financing ("TIF").[302] Typically, to use TIF, a city designates a geographic area as blighted or distressed.[303] Once that finding is made, the city — typically through a redevelopment agency — determines the projected increase in taxes that would generate from the proposed renewal of the area.[304] The increment between existing and projected taxes can be bonded at the beginning of the time period, which provides the city money to implement its proposed redevelopment plan that it would not otherwise have upfront.[305] In 1970, there were just 26 TIF districts in California.[306] By the early 1990s, fifty-six percent of cities with populations over 100,000 have used TIF; today, every state but Arizona authorizes TIF.[307] Notably, in 2011, the California State Legislature ended redevelopment in that state, an act that was upheld by the California Supreme Court.[308] While it is hard to imagine that this is the long-term end of redevelopment in California, the movement's struggle over money, and in particular access to money for

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[299] Matt Koschmann & Nicole M. Laster, *Communicative Tensions of Community Organizing: The Case of a Local Neighborhood Association*, 75 W. J. OF COMMC'N 28 (2011) (discussing methods to eliminate tensions perceived present in diverse range of interactions including prayer, diversity, gentrification, and neighborhood quality).

[300] Megan Meyer & Cheryl Hyde, *Too Much of a "Good" Thing? Insular Neighborhood Associations, Nonreciprocal Civility, and the Promotion of Civic Health*, 33 NONPROFIT & VOLUNTARY SECTOR Q. 77S, 81S (2004) (modeling types of civil society organizations and asserting rise of insularity in same).

[301] *See, e.g.*, U.S. CENSUS BUREAU, 2007 CENSUS OF GOVERNMENTS: THE MANY LAYERS OF AMERICAN GOVERNMENT (2007), *available at* http://www2.census.gov/govs/cog/2007/2007_cog_map.pdf (listing, as of 2007, 19,492 municipalities, and 37,381 special districts, exclusive of school districts).

[302] Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 69 (2010) [hereinafter *Most Popular Tool*].

[303] *Id.* at 71.

[304] *Id.*

[305] *Id.* at 68.

[306] *Id.* at 69.

[307] *Id.* at 70.

[308] Cal. Redevelopment Ass'n v. Matosantos, 267 P.3d 580 (Cal. 2011).

schools, makes evident the scope of what is at stake with TIF, and its potential for controversy.[309]

Also prominent among these neighborhood funding strategies has been the business improvement district ("BID"). The origins of BIDs are unclear, though some commentators point to the 1975 creation of the Downtown Development District in New Orleans.[310] While some BIDs were created in the 1980s, the overwhelming surge in their popularity arose throughout the 1990s and 2000s.[311] In practice, a BID is a geographically defined area in which the property owners of the area agree to pay a tax surcharge that will be spent in the defined area.[312] The typical uses of the BID funds have been primarily for upkeep of business districts, increased safety patrols, branding and marketing of the district, and other aesthetic branding concerns, such as specialty street lighting.[313] BID funds are typically managed by some combination of local government representatives and business owners in the district.[314] BIDs have also come under fire for raising troubling concerns over unequal provisions of urban services, accountability, and for how they focus urban governance.[315]

The enterprise zone arose in the 1980s as a conservative urban policy to attract businesses into distressed areas of a city by offering relief from taxes and regulations for businesses that located or invested in the targeted area.[316] Although there is no federal enterprise zone legislation, a number of states now rely upon enterprise zones to attract businesses into distressed areas.[317] Enterprise zones in place today typically offer some combination of tax abatements, reductions, and credits but seldom the regulatory relief once imagined.[318] Enterprise zones have received mixed reviews on their effectiveness, but they were unique in their time as a tool focused on providing economic development to a specific neighborhood in a city.[319]

Community facilities districts ("CFDs") are a means of financing public improvements in neighborhoods. CFDs arose in California (commonly referred to as "Mello-Roos districts" in California) as a way to build public improve-

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[309] *Most Popular Tool*, *supra* note 302, at 65-69.

[310] Richard Briffault, *The Business Improvement District Comes of Age*, 3 Drexel L. Rev. 19, 19 (2010) [hereinafter *Business Improvement District Comes of Age*]; *see also* Richard Schragger, *Does Governance Matter? The Case of Business Improvement Districts and the Urban Resurgence* 3 Drexel L. Rev. 49 (2010) (expressing skepticism about BIDs' ability to provide economic growth); Robert Ellickson, *New Institutions for Old Neighborhoods*, 48 Duke L.J. 75 (1998) (arguing in support of BIDs).

[311] *Business Improvement District Comes of Age*, *supra* note 310, at 19.

[312] *Id.* at 20.

[313] *Id.*

[314] *Id.* at 19–20.

[315] *Id.* at 19.

[316] *Rise of Sublocal Structures, supra* note 11, at 509–10.

[317] *Id.*; *see, e.g.*, *California Enterprise Zones*, Cal. Dep't. of Housing and Cmty. Dev., www.hcd.ca.gov/fa/ez (last visited Jan. 28, 2013 (on file with the Harvard Law School Library); *Enterprise Zone Tax Credits*, Colo. Office of Econ. Dev. and Int'l. Trade, http://www.advancecolorado.com/funding-incentives/incentives/enterprise-zone-tax-credits (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[318] *Rise of Sublocal Structures*, *supra* note 11, at 510.

[319] *Id.*

ments, especially in new neighborhoods, that could no longer be financed through property taxes that were capped by Proposition 13.[320] A special property tax is applied to real estate in the geographic area of the CFD, which permits the city to issue a bond to pay for things like roads, sewers, schools, and other infrastructure.[321] CFDs have also been used in other western states, including Arizona,[322] Hawaii,[323] and Washington.[324]

A novel approach to providing neighborhood facilities is a neighborhood matching funds program, such as that implemented in Seattle, Washington.[325] Seattle's "Neighborhood Matching Fund (NMF) program was created in 1988 to provide neighborhood groups with City resources for community-driven projects. . . . [P]rojects are initiated, planned and implemented by community members," and "every award [from the city] is matched by a neighborhood's resources of volunteer labor, donated materials, donated professional services or cash."[326] The program funds three levels of projects — up to $100,000; up to $20,000; and up to $1,000.[327] Projects have ranged from community gardens to cultural events to capacity building and college preparation workshops at community centers.[328]

C.   *Neighborhood-Specific Zoning, Neighborhood Control of Commerce*

Cities have also increasingly provided special zoning districts that are meant to provide additional protections to specific neighborhoods.[329] When these special zoning districts first emerged in the 1960s and 1970s, they were revolutionary in that, unlike traditional Euclidean zoning that limited uses, these zoning ordinances provided detailed regulations that sought to preserve or enhance characteristics of a particular neighborhood.[330]

One example was the creation of San Francisco, California's neighborhood commercial districts ("NCDs"). In the 1970s, the city's neighborhood populations grew rapidly; perceptions were that the rapid economic revitalization of the city was disorganized, and caused residents and merchants to voice concern

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[320] *See* CAL. GOV'T. CODE §§ 53311–53368.3 (West 2011).

[321] *Id.*

[322] ARIZ. REV. STAT. ANN. § 48-701 to § 48-725 (2011).

[323] HAW. REV. STAT. § 46-80.1 (2011).

[324] WASH. REV. CODE § 82.02.020 (2011).

[325] *Neighborhood Matching Fund Overview*, SEATTLE DEP'T OF NEIGHBORHOODS, http://www.seattle.gov/neighborhoods/nmf/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[326] *Id.*

[327] *Neighborhood Matching Fund announces 2012 deadlines*, SEATTLE DEP'T OF NEIGHBOR-HOODS (Dec. 22, 2011), http://frontporch.seattle.gov/2011/12/22/neighborhood-matching-fund-announces-2012-deadlines/.

[328] *Neighborhood Matching Fund Sites*, SEATTLE DEP'T OF NEIGHBORHOODS, http://www.seattle.gov/neighborhoods/nmf/documents/2008Map_Front_small.pdf (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[329] *Rise of Sublocal Structures, supra* note 11, at 514–15.

[330] *Id.* at 515.

that the neighborhood districts were losing character and orientation.[331] Believing that existing zoning was too broad, the city adopted detailed regulations of its NCDs in 1987.[332] Among other things, the NCD regulations replaced old zoning rules, which did not distinguish between retail uses, with sixty-three detailed retail uses typical in the NCDs.[333] Moreover, the NCD regulations made a number of generally permitted uses conditional uses, including high rent businesses, such as eating and drinking establishments.[334] These zoning restrictions were adopted in order to preserve lower rent businesses like convenience stores, mom-and-pop corner grocery stores, and hardware stores.[335]

As of 2007, seventeen NCDs have been established in the city, with each NCD having between 100 and 300 parcels.[336] In a twenty-year review of NCDs, the city found that seventy-seven percent of conditional use applications in NCDs were approved, while eight percent were disapproved and fifteen percent were abandoned.[337] The least successful conditional use requests were residential conversion of retail space (fifty-two percent approval); outdoor activity areas (fifty-eight percent); and lengthened hours of operation (sixty-two percent).[338] Despite the high approval rate, the city also noted an increased complexity in its permitting process: In 1987, ninety-seven percent of all permits in NC districts were reviewed over-the-counter, while in 2006 thirty percent of permits were reviewed over-the-counter.[339] In the same time period, the "cycle time" between application and permit decision increased from 85 days to 218 days.[340]

Efforts such as San Francisco's NCDs also go hand-in-hand with efforts by some neighborhoods to protect local retailers against perceived threats from chain stores.[341] For instance, San Francisco requires any chain store — defined as a store with more than eleven branches — to obtain a conditional use permit to enter an NCD.[342] More generally, such anti-chain store ordinances have been adopted by a number of cities and may impose square footage limits, require labor agreements, or apply other special conditions.[343]

Neighborhoods are also increasingly requiring that potential nuisance sources, such as liquor stores, sign Good Neighbor Agreements ("GNAs"), which typically limit hours of operation and detail product selections, for exam-

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[331] SAN FRANCISCO PLANNING DEPT., NC@20: LOOKING BACK ON 20 YEARS OF NEIGHBORHOOD COMMERCIAL ZONING 3–4 (2008) [hereinafter NC@20], *available at* http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=5300.

[332] *Id.* at 7.

[333] *Id.* at 4–5; S.F. PLANNING CODE §§ 790–790.142 (2012).

[334] NC@20, *supra* note 331, at 7.

[335] *Id.* at 4.

[336] *Id.* at 8.

[337] *Id.* at 13.

[338] *Id.*

[339] *Id.* at 31.

[340] NC@20, *supra* note 331, at 32.

[341] *See Mobile Capital*, *supra* note 54, at 517–20 (evaluating effectiveness of anti-chain store bans in light of relative "stickiness" of capital).

[342] S.F. PLANNING CODE § 703.3(b) (2012).

[343] *Mobile Capital*, *supra* note 54, at 517–18.

ple, by restricting high alcohol content.[344] However, some have argued that such agreements typically are meant to make operation of such uses difficult, and thus move them predominantly to areas where neighborhood organization is weak, which is typically in areas of higher poverty.[345]

D. Neighborhood Participation in Drafting Zoning Ordinances

Cities are increasingly moving toward a "collaborative participation" model of decision making with regard to zoning changes, and especially with regard to neighborhoods.[346] In such processes, the goal is to eliminate the Robert Moses-style of planning decision making, and instead to facilitate neighborhoods' input into future changes in their space.

An extreme, but illustrative, example of this approach was that which followed from San Francisco's effort to draft new zoning guidelines for its Western SoMa neighborhood.[347] In that effort, the city established a 22-member "Citizens Planning Task Force" to draft the new zoning code provisions.[348] The enabling legislation wrote the diversity into the ordinance itself, requiring that the task force include members,

> one of whom shall have been a resident of western SoMa for more than 3 years, one of whom has been a resident of western SoMa for less than 3 years, one of whom resides in a Single Room Occupancy hotel in western SoMa, one of whom is a youth in western SoMa, one of whom is raising a family in western SoMa, one of whom is a senior in western SoMa, one of whom operates a local business in western SoMa, one of whom works with a community-based organization in western SoMa, one of whom represents the arts, one of whom represents the entertainment industry, one of whom is a nonprofit developer, one of whom is a for-profit developer, one of whom is a bicycle advocate, one of whom is a parks and open space advocate, one of whom is a transportation advocate, one of whom is a preservation advocate and one of whom represents labor . . .[349]

Established in 2004, the task force has issued draft zoning regulations as of 2011 in a process that was often contentious and time-consuming.[350]

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[344] *See* Marcia England, *When "Good Neighbors" Go Bad: Territorial Geographies of Neighborhood Associations*, 40 Env't. & Plan. 2879, 2884 (2008).

[345] *Id.* at 2887.

[346] Judith E. Innes & David E. Booher, *Reframing Public Participation: Strategies for the 21st Century*, 5 Plan. Theory & Prac. 419, 430 (2004).

[347] *Western SOMA*, S.F. Planning Dep't, Aug. 08, 2011, http://www.sf-planning.org/index.aspx?page=1895.

[348] City and County of S.F., CA, Bd. of Supervisors, Resolution establishing a 22 member Western SoMa Citizens Planning Task Force, File No. 041359, Res. No. 731-04 (2004), *available at* http://www.sf-planning.org/Modules/ShowDocument.aspx?documentid=8154.

[349] *Id.* at 3.

[350] *Western SOMA*, *supra* note 347.

That does not mean, however, that such processes are failures. Indeed, community participation can lead to contentious hearings in which community members who feel otherwise unrepresented can voice their interests and effect change. For instance, participation by community members in the Boston West Roxbury neighborhood's master plan made key impacts on the plan. Community members helped establish the principles that residents would not be displaced as a result of the planning efforts, that existing residents would be considered in the design strategies for housing and services, and that the planning process would link economic development to other areas of need, such as affordable housing, the building of public schools, and improvements in education.[351] Seattle has also made a concerted effort to involve neighborhood residents in rezoning matters.[352]

E. *Neighborhood Schools*

A resurgence of interest in neighborhood schools has emerged in both liberal and conservative cities across the nation. "Neighborhood schools" have often been championed by conservative justices opposed to mandated busing regimes imposed to achieve integration after *Brown v. Board of Education.*[353] The problems of racially-isolated neighborhood schools were noted in *Brown*: "[t]o separate [children in grade and high schools] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."[354] The benefits of desegregation were later summarized in *Washington v. Seattle School Dist. No. 1,*[355] where the Court noted:

> [O]ur cases suggest that desegregation of the public schools . . . at bottom inures primarily to the benefit of the minority, and is designed for that purpose. Education has come to be 'a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.' [Citation omitted]. When that environment is largely shaped by members of different racial and cultural groups, minority children can achieve their full measure of success only if they learn to function in — and are fully accepted by — the larger community.

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[351] James Jennings, *Urban Planning, Community Participation, and the Roxbury Master Plan in Boston*, 594 ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 12, 22 (2004).

[352] *See Neighborhood Planning*, SEATTLE DEP'T OF NEIGHBORHOODS, http://www.seattle.gov/neighborhoods/npi/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library); *see also* SEATTLE DEP'T OF NEIGHBORHOODS, NEIGHBORHOOD PLANS: AN UPDATE ON WHAT WE'VE ACCOMPLISHED TOGETHER (2009), *available at* http://www.seattle.gov/neighborhoods/npi/planning/plans_2009_03.pdf; *Major Institutions and Schools*, SEATTLE DEP'T OF NEIGHBORHOODS, http://www.seattle.gov/neighborhoods/mi/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library) (community input on "major institutions and schools").

[353] Brown v. Bd. of Educ. of Topeka, Kan., 347 U.S. 483 (1954).

[354] *Id.* at 494.

[355] Washington v. Seattle Sch. Dist. No. 1, 458 U.S. 457 (1982).

Attending an ethnically diverse school may help accomplish this goal by preparing minority children "for citizenship in our pluralistic society," [citation omitted], while, we may hope, teaching members of the racial majority "to live in harmony and mutual respect" with children of minority heritage. [Citation omitted.]"[356]

On the other hand, Justice Powell noted in his *Washington v. Seattle Sch. Dist. No. 1* dissent that "[c]hildren of all races benefit from neighborhood schooling,"[357] and in his concurrence in *Keyes v. School Dist. No. 1, Denver, Colo.*, that "[n]eighborhood school systems, neutrally administered, reflect the deeply felt desire of citizens for a sense of community in their public education."[358] In *Freeman v. Pitts*, Justice Scalia's concurrence gave further voice to the neighborhood school movement:

Since parents and school boards typically want children to attend schools in their own neighborhood, "[t]he principal cause of racial and ethnic imbalance in . . . public schools across the country — North and South — is the imbalance in residential patterns." [Citation omitted.] That imbalance in residential patterns, in turn, "doubtless result[s] from a mélange of past happenings prompted by economic considerations, private discrimination, discriminatory school assignments, or a desire to reside near people of one's own race or ethnic background." [Citation omitted.] Consequently, residential segregation "is a national, not a southern[,] phenomenon" which exists " 'regardless of the character of local laws and policies, and regardless of the extent of other forms of segregation or discrimination.' " [Citation omitted.][359]

The interest in pressing for neighborhood schools is no doubt strengthened by the 2007 Supreme Court decision in *Parents Involved in Community Schools v. Seattle School Dist. No. 1* (*PICS*),[360] which made race-based efforts to integrate schools more challenging. For instance, in 2010, a conservative school board in Raleigh, North Carolina, decided to abandon a socioeconomic-based busing plan meant to achieve diversity, which had been seen as a model for those interested in maintaining busing after *PICS*.[361] But the interest in neighborhood schools is not limited to conservative districts. In 2011, a ballot initiative to return San Francisco schools to neighborhood school assignments failed by just 115 votes out of over 183,000 cast.[362] The effort towards neighborhood

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[356] *Id.* at 472–73.

[357] *Id.* at 495.

[358] Keyes v. Sch. Dist. No. 1, Denver, Colo., 413 U.S. 189, 246 (1973).

[359] Freeman v. Pitts, 503 U.S. 468 (1992).

[360] Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007).

[361] *North Carolina: Raleigh Changes Busing Policy*, N.Y. Times, March 24, 2010, http://www.nytimes.com/2010/03/24/us/24brfs-RALEIGHCHANG_BRF.html (changing to a neighborhood school assignment program).

[362] Amy Crawford, *San Francisco Neighborhood Schools Lose in Final Ballot Count*, S.F. Examiner, Nov. 17, 2011, http://www.sfexaminer.com/local/education/2011/11/san-francisco-neighborhood-schools-lose-final-ballot-count.

schools is also gaining resurgence among those concerned with transportation and seeking a walkable community[363] and those who view neighborhood schools as the center of a neighborhood's community, a notion once championed by both Perry and Wright, among others.[364]

F.   *Neighborhood Courts*

Community-based courts were a part of the neighborhood efforts in the 1960s and 1970s,[365] and they have experienced a resurgence of interest. Notably, San Francisco has implemented ten Neighborhood Courts throughout the city.[366] The Neighborhood Courts hear non-criminal misdemeanor and infraction cases.[367] When a person agrees to participate in Neighborhood Courts, the citation is discharged, and volunteer adjudicators direct participants to do community service in the neighborhood, pay restitution, attend mediation, or get treatment for issues including substance abuse and anger management.[368]

G.   *Neighborhood Historic Districts*

While nineteenth-century historic preservation once was concerned with safeguarding landmarks like George Washington's Mount Vernon, and twentieth-century preservation focused on creating historic districts and conservation districts of architecturally significant buildings, today's historic preservation increasingly focuses on preserving cultural ephemera, such as historic signs, and aspects of neighborhood life and culture.[369] Dolores Hayden, for instance, once emphasized that historic preservation should "celebrate the history of the citizens' most typical activities — earning a living, raising a family, carrying on

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[363] *See, e.g.*, *Walkable Neighborhood Schools,* Transportation and Growth Management Program, State of Oregon (Jan. 27, 2011), http://www.oregon.gov/LCD/TGM/walkable schools.shtml.

[364] Renee Kuhlman, Nat'l Trust for Historic Preservation, Helping Johnny Walk to School: Policy Recommendations for Removing Barriers to Community-Centered Schools (2010), *available at* www.preservationnation.org/information-center/saving-a-place/historic-schools/helping-johnny-walk-to-school.pdf.

[365] *See* John C. Cratsley, *Community Courts: Offering Alternative Dispute Resolution Within the Judicial System*, 3 Vt. L. Rev. 1 (1978); George W. Liebmann, *Devolution of Power to Community and Block Associations*, 25 Urb. Law. 335, 361 (1993) (discussing proposals for decentralization of justice system).

[366] *Neighborhood Courts*, City and County of S.F., CA, District Attorney, http://www.sfdistrictattorney.org/index.aspx?page=178 (last visited Jan. 28, 2012) (on file with the Harvard Law School Library).

[367] *Id.*

[368] *Id.*; *see also* Jaxon van Derbeken, *D.A. Gascón sets neighborhood courts in motion*, S.F. Chron., May 17, 2011, http://articles.sfgate.com/2011-05-18/bay-area/30223215_1_gasc-n-recidivism-offenders.

[369] *See* Stephen R. Miller, *Historic Signs, Commercial Speech, and the Limits of Preservation*, 25 J. Land Use & Envtl. L. 227, 244–57 (2010) (tracing development of historic preservation theory and practice).

local holidays, and campaigning for economic development or better municipal services."[370]

The result has been an increased desire of currently existing neighborhood residents to ensconce the histories of their lives in a city's neighborhood, not just preserve the neighborhood's architecture.[371] Murals of neighborhood leaders and activists are a common form of this type of historic preservation.[372] On the one hand, this kind of memorialization can have the effect of coalescing a neighborhood identity and also helping less politically powerful communities to establish a claim on a neighborhood in the face of gentrification.[373] On the other hand, American neighborhoods have traditionally seen substantial turnover in ethnic and racial neighborhood mobility.[374] Thus, this new era of preserving not just architectural buildings, but also trying to preserve senses of how a community lived in a neighborhood, presents novel and potentially contentious long-term problems for cities as neighborhoods evolve and change.

H. *Community Benefits Agreements*

Community benefits agreements ("CBAs") have become a powerful tool for neighborhoods in negotiating with developers seeking to build larger projects and have become a particularly popular tool for those working in the social justice and labor movements.[375] CBAs are notable because neighborhood groups, or coalitions of groups, negotiate directly with developers for community benefits to be provided to that community, rather than city officials negotiating on behalf of either the neighborhood or the city as whole.[376] The first major CBA was negotiated in 2001 in relation to a proposed development adjacent to the Staples Center, home to the Los Angeles Lakers.[377] In exchange for backing rezoning and public subsidies needed for the multi-use project, the coalition of labor and local community groups obtained an agreement from the

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[370] Dolores Hayden, *Placemaking, Preservation and Urban History*, 41 J. ARCHITECTURAL EDUC. 45, 46 (1984).

[371] *Id.*

[372] *See, e.g.*, mural of community leaders on Valencia Street, between 23rd and 24th Streets, in San Francisco, CA (photograph on file with author).

[373] Levy et al., *supra* note 37, at 274 (noting tension between historic preservation and affordable housing efforts); *cf.* N. EDWARD COULSON & ROBIN M. LEICHENKO, LINCOLN LAND INST., HISTORIC PRESERVATION AND NEIGHBORHOOD CHANGE (2002), *available at* https://www.lincolninst.edu/pubs/dl/560_coulson_leichenko.pdf (study finding no correlation between historic designations and demographic change in Fort Worth, Texas tracts).

[374] *See* discussion *supra* Part II(C).

[375] *See* Vicki Been, *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?*, 77 U. CHI. L. REV. 5 (2010) [hereinafter *Community Benefits Agreements*]; Patricia E. Salkin & Amy Lavine, *Negotiating for Social Justice and the Promise of Community Benefits Agreements: Case Studies of Current and Developing Agreements*, 17 J. OF AFFORDABLE HOUSING 113 (2008); Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399 (2001); JULIAN GROSS ET AL., COMMUNITY BENEFIT AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE (2005), *available at* http://community-wealth.com/_pdfs/articles-publications/state-local-new/report-gross.pdf.

[376] *See, e.g.*, *Community Benefits Agreements*, *supra* note 375, at 1.

[377] *Id.* at 6.

developer to provide money to fund parks, retain "living wage" jobs, construct affordable housing, adopt a first-source hiring program, and establish an advisory program to oversee the implementation of the CBA.[378] At least twelve other cities across the country have begun to negotiate CBAs.[379]

While CBAs are often negotiated with either the encouragement or acquiescence of the city, the city is not necessarily a party to the CBA, and therefore is not necessarily a beneficiary of the CBA and may not be able to enforce the CBA if the developer does not fulfill its obligations. This negotiation structure creates a situation in which neighborhood groups are uniquely empowered to seek benefits they desire but which may leave the neighborhood without tools to enforce an agreement that is breached. In addition, a proposed CBA that provides substantial benefits to the target neighborhood might prevent the city from negotiating with the developer for benefits that could be used city-wide.[380]

I. The Neighborhood as a Unit of Design

As noted previously, the neighborhood has once again become a unit for design. While this is evident in the new urbanism movement generally and the rush to older, denser neighborhoods, perhaps the most telling aspect of this change in design is the LEED for Neighborhood Development ("LEED-ND") rating system created by the Congress for the New Urbanism, Natural Resources Defense Council, and the U.S. Green Building Council.[381] LEED-ND provides a systematized, point-driven approach intended to create the "type of development that recalls the siting and design of traditional neighborhoods."[382] As noted previously, LEED-ND borrows heavily from early twentieth-century neighborhood design, which in turn can be traced back to ancient principles. As the LEED-ND system notes, Perry's neighborhood unit model "serves as a reference point for the mix of uses and walkable scale of neighborhood development encouraged in the rating system,"[383] and indeed, the physical design proposed by LEED-ND is essentially that of Perry. The modern twist of the LEED-ND system is its technocratic approach that, ultimately, provides a badge of honor for those projects that tally enough points to earn ratings of distinction. The LEED rating systems have proven immensely popular as marketing tools, and the use of green ratings has become even more pronounced, with some cities even rating buildings for their energy performance.[384] By taking this rating system to the neighborhood level, the LEED system moves Perry's module into a form accessible to the current building environment.

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[378] *Id.* at 6–9.

[379] *Id.* at 10–11.

[380] *Id.* at 33.

[381] *See* LEED-ND 2009 Rating System, *supra* note 190.

[382] *Id.* at xvi.

[383] *Id.*

[384] *See* Stephen R. Miller, *Commercial Green Leasing in the Era of Climate Change: Practical Solutions for Balancing Risks, Burdens, and Incentives*, 40 Envtl. L. Rep. 10487, 10501 (2010) (describing energy and resource usage label trends).

Another notable neighborhood design project is an effort through a coalition of departments at University of California, Berkeley, which is investigating legal and liability barriers to better street design.[385] Along with California's SB 375, which seeks to reduce GHG emissions resulting from transportation,[386] California's AB 1358, the Complete Streets Act,[387] requires local governments to identify how they will accommodate all travelers, including motorists, pedestrians, bicyclists, individuals with disabilities, seniors, and users of public transportation, in the circulation elements of each city and county's general plan.[388] Rules governing roads, both legal and often simply rule-of-thumb guidelines turned industry standard, have much to do with neighborhood design.[389] Eliminating these barriers, as well as funding barriers and liability barriers, is essential to designing more compact neighborhoods like those envisioned in Perry's plans and, ironically, like those streets already functioning well in older, established, and much sought-after neighborhoods.[390]

J. Neighborhood Delivery of Services

A number of major cities are operating neighborhood service centers, or "mini-city halls," that provide neighborhood access to city services and programs. For instance, Seattle operates six Neighborhood Service Centers, each of which provides access to information including land use and zoning, as well as neighborhood events and employment opportunities.[391] Residents can also do other routine business with the city, such as pay parking tickets, utility bills, and obtain pet licenses.[392] Miami runs nine neighborhood centers that operate in a similar fashion.[393]

K. The Neighborhood and the Internet

Cities are also leveraging technology as a means of improving neighborhood living. For instance, cities are using websites as a way for neighborhood councils to report issues such as graffiti, litter, and other concerns. Sophisti-

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[385] Steven Weissman et al., Ctr. for Law, Energy, & the Env't, Moving Beyond Prevailing Street Design Standards: Assessing Legal and Liability Barriers to More Efficient Street Design and Function (2010) [hereinafter Moving Beyond Prevailing Street Design Standards].

[386] *See supra* notes 241–44.

[387] Cal. Gov't. Code §§ 65040.2, 65302 (West 2011).

[388] *Id.*; *see also* Mark Leno, The Complete Streets Act: Fact Sheet (2007), *available at* www.calbike.org/pdfs/AB1358_Fact_Sheet.pdf.

[389] Moving Beyond Prevailing Street Design Standards, *supra* note 385, at 9–17 (describing legal governance of street design).

[390] *Id.* at 17–24 (describing liability in street design).

[391] *Neighborhood Service Centers*, Seattle Dep't of Neighborhoods, http://www.seattle.gov/neighborhoodservices/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[392] *Id.*

[393] *Neighborhood Enhancement Teams*, City of Miami, http://www.miamigov.com/nets/about/index.html (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

cated GIS systems now act as a means of facilitating data delivery, such as
zoning and land use applications, as well as neighborhood crime statistics.[394]
The federal government has also established an effort, through its "Apps for
Communities" program, to make local public information more personal and
usable through smart phone technology.[395] Other technologies permit transit
riders to know how long their wait will be for the next bus[396] or where to find a
parking spot on the street.[397] A Chicago-based website shows residents maps of
what streets have been plowed after a snow storm.[398] Increasingly, such tech-
nology will make it easier for cities to communicate with neighborhoods, and
also for neighborhoods to communicate with themselves. Already, such basic
communication tools as listservs, which were not available just a generation
ago, as well as social media, will likely also facilitate the ability of neighbor-
hoods to organize efficiently.

V. Evaluation of Legal Neighborhoods in Practice

Imagine a neighborhood with all of the political tools described above —
a district-elected representative to the city council, a neighborhood council or
association — and all of the legal tools described above — funding itself and
attracting businesses through business improvement districts, enterprise zones,
tax increment financing, community facilities districts, and obtaining neighbor-
hood matching funds; implementing neighborhood-specific zoning; prioritizing
neighborhood businesses over chain stores; drafting its own zoning ordinances;
running a neighborhood school; operating neighborhood courts; an historic dis-
trict focused on preserving the neighborhood's history; negotiating community
benefits agreements with developers doing projects in the neighborhood; imple-
menting neighborhood-centered design for new projects; receiving neighbor-
hood-level delivery of services; and using technology to build relationships
between neighbors. While no one neighborhood is likely to implement all of
these strategies, several neighborhoods are good examples of how such a vari-
ety of tools can be overlaid to create a de facto legal neighborhood. This sec-
tion will review two legal neighborhoods in San Francisco, California — the
Noe Valley neighborhood and the Bayview-Hunters Point neighborhood — that
are very different neighborhoods. The purpose of reviewing two neighbor-
hoods in one city is to illustrate how different neighborhoods can use the legal

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[394] *See SFPD CrimeMAPS*, S.F. Police Dep't, http://sf-police.org/index.aspx?page=1618
(last visited Jan. 28, 2013) (on file with the Harvard Law School Library).
[395] *Apps for Communities*, U.S. Gen. Servs. Admin., http://appsforcommunities.challenge.
gov/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).
[396] *See, e.g.*, NextBus, http://www.nextbus.com/homepage/ (last visited Jan. 28, 2013) (on
file with the Harvard Law School Library).
[397] *See, e.g.*, SFpark, http://sfpark.org/ (last visited Jan. 28, 2013) (on file with the Harvard
Law School Library) (sensors indicate parking spaces open and may be accessed through
smartphone apps).
[398] Monica Davey, *Snow Site Lets Chicago See if Plows are Really in a Rut*, N.Y. Times, Jan.
3, 2012, http://www.nytimes.com/2012/01/03/us/chicagoshovels-web-site-gives-lowdown-on-
snow.html.

neighborhood concept in different manners, even within the same city, to address differing circumstances.

The Noe Valley neighborhood in San Francisco, California is currently an upper-middle class community, which is popular with young professionals and young families. In the 1960s and '70s, the neighborhood had suffered as population shifted to the Bay Area suburbs, but has reemerged as a popular neighborhood since the dot-com boom primarily because it is easily accessible to the city's financial district by public and private transportation and is close to highways that provide access to Silicon Valley.[399] A district supervisor represents Noe Valley, as well as two adjacent neighborhoods, Glen Park and the Castro.[400] The neighborhood was the subject of San Francisco's first neighborhood commercial district, which highly regulates the types and number of businesses that can locate in the neighborhood's business district.[401] City-wide regulations require chain stores to obtain a conditional use permit to operate in this or any other NCD.[402] While San Francisco does not have officially sanctioned neighborhood councils or associations, a powerful neighborhood association, Friends of Noe Valley, weighs in on all major, and much of the minor, development in the neighborhood.[403] The powerful Noe Valley Merchants Association represents the interests of the mostly local and up-scale retailers.[404] The Noe Valley Community Benefits District is a BID that provides that neighborhood's business district steam-cleaned sidewalks, benches for resting and conversation, new signage, flower boxes, and uniformed security patrols.[405] Almost all of the buildings in the neighborhood are over fifty years of age, and thus subject to historic preservation. Changes to these buildings are often highly contentious and subject to a public review process. Historic districts have been established to preserve the neighborhood's architecturally significant buildings.[406] San Francisco does not have neighborhood schools, which are contentious in the city.[407] Due in part to the high price of private education in the city and poor

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[399] *See, e.g.*, Danielle Magee, *The private bus problem: Corporate behemoths crowd city streets and block Muni stops*, S.F. BAY GUARDIAN, Apr. 19, 2012, http://www.sfbg.com/2012/04/18/private-bus-problem (noting neighborhood is increasingly a "bedroom community" for Silicon Valley); San Francisco Municipal Transportation Authority, System Maps, *available at* http://www.sfmta.com/cms/mmaps/official.htm (illustrating multiple bus, trolley, and subways lines operating from Noe Valley to the Financial District).

[400] *Board of Supervisors: Scott Wiener — District 8,* CITY AND CNTY. OF S.F. BD. OF SUPERVISORS, http://www.sfbos.org/index.aspx?page=11325 (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[401] *See* discussion *supra* Part IV(C).

[402] *See* S.F. PLANNING CODE § 703.3(b) (2012).

[403] *See* FRIENDS OF NOE VALLEY, http://friendsofnoevalley.com/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[404] *See* NOE VALLEY MERCHANTS ASS'N, http://www.noevalleymerchants.com/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[405] *Community Benefit Districts*, S.F. OFFICE OF ECON. & WORKFORCE DEV., http://www.oewd.org/Noe-Valley.aspx (last visited Jan. 28, 2013) (on file with the Harvard Law School Library); Corrie M. Anders, *Community Benefit District Nears Reality*, NOE VALLEY VOICE (June 2005), http://noevalleyvoice.com/2005/June/CBD.html.

[406] *See* S.F. PLANNING CODE, art. 10, app. F (1985) (creating Liberty Hill Historic District).

[407] *See* Crawford, *supra* note 362.

public schools, a significant number of residents in the neighborhood leave once their children become school-age.[408] However, several excellent small private schools do serve the neighborhood, including a parochial school and an arts-based school.[409]

San Francisco's Bayview-Hunters Point neighborhood is a low-income, mostly African-American section of the city. Because of its different demographics, the neighborhood has utilized a different subset of legal tools to meet its needs. Bayview-Hunters Point is represented by a district supervisor who serves this large geographic area alone.[410] An historic district preserves the neighborhood's architecturally significant Dogpatch section.[411] A neighborhood court for handling misdemeanors and other infractions serves the high-crime area.[412] A substantial part of the neighborhood is located in a redevelopment area and subject to tax-increment financing.[413] The redevelopment agency has established a community board, the Bayview Hunters Point Project Area Committee, which requires project sponsors to review projects before the committee that is comprised of neighborhood residents.[414] Several organizations work with the area's at-risk youth,[415] and provide a number of other services targeted at the neighborhood-level.[416] Bayview Merchants' Association represents local merchants, and Bayview Hunters Point Coordinating Council represents local residents. The neighborhood is hosting a massive proposed redevelopment scheme along the city's waterfront.[417] In seeking project approval, the developer, Lennar, entered into a community benefits agreement with labor representatives and local activists to provide for affordable housing, down payment assistance for low-income residents in the neighborhood, job training funds, a local hiring program, and other labor provisions.[418]

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[408] *See, e.g.*, Joshua Sabatini, *San Francisco becoming a child-free zone as youth population declines*, S.F. Examiner, March 23, 2011, http://www.sfexaminer.com/local/2011/03/san-francisco-becoming-child-free-zone-youth-population-declines#ixzz1jCOQsdDU (noting continued decline in the number of families living in San Francisco).

[409] *See, e.g.*, Adda Clevenger Junior Preparatory and Theater School for Children, http://www.addaclevenger.org/.

[410] *Board of Supervisors: Malia Cohen — District 10*, City and Cnty of S.F., http://www.sfbos.org/index.aspx?page=11322 (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[411] *See* S.F. Planning Code art. 10, app. L (2003) (creating Dogpatch Historic District).

[412] Gabriela Arvizu, *Neighborhood prosecutor and community courts program introduced*, El Tecolote.org (April 22, 2011), http://eltecolote.org/content/2011/04/neighborhood-prosecutor-and-community-courts-program-introduced/.

[413] *See Bayview Hunters Point*, S.F. Redev. Agency, http://www.sfredevelopment.org/index.aspx?page=53 (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[414] *Id.*

[415] *See, e.g.*, Hunters Point Family, http://hunterspointfamily.com/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[416] *See, e.g.*, Bayview Hunters Point Foundation for Community Improvement, http://www.bayviewci.org/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[417] *See supra* note 413.

[418] *See Policy & Tools: Community Benefits Agreements and Policies In Effect*, Partnership for Working Families, http://www.forworkingfamilies.org/page/policy-tools-community-benefits-agreements-and-policies-effect (last visited Jan. 28, 2013) (on file with the Harvard Law School Library) (providing text of CBA).

As these examples show, legal neighborhoods, even in the same city, can operate to provide local communities the varying services and tools to facilitate the needs of the particular neighborhood. The city's neighborhood organizations also are informally organized city-wide, with neighborhood residential organizations participating in the Coalition for San Francisco Neighborhoods[419] and neighborhood merchants' organizations participating in the San Francisco Council of District Merchants Association.[420] These organizations provide a means for neighborhoods to work together and share resources.

VI. Possibilities and Perils of Legal Neighborhoods in the City, in the Region

Several approaches have dominated the discussion about empowering neighborhoods over the years. First, some commentators have argued that neighborhoods should be permitted to secede from large urban cities.[421] This approach follows a line of thought premised upon the ideas that urban cities would not be able to provide neighborhoods adequate services, that suburbs had proven more manageable at providing services desired by their constituents, that these facts illustrated the Tieboutian need for more jurisdictions to suit the individual needs of constituents' service and tax preferences, that secession at the neighborhood level would provide a political and service benefit to neighborhood residents, and that this secession would permit neighborhoods to exercise political notions of "exit" and "voice." Independent of this approach's theoretical allure, its practical implications are fraught. Can we imagine neighborhoods in the middle of cities, such as Park Slope in Brooklyn, suddenly operating as their own cities? Not only is such secession unlikely and logistically difficult, it is likely to yield much higher transaction costs, as such a neighborhood-city would need to meet state requirements for cities that would prove expensive and redundant of services easily offered by the larger city.

Others have noted the rise of HOAs in suburbs[422] and taken from this rise the presumption that residents prefer being governed by such private associations. Followers of this school have not focused on the question of secession, because their primary goal has been the private delivery of services at the neighborhood level regardless of whether the public entity is urban, suburban, or any other form. This approach ignores that the rise of HOAs, such as in California where sixty percent of new development is subject to HOAs, often results from a government imposition as a means of paying for infrastructure where taxes have otherwise been limited and cannot pay for infrastructure, and

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[419] *See* Coalition for San Francisco Neighborhoods, http://www.csfn.net/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[420] *Merchant Associations*, City and Cnty. of S.F. Office of Small Bus., http://www.sfgsa.org/index.aspx?page=4233 (last visited Jan. 28, 2013) (on file with the Harvard Law School Library).

[421] *See, e.g.*, *Collective Individualism, supra* note 13.

[422] *See, e.g.*, Nelson, *supra* note 23.

are also favored by developers of new subdivisions as a means of shifting costs from the developer to the HOA during project buildout.[423] Viewed cynically, the rise of HOAs does not necessarily represent the will of the people to form private associations so much as a necessary evil of modern project development finance.

Regardless, the operation of HOAs faces two long-term problems: They do not integrate well with the city or neighboring HOAs and they do not integrate well in the region. The very nature of HOAs is to make operating decisions within the geographic area covered by the HOA, typically a subdivision. There is no obligation, and perhaps even no authority within the HOA's governing documents, to communicate or forge relations with the city, neighboring HOAs, or HOAs across the city, except as it might directly affect the HOA's operations. This structure creates an isolated pod of development that is the *sine qua non* of suburban development.[424] Furthermore, as HOAs are typically governing subdivisions, they can subject residents to peculiar regulations, even as mundane as door paint requirements, that are unlikely to emerge where governing structures are subject to larger groups, or even constitutional limitations of government entities, of which neighborhoods are a part.

Legal neighborhoods, this Article asserts, provide many of the benefits sought by neighborhood secession and private HOAs but without the logistical difficulty or expense and without severing links to the city-wide and regional goals of these other approaches. "Legal neighborhoods," of course, is a term used by this Article to give voice to the overlay of multiple political and legal tools in a single neighborhood. The result is that no two legal neighborhoods are the same, but rather are responsive to the particular city in which the neighborhood is located, as well as how that neighborhood is positioned within the city in terms of its constituencies and its geographic location in the city.

The malleability of the legal neighborhood concept permits the city and the neighborhood to engage in an ongoing balancing act as to how much power a particular neighborhood may yield over its future. This is a balancing act that will surely be political and require negotiation with other neighborhoods and the city as a whole. This negotiation is crucial because it is through such negotiation that the neighborhood balances its future against the concerns of the city and other neighborhoods. Through this process, the legal neighborhood is effectively linked both to the city and to other neighborhoods and can effectively respond to issues that arise in both the neighborhood and the city as a whole.

For instance, most neighborhoods in major urban areas only contain neighborhood-serving retail services. Office jobs in neighborhoods are also typically neighborhood-serving, such as doctors' offices and real estate brokers' offices. At the same time, the viability of neighborhoods is linked to maintaining close access to region-serving retail uses, as well as region-serving office jobs. Region-serving retail, such as chain stores and automobile sales lots, is typically

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[423] *See* EVAN MCKENZIE, PRIVATOPIA 126-29 (1994) (discussing developers' use of HOAs).
[424] *See id.* at 170–80.

located in quasi-industrial areas with larger footprints. Region-serving office jobs are typically located in a downtown office district, or suburban office park, to which most neighborhood residents commute. A neighborhood alone cannot provide these resources, and no city can maintain these resources without the assistance of neighborhood constituencies. As a result, relation back to the city remains vital for neighborhoods even when they wield legal powers for their own benefit.

Similarly, a legal neighborhood's public character provides it an accountability that private HOAs do not have to the city at large. Neighborhood councils, and many other legal neighborhood entities, are subject to public disclosure requirements that provide a level of transparency and public accountability that is not available with private HOAs. It is true that some legal neighborhood tools do not currently require such disclosures or accountability, and that is something that should be addressed as the concept of legal neighborhoods evolves, because this transparency and accountability justify, in part, the public character of legal neighborhoods against private HOAs.

Finally, concerns with empowering neighborhoods must be addressed. One argument against empowering neighborhoods has been that doing so would not encourage residents to consider regional issues, but rather would simply encourage them to protect their hyper-local interests. This potential narrow-mindedness is a legitimate concern; however, this Article asserts that legal neighborhoods can be structured by cities so as to require them to find neighborhood solutions to regional concerns, such as transportation, air quality, and water supply. For instance, when the 1989 earthquake destroyed a major elevated highway artery running through the center of San Francisco that divided a neighborhood, a re-design for the new highway created a grade-level, multimodal road with a park and native landscaping that not only no longer divided the neighborhood, but also gave the community common open space.[425] Such solutions serve the neighborhood while also serving regional transportation needs.

Legal neighborhoods are also uniquely situated to assist regional development requirements. American cities have long sought ways to stop sprawling tendencies, because of both the high infrastructure costs and environmental effects. Approaches to solving this dilemma have largely been based around environmental engineering principles, such as with California's SB 375. The problem, however, is that such approaches lack a way to provide residents of new, denser communities the kind of autonomy they desire and which they are accustomed to having in suburbs. Legal neighborhoods — a loose overlay of political and legal tools — are a way for older, inner-city neighborhoods, as well as new inner-ring suburban communities that are expected to see the bulk

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[425] *See San Francisco's Octavia*, CONGRESS FOR THE NEW URBANISM, http://www.cnu.org/highways/sfoctavia; John King, *An Urban Success Story: Octavia Boulevard an Asset to Post-Central Freeway Area*, S.F. CHRONICLE, Jan. 3, 2007, http://www.sfgate.com/bayarea/place/article/SAN-FRANCISCO-An-urban-success-story-Octavia-2659608.php.

of growth in the coming decade, to provide services to these new neighborhood constituents that will, hopefully, make them long-term stewards of these dense neighborhoods. Approaches to dense development need to develop this type of statecraft alongside their engineering-based schemes as a means of facilitating the lived experience of the new, urban communities they hope to create, as well as managing the older neighborhoods they seek to reinvigorate.

A second argument against legal neighborhoods is that they result in multiple and often duplicative levels of review, which in turn create higher transaction costs. A vivid example of this increased bureaucracy is portrayed in San Francisco's NCDs, where a study found that review time of conditional use permits had increased threefold in those districts over a span of twenty years.[426] The cause of such time-intensive review is often believed to be the multiple layers of review that a proposal must endure, such as meetings with resident groups and business associations and public hearings. The concern here is legitimate, and cities that employ a legal neighborhood approach will need to find a way to balance neighborhood input while also ensuring that the transaction costs of permitting do not overly burden businesses and residents. A number of strategies for addressing the transaction costs of multiple reviews point away from a litigation-based model for resolving neighborhood land use disputes and toward an arbitration or negotiation model.[427] Such an approach does not prioritize obstruction of a project so much as a solution amenable to the project sponsor and those in the neighborhood.

A third argument against legal neighborhoods is that they formalize neighborhood boundaries that are otherwise fluid as lived, and similarly, that as neighborhoods evolve and change over time, empowering today's neighborhood may lead to problems as the neighborhood evolves. The chief concern here is defining continuity in the neighborhood, either in space or time. As noted previously, the legal neighborhood concept does not require a reification of the neighborhood itself, nor does it require that a strict neighborhood boundary be drawn. Rather, different legal tools in a legal neighborhood will likely draw different boundaries. For instance, as noted earlier in this Article, a business improvement district may have different bounds from the applicable bounds of the jurisdiction of a neighborhood court. Both such tools may differ from the bounds that determine attendance at a neighborhood school. Nonetheless, the overlay of tools permits variation in how different segments of the neighborhood draw their boundaries. This flexibility does not mean boundary issues will not arise, but it does provide a more malleable approach to the issue of neighborhood definition than a strict line drawn on a map and applicable to all legal tools.

A fourth argument against legal neighborhoods is that the overlay of legal tools may, contrary to what this Article asserts, detract from the efficacy of any one legal tool used in isolation. It is true that the overlay of jurisdictions of

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[426] *See* NC@20, *supra* note 331, at 32.
[427] *See* discussion *supra* Part IV(H).

legal tools, as well as the fact that the parties in charge of each particular tool will likely be different, may halt a tool's efficacy, or otherwise be a recipe for a stalemate. Such an assertion cannot be dismissed out of hand, and determining how legal tools interact when used in concert at the neighborhood level is precisely the type of research that would be valuable in the future.

The conflicts that could arise may be as mundane as opposition over an individual development project, but may rise to more substantive differences over the character of the neighborhood itself. Nonetheless, this Article has made the case that the overlay of legal tools works because each legal tool is aimed at supporting, and giving voice to, a particular issue that arises in a neighborhood. For instance, a neighborhood court and a neighborhood school would seemingly support each other's mission without too much strife.

At the same time, a neighborhood historic preservation group and a neighborhood merchants' group may clash over a proposed business development project. In such cases, this Article proposes that an analysis must be conducted by the city and the neighborhood to determine whether the overlap of legal tools is too fine-grained, and perhaps empowers multiple groups to perform what are, in practice, the same or similar functions. In that case, the city or neighborhood may seek to realign the legal tools in that neighborhood to ensure that there is a more coherent alignment of neighborhood power. It may be, however, that there simply is conflict on a neighborhood issue and opposing views within the neighborhood. In that case, multiple groups may arise, regardless of whether they are sanctioned by the city or the neighborhood as a whole. For instance, if the neighborhood's historic group gave its approval to a development project that some thought was inappropriate, a new historic group may emerge. Such splintering and divisive issues are often the ones that opponents of legal neighborhoods point to first to show the inability of neighborhoods to effectively govern at a sub-local level.

This Article, however, does not view such conflict in the neighborhood in a defeatist fashion. Rather, that conflict is evidence of the passions that are heartfelt in neighbors. The conflict arises because people care about where they live, and that is an attitude to be encouraged. The question is how to turn passions that differ into compromises that all parties can live with, and where no compromise can be reached, what to do next. As noted previously, this Article asserts that models based on arbitration and negotiation better serve neighborhoods than litigation-based approaches. Regardless of how disputes are resolved, this Article places a priority on the vision-forming aspects of legal neighborhoods rather than the dispute potential: The more that neighbors have the chance to define visions for their neighborhood, the more likely they are to care about where they live. Legal tools in neighborhoods assist neighborhoods in forming institutions that are not only tools for self-governance, but also tools for collective vision-making for the neighborhood. Having multiple groups empowered and working together at creating different visions — visions as diverse as how to promote business interests, how to address crime, and how to educate children — has the long-term effect of providing a neighborhood with

not just a singular vision, but a diversity of visions that can facilitate a variety of interests.

VII. Conclusion

The past four decades have seen a dramatic rise in the political and legal tools that can empower neighborhoods. This Article has sought to give context to this rise, not only by enumerating the varieties of tools available to neighborhoods, but also by giving voice to the value of using these tools collectively as appropriate in individual neighborhoods. The concept of a legal neighborhood is not a call for secession, privatization, or otherwise divesting the neighborhood from the city or the region. Rather, the concept of the legal neighborhood can itself support the growth of urban cities, as well as serve as a framework for inner-ring suburbs that are becoming denser, as they seek ways to address concerns of particular communities while maintaining city-wide and regional goals that may differ from those of the neighborhood.

The relationship of legal neighborhoods and cities is necessarily one of trial and error, and will need to be reevaluated from time to time in light of other priorities. For instance, suffering from a severe budget crisis, Los Angeles is currently considering whether to continue its neighborhood councils.[428] Inevitably, such conflicts will arise, but they are specific to the culture of the city and its neighborhoods. Legal neighborhoods have emerged in American cities as city life itself has become more popular than it has been in generations.[429] There is reason to believe that de facto legal neighborhoods are among the reasons for the continued popularity of urban living and will be a valuable tool for its continued rise in the coming century. Because of this, urban and urbanizing cities should seek to formulate a coherent legal neighborhood strategy, making legal neighborhoods a conscious choice where they might otherwise have solely been a response to citizen demands.[430] As this Article has shown, the idea of the neighborhood is imbued with cultural significance that makes it an invaluable unit for political and legal tools, just as it remains a significant approach for organizing life itself.

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[428] *See* Jim Newton, *L.A.'s neighborhood councils*, L.A. Times, July 2, 2012, http://articles.la times.com/2012/jul/02/opinion/la-oe-0702-newton-column-neighborhood-councils-20120702 (noting multiple attempts to close Department of Neighborhood Empowerment and reduce its funding).

[429] *See* discussion *supra* Part II(F).

[430] *See* Neighborhood Empowerment Network, http://empowersf.org/about-us/ (last visited Jan. 28, 2013) (on file with the Harvard Law School Library) (providing training to building neighborhood "resilience" in San Francisco's neighborhoods).