Reclaiming the Streets

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Reclaiming the Streets

Vanessa Casado Perez

ABSTRACT: Pedestrians have been getting the short end of the stick in street policies and regulations. Drivers and cars dominate our streets even though automobiles’ externalities kill thousands of people every year. Given the environmental, health, safety, and community effects of cars, municipalities should embrace a policy that puts pedestrians at the center and produces more miles of wider, well-maintained sidewalks. Sidewalks make communities greener, healthier, safer, more socially connected, and even, wealthier. COVID-19 lockdowns have shown both the relevance of sidewalks, as well as the possibility of pedestrians regaining space currently allocated to cars by widening sidewalks.

This Essay identifies, first, the benefits of and potential arguments against more sidewalks. Second, it analyzes the current approach to adding sidewalks to neighborhoods without them or widening existing sidewalks. It shows the disparities created by shouldering homeowners with the responsibility of building, maintaining, and repairing sidewalks and advocates for the socialization of sidewalks’ cost. It also advocates for sidewalks reclaiming space today occupied by parked or running automobiles. Third, regarding new developments, this Essay proposes an approach mirroring technology-forcing environmental regulations that will require developers to not only not serve future road demand, but also actually reduce it by increasing the walkability score of the development and the surrounding area.

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Regulations and policies give priority to cars over pedestrians. This needs to change. One of the key issues affecting the quality of the environment and the quality of life in our towns and cities is road traffic. The automobile has local and global implications. At the local level, pollution greatly affects our health. For example, higher levels of pollution are linked to dire cases of COVID-19.\(^1\) Globally, climate change is the most important challenge we are facing. Beyond poor air quality, “traffic means . . . [high] levels of noise and a weakened sense of . . . local community.”\(^2\) Noise and pollution “give[] rise to high [economic] costs,” jointly with the “delays caused by congestion”\(^3\) and the health effects of a sedentary lifestyle usually connected to automobile culture. More people traveling on foot should reduce our dependence on cars.\(^4\)


\(^3\). Id.

\(^4\). See AARP, SIDEWALKS: A LIVABILITY FACT SHEET, https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/5344559/Attachment__3_-_Sidewalk_Factsheets.pdf [https://perma.cc/2WE7-9aEUR] [hereinafter SIDEWALKS]. For an account of how cities are shifting from an automobile centered planning to a more pedestrian friendly ethos, see NICHOLAS BLOMLEY, RIGHTS OF PASSAGE 52 (2010).
To address the externalities of the 273 million vehicles in the United States, the focus is often on making cars cleaner, improving public transport, and sometimes increasing the use of alternative modes of transportation, such as bicycles. Connected to the latter, the idea of complete streets has gained traction. Complete streets capture the idea of multi-use streets: “[Complete streets] are designed and operated to enable safe access for all users, including pedestrians, bicyclists, motorists and transit riders of all ages and abilities.” This Essay focuses on the less-traveled path of complete streets: sidewalks. To deal with automobile externalities, transportation by foot must take the center stage. Where the sidewalk ends, the problems begin: We need sidewalks to live safer, healthier, greener, and even wealthier lives.

While the public right of way over streets initially served mostly pedestrians and horses because automobiles were not widespread when many cities were built, automobile culture has taken over. Sidewalks have been ignored for far too long. Cars have been the main beneficiaries of the easement. Sidewalks became narrower as automobiles’ reign over the streets consolidated. The situation is direr in many suburban neighborhoods that do not have sidewalks because they were built with the idea of differentiating from urban areas, as embodied by Shel Silverstein in his famous poem, “Where the Sidewalk Ends,” about a non-urban, ideal place that children enjoy. COVID-19 has proven the poet wrong and shed light on the fact that children and the rest of society need sidewalks. Sidewalks offer the possibility to enhance our communities, protect the environment, and allow us to live healthier lives.

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7. Sidewalks are defined as “[t]hat portion of the dedicated right-of-way between the curb line or the lateral lines of the roadway, and the adjacent property or right-of-way intended for the use of pedestrians and improved for such purposes.” NAPERVILLE, ILL., MUN. CODE § 9-1H-1 (2010).

8. *See infra Section II.A.*

9. Right of way included foot travelers. For instance, “public have such right of way for such travel as highways are used for by the customs of the inhabitants which such ways are designed to accommodate, whether on foot, on horses, in carriages, or for hauling larger objects.” Graves v. Shattuck, 35 N.H. 257, 261 (1857). Right of ways allow “a right to pass and repass on foot and with horses and carriages.” Salisbury v. Andrews, 36 Mass. (19 Pick.) 250, 251 (1837) (right of way includes the sidewalk and sidewalks are for pedestrians).

Beyond the expansion of the space occupied by cars and the diminution of the one occupied by pedestrians in the right of way, pedestrians are receiving the leftovers in many regulations.11 Snow removal is a good illustration: while cities remove snow from the street, often residents are in charge of the sidewalk. In many municipalities, other aspects of road and sidewalk construction and maintenance are equally allocated. For example, sidewalk maintenance, repair, and construction are assigned to the landowner in many municipalities.12 A landowner may use their sidewalk more often than anyone else, and the same is probably true for roads in front of their property, yet often local governments cover the costs for roads,13 but not for sidewalks.14 The cost of sidewalks should be socialized like the cost of roads. In addition, low-income neighborhoods, either because property owners cannot afford to care for sidewalks or because cities have not invested in those areas,15 tend to present sidewalks in a state of disrepair or without amenities such as trees.16 Making the municipality responsible for sidewalks should also help mitigate the disparity. For new developments, this Essay supports, at a minimum, treating roads and sidewalks equally, and proposes that municipalities should not focus on asking developers to serve future road demand, but require reductions of that demand by improving walkability.

Sidewalks not only need to gain space from cars in the regulatory arena, but also in the streets. For existing developments, where there are sidewalks, they need to be broader; where there are none, they need to be built. Pedestrian-friendly sidewalks need to reclaim space from cars. A year ago, this reconfiguration would have been an intellectual exercise, but the COVID-19 lockdowns have shown that it is possible to make our sidewalks and our streets car-free or at least pedestrian-centric.

Better sidewalks are not a panacea to solve all of our transportation and climate change woes. More miles of sidewalk need to be accompanied with other land-use policies that make development dense and mixed-use zoning a reality. But more sidewalks, both in terms of width and of miles of sidewalks,

are a step in the right direction\textsuperscript{17} to create communities that are safer, engaged, greener, and healthier.

Part II of this Essay will first describe the benefits of sidewalks and the arguments against them. Part III will describe how COVID-19 lockdowns have shed light on the problems and opportunities of our sidewalks. Part IV analyzes the regulatory framework regarding the addition or widening of sidewalks in existing and new developments.

II. MORE SIDEWALKS

A. ARGUMENTS IN FAVOR OF MORE SIDEWALKS

Sidewalks are as much a transportation corridor as any road. In most places, sidewalks are—or should be—necessary for kids to go to school, for people to access their workplaces, to go shopping, or to gather with friends. In some countries, they are essential because a considerable percentage of trips are by foot.\textsuperscript{18} Mixed-use zoning should aim at ensuring pedestrianization.\textsuperscript{19}

There are five main advantages of pedestrianization of existing neighborhoods and new developments. First, if sidewalks are present, people walk more,\textsuperscript{20} making them healthier. Second, sidewalks increase pedestrian safety because there are fewer pedestrian-car crashes.\textsuperscript{21} Third, if sidewalks are built or widened, reclaiming space from cars by either occupying parking spots or narrowing the road itself, the use of cars will be discouraged, reducing


pollution. Fourth, sidewalks contribute to a sense of community.22 Fifth, real estate markets value the presence of sidewalks positively.23

1. Healthier: Sidewalks Increase Our Physical Activity

Sidewalks make us healthier. “People who live in neighborhoods with sidewalks are 47 percent more likely than residents of areas without sidewalks to be active at least 39 minutes a day.”24 The urban environment can have a huge impact on the fight against another rampant epidemic in the United States: obesity.25 Furthermore, walking 15 minutes a day increases life expectancy.26 And, to the extent sidewalks reduce our daily driving commute, they make us just as happy as when we fall in love.27

Good quality sidewalks also lead to positive health outcomes. Tree canopy, often lacking in low-income neighborhoods, positively contributes to an active lifestyle.28 This and other sidewalk amenities are not equally distributed across neighborhoods, exacerbating the obesity problem of the low-income population, which is already less likely to exercise due to, among others, their lack of free time.29


24. SIDEWALKS, supra note 4, at 1. It must be noted that a metastudy showed that walkability has a larger effect on the activity of those advantaged and smaller in those with a lower socioeconomic status. Arlie Adkins, Carrie Makarewicz, Michele Scanze, Maia Ingram & Gretchen Luhr, Contextualizing Walkability: Do Relationships Between Built Environments and Walking Vary by Socioeconomic Context?, 83 J. AM. PLAN. ASS’N 296, 297 (2017).


27. Id.


29. Id.
2. Safer: Sidewalks Save Pedestrian Lives

Pedestrian fatalities abound. There is one pedestrian death every 88 minutes. In 2017, more than 5,000 pedestrians died in the United States, and 137,000 were treated for nonfatal injuries. These average figures do not paint the full picture. Minority, low-income neighborhoods see far more pedestrian accidents than wealthier ones. Roads without sidewalks are more likely to have pedestrian crashes. Sidewalks can prevent 88 percent of accidents involving cars and pedestrians walking along the road. In addition, research demonstrates that as the number of pedestrians rises, the number of injuries falls.

Sidewalks, planters, chicanes, or diagonal parking, as well as other items of street design, have a traffic calming effect that contributes to slowing traffic speed.

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   defines a pedestrian as any person on foot, walking, running, jogging, hiking, sitting, or lying down who is involved in a motor vehicle traffic crash. These exclude people on personal conveyances like roller skates, inline skates, skateboards, baby strollers, scooters, toy wagons, motorized skateboards, motorized toy cars, Segway-style devices, motorized and non-motorized wheelchairs, and scooters for those with disabilities.


32. SMART GROWTH AM., DANGEROUS BY DESIGN 17 (2019), https://smartgrowthamerica.org/app/uploads/2019/01/Dangerous-by-Design-2019FINAL.pdf [hereinafter DANGEROUS BY DESIGN] (“Even after controlling for differences in population size and walking rates, we see that drivers strike and kill people over age 50, Black or African American people, American Indian or Alaska Native people, and people walking in communities with lower median household incomes at much higher rates.”).


34. Bartlett et al., supra note 21.


37. Traffic Calming 101, PROJECT FOR PUB. SPACES (Dec. 31, 2008), https://www.pps.org/article/livememtraffic [hereinafter TRAFFIC CALMING]. Traffic calming is a concept broader than just slowing down vehicles. It was crafted in Germany, and “[i]t is founded on the idea that streets
down cars, making them less dangerous. Other cost-efficient ways to slow down traffic and make walking safer and thus, more attractive are: diverters; roadhumps; neckdowns; raised medians; or pedestrian crossings, which are not always available. Given that pedestrian safety is not taken into account when assessing car safety, urban landscape improvements are key to ensuring that people feel comfortable walking. Effective improvements include making sidewalks wider by devoting less space to parking spots and using bike lanes or street furniture as buffers to protect pedestrians.

3. Greener: Sidewalks Are a Tool to Mitigate Climate Change

Transportation emissions are the major source of greenhouse gas (“GHG”) emissions in the United States and also contribute to local pollution with “particulate matter (PM), nitrogen oxides (NOx), and volatile organic compounds (VOCs).” If there are sidewalks, more trips will be made on foot and pollution will be reduced. The decrease in people driving in metro areas since the 2000s suggests that the presence of sidewalks can contribute to a change in transportation modes.

Cities around the world have jumped on the bandwagon of reducing emissions; these cities want to consolidate the reduction achieved during the COVID-19 lockdown. By reducing automobile pollution, cities will be saving lives. Studies show that automobile pollution causes more deaths than automobile crashes. For example, some data suggest that those who have been exposed to high levels of pollution are more likely to die from the coronavirus. One of these cities is Milan, which was the epicenter of the Italian tragedy and one of the most polluted urban areas in Europe. Milan is reimagining the city by expanding sidewalks and setting up bike lanes to should help create and preserve a sense of place, that their purpose is for people to walk, stroll, look, gaze, meet, play, shop and even work alongside cars - but not [be] dominated by them.”

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39. Id.
40. Id.
41. Id.
43. FRANK ET AL., supra note 17, at 28; CROSSCUT, supra note 17.
44. Peters, supra note 22.
46. Fabio Caiazzo, Akshay Ashok, Ian A. Waiz, Steve H.L. Yim & Steven R.H. Barrett, Air Pollution and Early Deaths in the United States. Part I: Quantifying the Impact of Major Sectors in 2005, 79 ATMOSPHERIC ENV’T 198, 207 (2013) (“Combustion emissions in the U.S. are found to be responsible for ~200,000 premature mortalities due to long-term exposure to increased PM2.5 concentrations, and ~10,000 premature mortalities due to exposure to increased ozone concentrations.”).
ensure that people who go back to work and fear public transportation do not turn to their private cars.47

More pollution-reduction benefits can be reaped if construction or improvement of sidewalks targets connection with public transit, routes to school,48 and connection with mixed-use areas. The relationship goes both ways: more and better planned public transit, as well as other road reconfigurations, may help make walking more attractive.

Sidewalk design also affects the environment and may boost environmental benefits. For example, one measure that increases walkability and contributes positively to the environment is tree canopy.49 Trees provide us with shade, a buffer from cars, and a habitat for urban species.

4. Socially Connected: Sidewalks Increase Social Capital

Sidewalks also contribute to creating a sense of place and community,50 even in the era where civic engagement may happen online.51 A study in...


48. For an example of an initiative targeting construction of routes to school, see Safe Routes to School, SAFE ROUTES P'SHIP, https://www.saferoutespartnership.org/safe-routes-school [https://perma.cc/U75E-E37F].


50. “Walkable streets bring people together who might not otherwise meet. In a classic 1960s study, people who lived on streets with more car traffic were less likely to know their neighbors.” Peters, supra note 22; see also JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 50 (Vintage Books 1992) (1961) (describing the interactions as “sidewalk ballet”).

Galway, Ireland, shows that those who live in walkable communities have 80 percent more social capital than those who depend on vehicles. As Senator Markey said:

Sidewalks are far more than a means of transportation, they are a means of economic growth and community development, and we must make them safe and accessible for everyone . . . . When we have complete streets, we can have complete communities – comprehensive centers for employment, education, health care, civic life, and commerce.

Both the sense of community and the physical activity on sidewalks translate into people living happier lives. Furthermore, sidewalks are where everyone is exposed to people from all walks of life, even if they do not interact, making citizens informed voters. In fact, planners are now advancing the concept of “sticky streets” or “places where people linger and stay around.”

5. Wealthier: Sidewalks Increase Property Values

From a purely economic standpoint, those who own property without sidewalks should want them. Sidewalks increase property value. According to a 2016 study by RedFin, “one [W]alk[,] [S]core point can increase the price of a home by an average of $3,250 or 0.9%.” This figure will probably be higher after COVID-19 lockdowns. The effect varies depending on the

54. See Peters, supra note 22.
55. BENJAMIN ROSS, DEAD END: SUBURBAN SPRAWL AND THE REBIRTH OF AMERICAN URBANISM 20 (2014) (explaining that immigrant workers at clothing manufacturers were sharing the sidewalks with high-end shoppers in the 5th Avenue district in New York).
58. “Walk Score is an algorithm that estimates the walkability of every address in the United States on a scale of 0 to 100 based on its proximity to a number of common destinations like schools, stores, coffee shops, parks and restaurants.” Cortright, supra note 23; Walk Score Methodology, WALK SCORE, https://www.walkscore.com/methodology.shtml [https://perma.cc/YM2J-CA3] (last updated 2021).
59. Goldstein, supra note 23.
area’s density, among other factors, but it is significant no matter whether you live in San Francisco or in Phoenix. Moreover, the increase in value is more pronounced once a certain level of walkability is achieved. Even if walkability may encompass more than just sidewalks, such as proximity to the city center, a follow-up study controlled for distance to the business district, and the effect of walkability was still significant.

B. ARGUMENTS AGAINST SIDEWALKS

While the benefits of sidewalks appear to be overwhelming, and today some suburbs are adding them even if they are expensive, some residents still oppose them. The perspective of the suburbs is helpful in understanding the arguments against sidewalks. However, the opposition may exist elsewhere, as there are many urban neighborhoods with blocks without sidewalks or blocks with interrupted sidewalks.

The suburbs are the place where the sidewalk ends because many were created to be the opposite of urban areas. Urban areas were dirty, bustling, and had sidewalks. Not having sidewalks signaled their difference from urban areas. The suburbs claimed to be rural and, in many cases, high-class. This reasoning is flawed, as many rural areas have sidewalks, and some suburbs were built with them as an advertised amenity.


61. Bokhari, supra note 23.
63. Id.
65. See ROSS, supra note 55, at 15-16.
Another argument suburban residents use against sidewalks is that the presence of sidewalks compromises their privacy. Privacy is not necessarily more compromised by having sidewalks than by having passersby look into your house from the roadway. Relatedly, some argue that sidewalks invite crime, but there is no evidence. In fact, others argue quite the contrary: Sidewalks will invite pedestrians, and more eyes on the street should increase safety. Perhaps the argument about crime is connected to the fear that sidewalks would invite in “people who do not belong.”

In existing neighborhoods without sidewalks, some homeowners may be wary of losing their property because sidewalks may be installed on their front lawn. If their property line extends into the road, they may not realize that even now, without a sidewalk, there may be a right of way encumbering their property, perhaps via a prescriptive easement. If there is no right of way, the municipality may need to acquire the right of way, perhaps using eminent domain if need be, thus compensating owners.

Some oppose sidewalks, arguing that paving front lawns is bad for the environment. This critique is not unfounded. Paved surfaces affect runoff. Runoff, that is, water not absorbed into the ground, carries pollution and...
debris to the sewers and waterways. However, sidewalks could be built in paved space now occupied by private vehicles, be it the road or parking spots, and, even if not, there are materials that mitigate the lack of permeability. Furthermore, the production of cement used to pave sidewalks produces CO₂ emissions that may offset the gains from the reduction of Vehicle Miles Traveled (“VMT”), but recent studies suggest that cement also absorbs carbon dioxide from the environment.

Probably the strongest argument against sidewalks is their cost. Sidewalks are expensive. A six-foot sidewalk costs around $12–20 per linear foot, amounting to $150,000–250,000 per mile. These figures are relatively inexpensive compared to other infrastructure. Sidewalks, however, often require more than just pouring concrete. Curb, gutter, connections, trees, and ADA required accessibility adds quickly to the tab. Current sidewalks tend to be between four and six feet wide. As such, if COVID-19-like social distancing needs to be implemented, these narrow sidewalks must be one-way only. Ideally, future sidewalks should be wider to prepare for future pandemics. Wider sidewalks will be even more expensive.

Although sidewalks are still inexpensive compared to other infrastructure, municipalities in many places shift the cost to homeowners, freeing funds to pay for probably less environmentally friendly amenities like roads. In some places, like Boston, the local government shoulders the costs of sidewalks. Who is responsible for paying for sidewalks is not explained by

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81. See Gwen Aviles, An Urban Planner Mapped Every NYC Street, Showing It’s ‘Extremely Difficult’ to Maintain Social Distance, NBC NEWS (Apr. 22, 2020, 4:35 PM), https://www.nbcnews.com/news/us-news/urban-planner-mapped-every-nyc-street-showing-it-s-extremely-n1189936 [https://perma.cc/TZ9Y-QD85] (noting pedestrians were walking in the street to avoid congestion, which prompted “call[s] for New York Mayor Bill de Blasio to designate certain streets for pedestrians only”).
82. See Zipper, supra note 10 (quoting Emiko Atherton, who noted: “[d]epending on your jurisdiction, the homeowner or the city has to pay for [the sidewalk]”).
83. Id.
the local political majority, and sometimes varies from municipality to municipality. Paying to build a sidewalk may be a considerable cost for many household finances. Even if property values are increased when sidewalks are installed, many may still not want to pay for them upfront as they believe they are unnecessary, or they believe that they have already contributed to the common good by paying their property taxes.

Beyond construction, property owners may be concerned about maintenance costs and potential liability. Both maintenance and liability depend on particular local and state regulation. Nonetheless, landowners are right in many locations: not only may they be responsible for fixing the sidewalk, but they may also be responsible for snow removal; weed cutting; and litter clean-up on the sidewalk in front of their property, while the city cleans up the roads. This is an example of how cities prioritize the automobile over pedestrians. Homeowners may put off maintaining the sidewalk unless there is some enforcement mechanism to require repairs. Lack of enforcement, costs, and the presence of more rental properties explain why low-income neighborhoods have sidewalks in poor condition.

In order to build sidewalks in localities where homeowners pay for sidewalks, municipal regulation and policy should account for cost-sharing solutions both to mitigate stark opposition from neighbors who do not want

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85. Id.; SUSTAINABLE STREETS, supra note 79, at 6–13.

86. Certain states and municipalities allocate responsibility for sidewalk maintenance and liability for potential accidents differently. See, e.g., CONN. GEN. STAT. § 13a-149 (2020) (stating that parties bound to keep roads or bridges in repair may be liable for damages caused by defects in either); N.Y.C., N.Y., ADMIN. CODE § 7-210 (2021) (placing responsibility for sidewalk maintenance and liability for damages caused by “failure to maintain sidewalk in a reasonably safe condition” on the property owner and not the city); TEX. CIV. PRAC. & REM. § 101.022 (2019) (attributing to governmental units “only the duty that a private person owes to a licensee on private property” for claims arising from premise defects); Heather Leighton, As Houston’s Sidewalk Backlog is Getting Unlogged, Issues Remain, KINDER INST. (Aug. 28, 2019), https://kinder.rice.edu/urbanedge/2019/08/28/who-manages-repairs-fixes-sidewalks-houston [https://perma.cc/CE47-zQ5A] (noting that “[a]cross Houston, it’s the property owner’s responsibility to maintain the sidewalks in front of their property, but there aren’t any ordinances that keep property owners accountable”).

87. E.g., Päivi Rannila & Don Mitchell, Syracuse, Sidewalks, and Snow: The Slippery Realities of Public Space, 37 URB. GEOGRAPHY 1070, 1071 (2016) (noting that city codes in Syracuse “require[ed] that property owners clear the sidewalks that cross their property after every snowfall”).


89. See Rannila & Mitchell, supra note 87, at 1084–85 (”[T]he interests of people are subordinated—in law and in practice—to the interests of their cars . . . .”).

to foot the bill,\(^91\) and to stop subsidizing motor vehicles and instead socialize the cost of pedestrianization, as some municipalities are doing.\(^92\)

III. WHAT COVID-19 LOCKDOWNS REVEAL ABOUT OUR SIDEWALKS

COVID-19 lockdowns have illuminated both challenges and opportunities for our sidewalks, the last commons, and the last public space.\(^93\) COVID-19 cooped us up in our homes. Our gyms were closed. Our go-to bars for an after-work drink were closed. Our preferred coffee shop was closed. But our sidewalks were open. On our sidewalks, we could exercise and see other people.\(^94\) Once things started to reopen, our sidewalks could carry us there. Many had never carefully considered our sidewalks and came to realize their inexistence in certain areas, their intermittency in some streets, and the state of disrepair in other zones.

COVID-19 also made us realize that most sidewalks are not wide enough. Most sidewalks are required to be between four and six feet. To comply with social distancing norms, they would have to be single direction,\(^95\) which is difficult in practice.\(^96\) Additionally, the six feet of sidewalk are not always unobstructed due to architectural elements, trees, electric scooters, and blackboards announcing business specials. Therefore, wider sidewalks would also be advisable to promote walkability and allow for private uses of the sidewalk, like terraces.\(^97\) Sidewalks have been described as a commons, and being the last remaining public space, their space is contested.\(^98\) More space


\(^93\) See generally Casado Perez, supra note 56 (highlighting that although the COVID-19 pandemic heightened the importance of sidewalks in the daily lives of Americans, cities are increasingly privatizing sidewalks).


\(^96\) Aviles, supra note 81.

\(^97\) NAT’L ASS’N CITY TRANSP. OFFS., supra note 37.

will not necessarily mitigate all conflicts, but should be able to accommodate more types of uses and users.

The lockdowns have also shown where the space for pedestrianization must come from: space normally used by cars, either the road itself or parking spaces. During the COVID-19 pandemic, more than 200 cities around the world (most were in Europe) announced road closures. In Europe, Milan is a great example. While pandemic restrictions may be easing, some of the changes implemented during lockdown are not only staying, but also expanding. Milan has increased their sidewalk width and the miles of bike lanes to nudge commuters to use non-polluting transportation methods. This is not a new initiative; New York closed some streets for disadvantaged children to play as early as 1914. The recent pandemic lockdowns made closing streets a common measure in cities across the world. Sidewalks were already too narrow to allow for social distancing under normal pedestrian traffic. But during the lockdown, with people spending most, if not all, of their time at home, more people are walking on the street, and more of the hospitality business is done on the sidewalk because of indoor dining closures. Accordingly, cities needed to widen pedestrian space by taking space from cars. In New York or Chicago, restaurant terraces are now on parking spots or formerly no-parking areas (enabled to make sure cars

Henry E. Smith, *Semicommon Property Rights and Scattering in the Open Fields*, 29 J. LEGAL STUD. 131 (2000) (determining “[a] semicommuns exists where property rights are not only a mix of common and prime rights, but both are significant and can interact”).

99. See generally Casado Perez, *supra* note 56 (discussing the tension between the public nature of sidewalks and the regulations that have increasingly favored subsets of the public).

100. Paris plans to eliminate 72 percent of its on-street parking to create bike lanes in order to make the bike an alternative to public transportation. TransAlt, *Op-Ed: Here Are Some Cities Getting Open Streets Right*, STREETSBLOG USA (May 1, 2020), https://usa.streetsblog.org/2020/05/01/op-ed-heres-some-cities-getting-open-streets-right [https://perma.cc/4YB6-K87K].


could see pedestrians), taking the idea of a parklet\footnote{Margolies, supra note 105; Porter, supra note 104. For more information on parklets, see Casado Perez, supra note 56, at 39–41.} to a whole new level.\footnote{Another example is Oakland. It plans to open 10 percent of its streets. Holland, supra note 57.} The urgent need to reactivate the economy, the lockdown orders, and the rise of teleworking made these changes easier to implement. Under normal circumstances, local neighbors would have strongly opposed those changes.\footnote{Noah M. Kazis, Transportation, Land Use, and the Sources of Hyper-Localism, 106 IOWA L. REV. 2339, 2360 (2021).} But these changes should be made permanent.

Taking space back from cars for pedestrians has other positive consequences, in addition to ensuring more space for pedestrians. First, it increases business traffic. In fact, if the space gained from cars is made permanent, more business opportunities should flourish. While it may seem that not allowing traffic would discourage business, before the pandemic, Pearl Street’s businesses in Brooklyn (New York) saw a 172 percent increase in revenue once the street was closed to traffic.\footnote{TransAlt, supra note 100. The economic benefits are not the result of COVID lockdowns. A study from 2013 demonstrated this. N.Y.C. DEP’T OF TRANSP., THE ECONOMIC BENEFITS OF SUSTAINABLE STREETS 5 (2013), https://www.nyc.gov/html/dot/downloads/pdf/dot-economic-benefits-of-sustainable-streets.pdf [https://perma.cc/88D8-MG6L].} Second, it reduces traffic and pollution and increases safety. If the road is narrower, traffic slows down, and pedestrians are safer.\footnote{JAMES M. DAISA & JOHN B. PEERS, NARROW RESIDENTIAL STREETS: DO THEY REALLY SLOW DOWN SPEEDS? 2 (1997), https://nacto.org/wp-content/uploads/2015/04/narrow_residential_streets_daisha.pdf [https://perma.cc/V8PR-ZDVH].} While many will fear that these strategies will translate into worse congestion because some streets would have less space for cars, studies on pedestrianization of several European cities show that often, traffic evaporates.\footnote{EUROPEAN COMM’N, DIRECTORATE-GENERAL FOR THE ENV’T, supra note 2, at 18–19.} Third, if the road is not affected, but sidewalks eat up the space for parking, traffic may also be reduced because a large parking supply incentivizes more driving.\footnote{Eric Jaffe, The Strongest Case Yet That Excessive Parking Causes More Driving, BLOOMBERG CITI LAB (Jan. 12, 2016, 7:26 AM), https://www.bloomberg.com/news/articles/2016-01-12/study-the-strongest-evidence-yet-that-abundant-parking-causes-more-driving [https://perma.cc/CTqC-DPJE]. For a comprehensive account of the different costs that oversupply of parking entails, see generally DONALD SHOUP, THE HIGH COST OF FREE PARKING (2017).} Additionally, rethinking requirements for off-street parking could boost sidewalks, as “[p]arking lots and garages deaden sidewalks.”\footnote{Ross, supra note 55, at 205.}

During the lockdown, some street closures have been made with plastic cones or, at best, Jersey barriers.\footnote{Zipper, supra note 10.} Such unsafe practices were possible because very few had a reason to drive during the pandemic. In the long term, if these changes were made permanent, investment would be required to
ensure that pedestrians are safe in the space taken back from cars. More ambitious measures are possible: Brussels is giving priority to pedestrians in unprecedented ways in its city center. 114 Cars must abide by a 12 miles per hour speed limit, and pedestrians can walk wherever and have the right of way. 115 If this seems unattainable in the United States, at least a more traditional, but wider sidewalk, with some physical barrier between the road and the pedestrian area—parterres, for example—should become the norm.

IV. SIDEWALK REQUIREMENTS: TODAY AND IN OUR WALKABLE FUTURE

Sidewalks are a space where multiple governing agencies interact. Sidewalks in Philadelphia are governed by a myriad of agencies. 116 For example, the Philadelphia Streets Department controls when you need a permit to do construction on a sidewalk and decides on bike racks, street furniture, and other encroachments. 117 The Water Department governs the stormwater features. 118 The utilities running on the sidewalk depend upon the Board of Highway Supervisors. 119 But depending on where in Philadelphia you live, even more institutions may be involved, as Business Improvement Districts have power over the sidewalks. 120 Very rarely in any given jurisdiction is there any sort of task force coordinating all these different agencies. 121 While having more sidewalks would go a long way, properly managing them could get us even further. A more integrated management should be the norm.

The previous explanation is missing an important agent: the property owner. In some places, the property line for private owners finishes before the

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115. Id.


117. See id.


119. Saksa, supra note 116; Public Works, Department of Board of Highway Supervisors, CITY OF PHILA. (Nov. 8, 2000), https://www.phila.gov/phils/docs/inventory/graphics/agencies/A0/a83-100.htm [https://perma.cc/XX7J-PUA6].

120. This is the case, for example, in the acclaimed Center City District. Göktuğ Morçöl, Center City District: A Case of Comprehensive Downtown BIDs, 3 DREXEL L. REV. 271, 271 (2010); see also Casado Perez, supra note 56, at 23–29.

sidewalk—in others, it arrives at the center of the road. In the latter cases, the public has a right of way, which may exist—even over their front yards—if there is no sidewalk. That right of way may be defined in a deed, or it can arise implicitly by prescription (under a lost grant theory), custom, or implied dedication. No matter whether the city owns the sidewalk or the public has a right of way, the property owner has a role to play, as they may be responsible for construction and upkeep of sidewalks.

While the focus is on the municipal level, it is important to note that the federal government can play a role. The federal government has a long history of pushing for the preeminence of the automobile and offering funds for roads or undertaking the construction itself. This could change, and the federal government could push sidewalks to the top of the agenda. Transportation bills have included funding for sidewalks. The FAST Act of 2015, recently reauthorized, has two programs that could be used for sidewalk improvement. First, the Highway Safety Improvement Program’s (“HSIP”) funds can be used to improve pedestrian safety. Second, the Surface Transportation Block Grant Program (“STBG”), referred to as the TAP Set-Aside, “provides funding for programs and projects defined as transportation alternatives, including on- and off-road pedestrian

122. Whether the property line arrives to the curb or the middle of the street will depend on the particular deeds. For an example where old properties have property lines extending to the middle of the road but probably encumbered by an easement, see Dremann, supra note 74.

123. McFetridge, supra note 68.


... facilities."129 As part of the latter, there are funds for Safe Routes to School.130

For most of those funds, sidewalks compete with other municipal projects and priorities to which local governments give preeminence.131 A federal funding scheme specifically targeting sidewalks would be more effective. It is important to note that another federal statute, the Americans with Disabilities Act (“ADA”), can positively impact our sidewalks.132 This Act does not require new sidewalk construction, even in areas without sidewalks,133 but requires new and amended sidewalks to be accessible.134 Litigation may ensue whenever a city fails to comply with ADA requirements, but the case-by-case litigation is insufficient to prompt a qualitative change in our sidewalks.135

This Essay focuses on municipal regulations and policies aiming to have more miles of wider, well-maintained sidewalks. As stated, key aspects to having more sidewalks are who can, or must, build them, and who is going to pay for them. This applies both to construction and maintenance because an unusable sidewalk is an obstacle to pedestrianization. In this Section, this Essay will differentiate between: (1) existing developed areas without sidewalks or with sidewalks that are not wide enough; and (2) new developments, where sidewalks are yet to exist. Details vary across the 15,000 municipalities in the United States, but examples of some common regulatory mistakes and successes regarding sidewalks can shed some light on this topic.

### A. Existing Developments

The right of way benefits not only cars, but also pedestrians. Without sidewalks, pedestrians share the space, that is, the road, with cars, which discourages walking. Building sidewalks where there are none is not an easy

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129. Id.

130. Safe Routes to School initiatives are not new. In the late 1990s, the Bronx and Florida piloted programs, transplanting them from Europe. History of Safe Routes to School, SRTS GUIDE, http://guide.saferoutesinfo.org/introduction/history_of_srts.cfm [https://perma.cc/ZG58-YJ8X] (last updated July 2015). In the 2000s, the United States Congress provided funds for it for the first time. Id. By promoting walking and cycling to school, these programs have the potential of reducing up to 14 percent of traffic during morning rush hour. See Safe Routes to School Programs, U.S. DEP’T OF TRANSP. (Aug. 24, 2015), https://www.transportation.gov/mission/health/Safe-Routes-to-School-Programs [https://perma.cc/qQ5A-2GJ3]. Furthermore, walking or biking to school improves the physical health of the students. Id. The Safe Route to School program shows that not only may municipalities have an impact on sidewalks, but also school districts or even schools. See id. So, we could expect infra-municipal entities engaging in similar programs to enhance sidewalks.


133. Id.

134. ROBIN PAUL MALLOY, LAND USE LAW AND DISABILITY 165 (2016).

fix, though. It is part of undoing the urban sprawl. For example, mid-twentieth century suburbs included many dead ends and superblocks, leading to wide roads with no sidewalks and multiple lanes.136 In some suburban areas, there may be sidewalks inside a subdivision; but those sidewalks lead nowhere walkable.137

If a new sidewalk needs to be added, it either needs to occupy space previously occupied by cars (either parked or circulating on the road), or the front lawn of the buildings in the street if the right of way encumbered that area.138 The proposal that this Essay advances to mitigate climate change issues is for pedestrians to reclaim the streets and gain space from automobiles. In fact, right of way easements were first meant for pedestrians. Accordingly, if the municipality reallocates space for cars to pedestrians, there is no change in the scope of the easement.139

Furthermore, our pandemic experience suggests that our sidewalks need to be even wider. The space for cars will be reduced even more if sidewalks are built on both sides of the street. Bicycle lanes or wide shoulders for bicycles need to be protected, as they contribute to the goal of reducing emissions. As a result, the road of the future should be narrower, which makes traffic slow down, even more so if the streets are two-way.140

However, beyond the legality of reallocating space to pedestrians, a central concern is who bears the cost of sidewalk construction. In many towns across the United States, private owners are the ones who must pay.141 Although some oppose sidewalks for reasons other than costs, neighbors are more likely to object to a sidewalk project because it may make a dent in their households’ finances despite the potential increase in the value of their

136. Ross, supra note 55, at 40–41. The Institute of Transportation Engineers mentioned sidewalks when prescribing guidelines for new subdivisions, but their recommendations regarding roads were followed as if they were binding law. See id. at 50–51.
137. Id. at 35–47.
138. For example, in Gunnison County, Colorado, the setbacks are larger if the right of way limits are not clearly defined. Gunnison Cnty., Colo. Plan. Dep’t, Information Sheet: Setbacks 1 (2006), https://www.gunnisoncounty.org/DocumentCenter/View/2162/Setbacks-Information-Sheet-2006 [https://perma.cc/QR9Z-PBMU].
139. “The general rule does not preclude the scope of an easement being adjusted in the face of changing times to serve the original purpose, so long as the change is consistent with the terms of the original grant . . . .” Preseault v. United States, 100 F.3d 1325, 1342 (Fed. Cir. 1996). Jesse Dukeminier, James E. Krier, Gregory S. Alexander, Michael Schill, & Lior Jacob Strahilevitz, Property: Concise Edition 502–03, 511–22 (3d ed. 2017).
141. This is the case in the City of Fate (Texas). The ordinance establishes that the construction and repair must be paid by the homeowner. City of Fate, 50/50 Sidewalk Program 1-2, https://www.cityoffate.com/DocumentCenter/View/903/50?bidId= [https://perma.cc/ESUW-DV4E]. Nonetheless, the City acknowledges the financial commitment that such a measure entails for homeowners and has a program where the cost is shared 50/50. Id. For a general account, see Garbin, supra note 84.
property. Some municipalities, such as Boston, fund sidewalks themselves, using a variety of sources like Safe Routes to School grants from the federal government.142 Whether the municipality or the owner pays depends on each jurisdiction,143 and it is not explained by political factors, location, or size.144 In Fort Worth, the City Charter establishes that while the cost of road improvements will be split between the city and the abutting property owners, “the whole cost of constructing any sidewalk or curb shall be paid by the owners of such abutting property.”145 This is another example of how drivers are prioritized to the detriment of pedestrians. Where homeowners pay for sidewalk construction, political costs may discourage local governments from mandating it.

Beyond the city being able to mandate sidewalk construction or widening, no matter who pays for it, sometimes a percentage of landowners can also petition to have sidewalks installed on the street, subject to city approval, which can make it mandatory for the whole street.146 Beyond this…
collective petition, Fort Worth, like many other municipalities, requires anyone owning a property abutting a street without a sidewalk to install one or pay an in-lieu fee if the owner requires a building permit for an improvement of their property that would translate into an increase in value of more than 50 percent.\textsuperscript{147} While this is a positive move, in Fort Worth and in other municipalities, there are provisions allowing discretionary exceptions to these sidewalk construction rules, which may be granted if, for example, the cost of sidewalk construction is too onerous.\textsuperscript{148} Revision of these discretionary exceptions is necessary. Furthermore, waiving building permit fees for those putting in sidewalks could further incentivize installing them.\textsuperscript{149}

Nashville, a city of around one million inhabitants and where only 20 percent of streets have sidewalks, has another interesting policy. In Nashville, if there is redevelopment or construction done on a property and on a street without sidewalks, the owner can opt for installing sidewalks or an in-lieu contribution.\textsuperscript{150} However, if one owner on that street has opted for installing a sidewalk, the rest of the owners on the street will not be offered the in-lieu contribution option whenever they remodel their properties.\textsuperscript{151} A similar, albeit less demanding approach, exists in Austin, where an in-lieu fee is available, provided no more than 50 percent of the street front already has sidewalks. Owners may prefer to pay an in-lieu fee rather than building the sidewalk because sidewalk upkeep may fall on them and they may even face liability for accidents occurring on the sidewalk.\textsuperscript{152}

\textsuperscript{147} Fort Worth, Tex., Ordinance No. 23658-05-2019 (May 7, 2019). Fort Worth also notes: “Payments so made to the city, . . . shall become part of the permanent street improvement fund and be sacredly preserved therein, and shall not be used in any manner except to make other permanent street improvements, where the cost or part thereof is assessed against abutting property or its owners.”

\textsuperscript{148} Fort Worth, Texas, has an appeals process. Fort Worth, Tex., Ordinance No. 23658-05-2019 (May 7, 2019). Fort Worth may grant individual sites waivers “based on specific site constraints like topography, large trees, and safety issues.”

\textsuperscript{149} Harwood & Wiersig, supra note 146, at 25. In Austin, Texas, the municipality may waive the requirement to install a sidewalk if the development does not generate pedestrian traffic. Austin, Tex., Ordinance No. 20080214-0096 (Feb. 14, 2008). In Belmont, California, the standard is fairly loose, and the sidewalk requirement may be waived when the sidewalk is unreasonable or unnecessary. Belmont, Cal., Code of Ordinances ch. 7, art. III, § 7-13(c) (2016).

\textsuperscript{150} Harwood & Wiersig, supra note 146, at 13, 15.

\textsuperscript{151} Id., § 17.20.120.C.

\textsuperscript{152} See Loukaitou-Sideris et al., supra note 16, at 27, 29.
Construction and maintenance rules that make the property owner responsible, unfortunately, translate into unequal sidewalks. The sidewalks in low-income neighborhoods tend to be in a state of disrepair,\textsuperscript{153} have fewer amenities such as trees, or simply do not exist, as owners do not have the economic resources to undertake their installation. Offering in-lieu fees as an option to sidewalk construction can be helpful if those contributions are directed towards building or improving the most important sidewalks, such as the ones connecting to public transit hubs or schools, and reducing sidewalk inequity by investing in low-income neighborhoods.

In sum, to ensure walkability, in the same way that local authorities have been prioritizing drivers and roads, pedestrians and sidewalks must now take the front seat. Property owners should not shoulder the burden of construction and maintenance by themselves.\textsuperscript{154} Cities should fund sidewalk construction and maintenance. Cities may receive funds from other levels of government or from property and sale taxes. Distributing the financial responsibility for sidewalks via taxes is justified by the public goods that sidewalks produce, namely road safety, a healthier, more socially engaged population, and a cleaner environment. Furthermore, making the city financially responsible for sidewalks should mitigate the current inequities in sidewalks where low-income neighborhoods present poorly maintained sidewalks, if at all.

If this best policy option—cities financing sidewalks—is not feasible and cities cannot undertake city-wide sidewalk construction, widening, and repair, cities should make sidewalk construction mandatory for existing developments undergoing serious construction work even if, for a while, that results in patchwork-like sidewalks. In municipalities suffering from deep sidewalk disparities, local governments could offer the choice between sidewalk construction or an in-lieu fee to the owners of properties undergoing construction work and earmark those fees to fund neighborhood-wide programs for low-income areas. This in-lieu fee approach should be taken only if no other funds can be directed to improve the walkability of low-income neighborhoods. Finally, it is important that the construction of sidewalks or the fee are mandatory and that the exceptions to these rules are non-arbitrarily granted.

\textsuperscript{153} Kate Lowe, \textit{Environmental Justice and Pedestrianism: Sidewalk Continuity, Race, and Poverty in New Orleans, Louisiana}, 2598 TRANSP. RSCH. REC: J. TRANSP. RSCH. BD. 119, 119–23 (2016) (showing how the income level of the neighborhood correlates with the state of the sidewalks in New Orleans, where owners pay for them); Zipper, supra note 10 (describing the Denver 2017 sidewalk grant program for owners in low-income neighborhoods).

B. NEW DEVELOPMENTS

New subdivisions have not always been developed in places with public services to serve the population that will live in the new developed area. Cities could not afford to build infrastructure for such new subdivisions.\(^\text{155}\) New developments not only require streets within the area being developed, but also a range of public services in the nearby areas. A new development means children at public schools, more traffic, and, hopefully, more pedestrians. Accordingly, municipalities started to require the developer to pay for off-site improvements.\(^\text{156}\) There is important case law stating that the conditions imposed on a development permit must be substantially connected to the impacts of the project and roughly proportional to those.\(^\text{157}\)

Any new development should be expected to increase pedestrian transit. Hence, off-site sidewalk construction, expansion, and repair should be covered by the developer, given the current model. Developers have fought this in the past. For example, in 1977, a developer argued that providing sidewalks for subdivision kids to go to public school was a safety hazard.\(^\text{158}\) While these views have evolved substantially, cities often have been more inclined to require off-site improvements on roads than on sidewalks. In some cities, the local ordinances are murky when it comes to off-site sidewalks. Prince George County in Maryland was once one such jurisdiction. Until it passed Bill 2-2012 (“CB-2”) in 2012, sidewalks were not included among the off-site improvements that could serve as a condition for a development permit.\(^\text{159}\) In other jurisdictions, such as Morehead City in North Carolina, the requirement for off-site sidewalks only comprises the thoroughfares adjacent to the property and can be fulfilled by paying a fee.\(^\text{160}\) Those fees fund a sidewalk fund that the city may spend on sidewalks prioritizing the best


\(^{158}\) Valmont Homes, Inc. v. Town of Huntington, 392 N.Y.S.2d 806, 808 (Sup. Ct. 1977); Guardino, supra note 155.


\(^{160}\) Off-site subdivision fee language: “Subdivisions that have frontage on a major thoroughfare, minor thoroughfare as identified in the City’s most current Thoroughfare Plan or other street as identified by the City shall be required to submit a sidewalk for in accordance . . . .” Memorandum from Sandi Watkins, Plan. & Inspections Dir. to Ryan Eggleston, City Manager (July 9, 2020), https://www.moreheadcitync.org/AgendaCenter/ViewFile/Item/692?fileID=4088 [https://perma.cc/KR8S-VQBB] (emphasis added).
interest of the municipality’s public. This may be both a blessing and a curse. In-lieu fees for sidewalk construction in areas adjacent to the development may help redress the distributional issues in sidewalk construction. But it is also a curse because it perpetuates the model of the suburb, where nobody walks.

Still today, exemptions from the requirement of providing sidewalks are allowed, often in vague terms. In Austin, the city may exempt a subdivision from providing sidewalks if the director determines that the new development does not generate pedestrian traffic. This is a pretty loose standard.

In new developments, after a traffic study, the developer commonly builds extra road capacity near the subdivision. The principle is simple: current roads cannot absorb the new traffic coming from the subdivision. While theoretically developers could partly reduce traffic by investing in transit or other transportation modes, including walking, they hardly ever do so and just widen roads. This leads to four problems. First, it solves the perceived problem near the subdivision, but there will be more cars on the rest of the roads that have not been expanded to absorb it. Furthermore, more road capacity translates into more driving, so cars other than those in the subdivision may find driving more attractive. Second, wider roads with more cars make biking and walking less safe. Crossing a four-lane highway is dangerous. Third, compared to sidewalks, once the new or expanded road is built, maintenance costs fall on the municipality. Fourth, this road capacity mandate makes sprawl more attractive. Building new developments in fill-in or already somewhat dense areas is more expensive because more road capacity must be built.


163. Traffic studies, often part of environmental impact statements for a new subdivision, are commonly based on the “Level of Service” standard that looks at the congestion in a particular area and how the new development will contribute to it. Kenneth Stahl, Incorporating Transportation Topics into the Land Use Curriculum, 106 IOWA L. REV. 2451, 2467. Following this model either pushes sprawl by encouraging development where there is currently no congestion or prompts the widening of roads. Id. at 2471. This is changing, though. California now requires traffic studies to be based on Vehicle Mile Traveled (“VMT”) which encourages density. Id. at 2468. For an explanation of the different standards, see id. at 2469–72.

164. Id. at 2471.

165. Id. at 2484.

166. Id.

167. Id. at 2472. In fact, amenities that increase walking attractiveness—such as traffic calming tools like crosswalks—are further discouraged by models focusing on decreasing traffic delays. Id.

168. Id. at 2473.

169. Id.

170. Id.
However, development practices have started to change. Development near transit centers is being incentivized, among other regulatory measures, by exempting it from road capacity requirements or reducing parking requirements. A similar incentive scheme could be in place for developments with a great walkability score or that contribute to the pedestrianization of areas nearby. For example, reducing parking requirements for on-street and off-street parking for developments with great walkability scores would further enhance pedestrianization. First, space that would have been used for on-street parking spots can be used to widen sidewalks or provide some space for businesses that would otherwise occupy the sidewalk. Second, off-street parking requires cuts in the sidewalk, making it less walk-friendly. Third, reducing parking spots discourages driving and the occupation of most of the area covered by a public right of way by cars, thus helping counteract the dominance of the automobile.

Beyond incentives for transit-oriented development, another positive development is that California has adopted Vehicle Miles Traveled (“VMT”) as the methodology to measure the impact of new development in traffic studies. Developments in dense areas with jobs and schools will have a lower

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171. See Liam Dillon & Taryn Luna, California Bill to Dramatically Increase Home Building Fails for the Third Year in a Row, L.A. TIMES (Jan. 30, 2020, 4:49 PM), https://www.latimes.com/california/story/2020-01-29/high-profile-california-housing-bill-to-allow-mid-rise-apartments-near-transit-fails-short [https://perma.cc/G2PZ-6L3Q] (“The [failed bill] would have allowed for the construction of mid-rise apartment complexes near transit and job centers . . . .”). This bill also would have helped meet California’s climate goal because living near transit and job centers results in less driving and therefore fewer emissions. See id. The bill would have allowed cities two years to comply with it. The bill was opposed because of concerns it did not “sufficiently address low-income housing,” would increase gentrification, and would actually increase “single-family neighborhoods away from transit.” Id.

172. Alexandria, Virginia reduces its normal parking “requirement . . . by five percent in the following cases: [1] The building is within one-quarter mile of four or more active bus routes; and [2] the building has a walkability index score of 80 percent or above (buildings with a score of 90 to 100 are eligible for a 10 percent reduction in parking requirements).” Reduced Parking Requirements, LOC. HOUS. SOLS., https://www.localhousingsolutions.org/act/housing-policy-library/reduced-parking-requirements-overview/reduced-parking-requirements [https://perma.cc/BHY4-6JLQ]. Strong Towns keeps track of “[p]rogress on [p]arking [m]inimums [a]cross the [United States].” See Ending Parking Minimums, STRONG TOWNS, https://www.strongtowns.org/parking [https://perma.cc/PG43-PG4S]. On the need to reduce parking requirements, see Donald Shoup, On-Street Parking Management v. Off-Street Parking Requirements, 42 ACCESS ALMANAC 38, 38–39 (2015). Both on-street and off-street requirements impact pedestrianization negatively. Hence, the ordinances that give credits to developers that provide on-street parking, so that they need to provide less off-street parking, should also be discouraged. See, e.g., DENTON, TEX., DEV. CODE § 35-14.5 (2019), https://www.cityofdenton.com/CoD/media/City-of-Denton/Business/Development/Gt20Review/DDCSubchapter14.pdf [https://perma.cc/J57E-KEHE].

173. JEFF SPECK, WALKABLE CITY RULES: 101 STEPS TO MAKING BETTER PLACES 192–93 (2018); see also ROSS, supra note 55, at 205 (arguing that street parking “makes it hard to create walkable downtowns”).

174. Stahl, supra note 163, at 2468.
VMT, hence, sprawl is discouraged. In relation to walkability, better sidewalks can reduce VMT and mitigate the impacts of the project. While traffic studies adopting a VMT approach are more likely to mitigate impacts by investing in transit or pedestrianization than those studies based on road congestion criteria, neither requires it. A mandatory approach is called for given the safety, environmental, and community benefits pedestrianization brings.

Traffic studies assume people will drive. We are a car-centric culture and projecting future demand is based on current practices; therefore, it is politically unpopular to reduce car dependency. Municipal ordinances could encourage pedestrianization by following the model of technology-forcing environmental regulations. When regulating certain pollutants, an agency may decide to impose limits that are hard to achieve today by polluters, but that will prompt companies to be innovative and find new ways to reduce pollution. In urban planning, developers should be required to create policies and amenities that encourage walking, thus discouraging the use of private cars. Santa Clara County in California did not allow Stanford University to build a new development if it increased traffic, prompting Stanford to develop a comprehensive mobility strategy that rewarded employees for not driving to campus. Municipal ordinances should require a certain percentage reduction of future road demand to be fulfilled by improving walkability by building sidewalks connected to amenities. Furthermore, design standards for sidewalks can affect walkability.

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175. Id.
177. Stahl, supra note 163, at 2433–54.
Developers should ensure that, not only are there sidewalks, but also that those sidewalks have shade, are wide enough, and are well-maintained.

V. CONCLUSION

Municipalities, like other levels of government, have prioritized drivers over pedestrians. Given the benefits of sidewalks in comparison to cars, the priorities should change. While cars pollute, sidewalks can reduce emissions. While cars make us sedentary, sidewalks make us active. While cars cost lives, sidewalks improve safety for pedestrians. While cars do not require contact with other members, sidewalks build social capital. COVID-19 lockdowns have made citizens realize the relevance of sidewalks for their daily lives and for economic activity.

Municipalities should embrace policies that create more sidewalks, meaning more miles of wider, well-maintained sidewalks across all neighborhoods. For existing developments, the most straightforward way to achieve that is for the municipality to undertake sidewalk construction. This implies changing current ordinances in many municipalities across the United States, where property owners are responsible for sidewalks. For new developments, local governments should force developers to adopt plans that increase walkability and that erode our car-oriented culture.

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Attractiveness, 17 J. URB. DESIGN 499 (2012) (highlighting how design features of urban environments affect the walkability of the city).