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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.

I.	INTRODUCTION.....	2186
II.	MORE SIDEWALKS.....	2189
	A. ARGUMENTS IN FAVOR OF MORE SIDEWALKS	2189
	1. Healthier: Sidewalks Increase Our Physical Activity	2190

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2. Safer: Sidewalks Save Pedestrian Lives.....	2191
3. Greener: Sidewalks Are a Tool to Mitigate Climate Change	2192
4. Socially Connected: Sidewalks Increase Social Capital.....	2193
5. Wealthier: Sidewalks Increase Property Values.....	2194
B. ARGUMENTS AGAINST SIDEWALKS	2195
III. WHAT COVID-19 LOCKDOWNS REVEAL ABOUT OUR SIDEWALKS.....	2199
IV. SIDEWALK REQUIREMENTS: TODAY AND IN OUR WALKABLE FUTURE.....	2202
A. EXISTING DEVELOPMENTS.....	2204
B. NEW DEVELOPMENTS	2209
V. CONCLUSION.....	2213

I. INTRODUCTION

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 direr 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

1. *Air Pollution Linked with Higher COVID-19 Death Rates*, HARV. T.H. CHAN SCH. OF PUB. HEALTH (May 5, 2020), <https://www.hsph.harvard.edu/news/hsph-in-the-news/air-pollution-linked-with-higher-covid-19-death-rates> [<https://perma.cc/7R7S-2DAG>].

2. Margot Wallström, *Foreword* to DIRECTORATE-GENERAL FOR THE ENV'T, EUROPEAN COMM'N, RECLAIMING CITY STREETS FOR PEOPLE: CHAOS OR QUALITY OF LIFE? 5, 5 (2004), https://ec.europa.eu/environment/pubs/pdf/streets_people.pdf [<https://perma.cc/5ECV-B8V9>].

3. *Id.*

4. See AARP, SIDEWALKS: A LIVABILITY FACT SHEET, https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/334359/Attachment_3_-_Sidewalk_Factsheets.pdf [<https://perma.cc/2WE7-9AUR>] [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,⁵ 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.”⁶ This Essay focuses on the less-traveled path of complete streets: sidewalks.⁷ 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.⁸

While the public right of way over streets initially served mostly pedestrians and horses⁹ 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.¹⁰ 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.

5. *Number of U.S. Aircraft, Vehicles, Vessels, and Other Conveyances*, BUREAU OF TRANSP. STAT., <https://www.bts.gov/content/number-us-aircraft-vehicles-vessels-and-other-conveyances> [https://perma.cc/VWG3-CBVY].

6. *Equity in Complete Streets Policies: Fact Sheets & Research Briefs*, INST. FOR HEALTH RSCH. & POL’Y, <https://www.ihrp.uic.edu/content/equity-complete-streets-policies-fact-sheets-research-briefs> [https://perma.cc/RPB2-453L].

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).

10. David Zipper, *The High Cost of Bad Sidewalks*, BLOOMBERG CITYLAB (June 16, 2020, 1:38 PM), <https://www.bloomberg.com/news/articles/2020-06-16/its-time-to-fix-americas-urban-sidewalk-gap> [https://perma.cc/8AVT-37WK]. In existing cities, the federal government gave funds to ensure the preeminence of the automobile. *Id.* Newer cities, such as cities in the West, just put the automobile first. See *id.*

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,

11. “[P]edestrians get the leftovers,” says Lee Altman, an architect and urban designer at SCAPE who also teaches at Columbia University’s Graduate School of Architecture, Planning, and Preservation.” Caroline Spivack, *New York City Sidewalks Have Failed Us. Here’s How We Can Fix Them.*, CURBED N.Y. (Apr. 23, 2020, 12:07 PM), <https://ny.curbed.com/2020/4/23/21231798/coronavirus-nyc-sidewalk-widths-pedestrians-biking> [<https://perma.cc/3FBB-BqS7>].

12. See Renia Ehrenfeucht & Anastasia Loukaitou-Sideris, *Planning Urban Sidewalks: Infrastructure, Daily Life and Destinations*, 15 J. URB. DESIGN 459, 459 (2010).

13. Laura Bliss, *U.S. Transportation Funding Is Not Created Equal*, BLOOMBERG CITYLAB (July 20, 2017, 2:32 PM), <https://www.bloomberg.com/news/articles/2017-07-20/mapping-how-u-s-states-pay-for-roads> [<https://perma.cc/EZ74-JKUA>].

14. See Ehrenfeucht & Loukaitou-Sideris, *supra* note 12, at 459.

15. Zipper, *supra* note 10.

16. ANASTASIA LOUKAITOU-SIDERIS, RENIA EHRENFUCHT & ROBERT GOTTLIEB, *SIDEWALKS: CONFLICT AND NEGOTIATION OVER PUBLIC SPACE* 189–217 (2009).

are a step in the right direction¹⁷ 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.¹⁸ Mixed-use zoning should aim at ensuring pedestrianization.¹⁹

There are five main advantages of pedestrianization of existing neighborhoods and new developments. First, if sidewalks are present, people walk more,²⁰ making them healthier. Second, sidewalks increase pedestrian safety because there are fewer pedestrian-car crashes.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

17. A study by the Washington State Department of Transportation shows that sidewalks contribute to reducing CO₂ and Vehicles Mile traveled. LAWRENCE D. FRANK, MICHAEL J. GREENWALD, SARAH KAVAGE & ANDREW DEVLIN, WASH. STATE DEP'T OF TRANSP., AN ASSESSMENT OF URBAN FORM AND PEDESTRIAN AND TRANSIT IMPROVEMENTS AS AN INTEGRATED GHG REDUCTION STRATEGY 25 (2011), <https://www.wsdot.wa.gov/research/reports/fullreports/765.1.pdf> [<https://perma.cc/4YQK-HT8N>]; *Sidewalks Are a Neighborhood's Status Symbol, but Do They Help the Environment?*, CROSSCUT. (Apr. 19, 2011), <https://crosscut.com/2011/04/sidewalks-are-neighborhoods-status-symbol-but-do-t> [<https://perma.cc/A2W9-YNEF>] [hereinafter CROSSCUT].

18. *Walking and Cycling as Transport Modes*, EUROPEAN COMM'N: MOBILITY & TRANSP. RD. SAFETY, https://ec.europa.eu/transport/road_safety/specialist/knowledge/pedestrians/pedestrians_and_cyclists_unprotected_road_users/walking_and_cycling_as_transport_modes_en [<https://perma.cc/N7LM-REVN>]; Joseph Stromberg, *Fewer than 4% of Americans Walk or Bike to Work. Here's How to Change That.*, VOX (May 29, 2015, 9:30 AM), <https://www.vox.com/2015/5/29/8682707/walking-biking-cities-transportation> [<https://perma.cc/YD8A-24H8>].

19. Robin King, *We'll Spend Less Time Commuting and More Time Relaxing in the Neighborhoods of the Future*, QUARTZ (Sept. 25, 2018), <https://qz.com/1381118/well-spend-less-time-commuting-and-more-time-relaxing-in-the-neighborhoods-of-the-future> [<https://perma.cc/H734-7HGV>]; see STATE OF FLA. DEP'T OF TRANSP., CONSERVE BY BICYCLING AND WALKING PHASE II REPORT 37, 130–31 (2009), <https://www.fdot.gov/docs/default-source/safety/4-reports/Bike-Ped/CCBPhase2final-report.pdf> [<https://perma.cc/23SE-56BK>].

20. *Sidewalks Promote Walking*, BUREAU OF TRANSP. STAT. (May 21, 2017), https://www.bts.gov/archive/publications/special_reports_and_issue_briefs/issue_briefs/number_12/entire [<https://perma.cc/E6MK-A65K>].

21. Jennifer Bartlett, Brett Graves, Theo Petritsch & Tamara Redmon, *Proven Countermeasures for Pedestrian Safety*, 75 PUB. RDS., no. 5, Mar.–Apr. 2012, <https://www.fhwa.dot.gov/publications/publicroads/12marapr/04.cfm> [<https://perma.cc/CBK9-QPU6>].

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

22. Adele Peters, *50 Reasons Why Everyone Should Want More Walkable Streets*, FAST CO. (Aug. 24, 2016), <https://www.fastcompany.com/3062989/50-reasons-why-everyone-should-want-more-walkable-streets> [https://perma.cc/9NLM-ESKR].

23. Joe Cortright, *The Economic Value of Walkability: New Evidence*, CITY COMMENT. (Aug. 30, 2016), <https://cityobservatory.org/the-economic-value-of-walkability-new-evidence> [https://perma.cc/W762-RZQZ]; Daniel Goldstein, *How a High 'Walk Score' Boosts Your Home's Value*, MKT. WATCH (Aug. 11, 2016, 4:29 PM), <https://www.marketwatch.com/story/how-walk-score-boosts-your-homes-value-2016-08-11> [https://perma.cc/BHG6-PgCW]. The 2016 study has been updated recently. See Sheharyar Bokhari, *How Much Is a Point of Walk Score Worth?*, REDFIN: NEWS (Oct. 6, 2020), <https://www.redfin.com/news/how-much-is-a-point-of-walk-score-worth> [https://perma.cc/9AP7-FVKA].

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 low 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).

25. *Obesity Prevention Source: Urbanization and Obesity*, HARVARD T.H. CHAN SCH. OF PUB. HEALTH, <https://www.hsph.harvard.edu/obesity-prevention-source/obesity-and-urbanization> [https://perma.cc/QC96-ZDQF].

26. Peters, *supra* note 22.

27. *Id.*

28. See generally Russell P. Lopez & H. Patricia Hynes, *Obesity, Physical Activity, and the Urban Environment: Public Health Research Needs*, 5 ENV'T HEALTH 25 (2006), <https://ehjournal.biomedcentral.com/articles/10.1186/1476-069X-5-25#citeas> [https://perma.cc/MCV6-55RN] (discussing street trees promoting physical activity).

29. *Id.*

2. Safer: Sidewalks Save Pedestrian Lives

Pedestrian³⁰ fatalities abound. There is one pedestrian death every 88 minutes.³¹ In 2017, more than 5,000 pedestrians died in the United States, and 137,000 were treated for nonfatal injuries.³² These average figures do not paint the full picture. Minority, low-income neighborhoods see far more pedestrian accidents than wealthier ones.³³ Roads without sidewalks are more likely to have pedestrian crashes.³⁴ Sidewalks can prevent 88 percent of accidents involving cars and pedestrians walking along the road.³⁵ In addition, research demonstrates that as the number of pedestrians rises, the number of injuries falls.³⁶

Sidewalks, planters, chicanes,³⁷ or diagonal parking,³⁸ as well as other items of street design, have a traffic calming effect that contributes to slowing

30. The National Highway Traffic Safety Administration (“NHTSA”):

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.

TRAFFIC SAFETY FACTS: 2017 DATA, NAT’L HIGHWAY TRAFFIC SAFETY ADMIN. 1 (2019), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812681> [<https://perma.cc/U5RX-LAW>].

31. *Id.* (in 2017). For more information, see *Pedestrian Safety*, CDC (Mar. 6, 2020), https://www.cdc.gov/transportationsafety/pedestrian_safety/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fmotorvehiclesafety%2Fpedestrian_safety%2Findex.html [<https://perma.cc/8LPG-RV4W>] [hereinafter *Pedestrian Safety*]; see Gavin R. McCormack, Alan Shiell, Billie Giles-Corti, Stephen Begg, J. Lennert Veerman, Elizabeth Geelhoed, Anura Amarasinghe, & J.C. Herb Emery, *The Association Between Sidewalk Length and Walking for Different Purposes in Established Neighborhoods*, 9 INT’L J. BEHAV. HEALTH & PHYSICAL ACTIVITY 1, 2 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3479072/pdf/1479-5868-9-92.pdf> [<https://perma.cc/4BqJ-L2JU>].

32. NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., *supra* note 30, at 2 tbl.1; *Pedestrian Safety*, *supra* note 31.

33. SMART GROWTH AM., DANGEROUS BY DESIGN 17 (2019), <https://smartgrowthamerica.org/app/uploads/2019/01/Dangerous-by-Design-2019-FINAL.pdf> [<https://perma.cc/CM95-HHLN>] (“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. For an analysis of street design standards, see Sara C. Bronin, *Rules of the Road: The Struggle for Safety & The Unmet Promise of Federalism*, 106 IOWA L. REV. 2153, 2173–80 (2021).

35. Bartlett et al., *supra* note 21.

36. P. L. Jacobsen, *Safety in Numbers: More Walkers and Bicyclists, Safer Walking and Bicycling*, 9 INJ. PREVENTION 205, 205 (2003).

37. *Urban Street Design Guide: Chicane*, NAT’L ASS’N CITY TRANSP. OFFS. <https://nacto.org/publication/urban-street-design-guide/street-design-elements/curb-extensions/chicane> [<https://perma.cc/AK2E-XF6M>].

38. *Traffic Calming 101*, PROJECT FOR PUB. SPACES (Dec. 31, 2008), <https://www.pps.org/article/livememtraffic> [<https://perma.cc/2CXZ-5XST>]. 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.³⁹ 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.⁴⁰ Given that pedestrian safety is not taken into account when assessing car safety,⁴¹ 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 (NO_x), and volatile organic compounds (VOCs).”⁴² If there are sidewalks, more trips will be made on foot and pollution will be reduced.⁴³ 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.⁴⁴

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.⁴⁵ By reducing automobile pollution, cities will be saving lives. Studies show that automobile pollution causes more deaths than automobile crashes.⁴⁶ 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.” *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Smog, Soot, and Other Air Pollution from Transportation*, EPA, <https://www.epa.gov/transportation-air-pollution-and-climate-change/smog-soot-and-local-air-pollution> [<https://perma.cc/7X7A-K8CL>] (last updated Nov. 20, 2020).

43. FRANK ET AL., *supra* note 17, at 28; CROSSCUT, *supra* note 17.

44. Peters, *supra* note 22.

45. Sheila Watson & Imke Verburg, *We Must Prevent a Post-COVID ‘Carmageddon’. Here’s How*, WORLD ECON. F. (Sept. 7, 2020), <https://www.weforum.org/agenda/2020/09/prevent-post-covid-carmageddon> [<https://perma.cc/PWC5-687N>].

46. Fabio Caiazzo, Akshay Ashok, Ian A. Waitz, 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 PM_{2.5} concentrations, and ~10,600 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

47. See Laura Laker, *Milan Announces Ambitious Scheme to Reduce Car Use After Lockdown*, GUARDIAN (Apr. 21, 2020, 3:00 AM), <https://www.theguardian.com/world/2020/apr/21/milan-seeks-to-prevent-post-crisis-return-of-traffic-pollution> [<https://perma.cc/7KXF-MV3K>].

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

49. For examples of the study of tree cover, see generally Thomas Astell-Burt & Xiaoqi Feng, *Does Your Street Have a Lush Tree Canopy? It May Be Making You Healthier*, FAST CO. (Aug. 1, 2019), <https://www.fastcompany.com/90382876/does-your-street-have-a-lush-tree-canopy-it-may-be-making-you-healthier> [<https://perma.cc/7JKE-8S3D>] (reviewing a study showing that both our general health and our psychological health are impacted by tree presence); Bin Jiang, Dongying Li, Linda Larsen & William C. Sullivan, *A Dose-Response Curve Describing the Relationship Between Urban Tree Cover Density and Self-Reported Stress Recovery*, 48 ENV'T & BEHAV. 607, 607–08 (2016) (finding “that viewing tree canop[ies] in communities can significantly aid stress recovery”); Omid Kardan, Peter Gozdyra, Bratislav Mistic, Faisal Moola, Lyle J. Palmer, Tomáš Paus & Marc G. Berman, *Neighborhood Greenspace and Health in a Large Urban Center*, 5 SCI. REPS., Feb. 8, 2015 (describing the relationship between neighborhood greenspace and health); The Nature Conservancy, *Funding Trees for Health: An Analysis of Finance and Policy Actions to Enable Tree Planting for Public Health*, INFRASTRUCTUREUSA (Oct. 9, 2017), <https://www.infrastructureusa.org/funding-trees-health-analysis-finance-policy-actions-enable-tree-planting-public-health> [<https://perma.cc/F6D3-F4RD>] (noting both the benefits of trees in urban places and common barriers to urban tree-planting); Kaid Benfield, *The Case for More Urban Trees*, THE ATLANTIC CITIES (July 31, 2012), <https://www.tukwilawa.gov/wp-content/uploads/DCD-UrbanForestry-The-Case-for-More-Urban-Trees.pdf> [<https://perma.cc/7SDH-KEQ4>] (same).

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”).

51. See Ariel Kennan, Farhaan Ladhani, & Sean Willet, *Collab: A New Digital Tool for Community Participation*, SIDEWALK LABS (May 14, 2019), <https://www.sidewalklabs.com/blog/collab-a-new-digital-tool-for-community-participation> [<https://perma.cc/DS7Q-2C39>]. Sidewalks are forums to create community. There is an initiative called Sidewalk Talk, where therapists enlisted people in different cities to listen to each other on sidewalks. See *Our Story*, SIDEWALK TALK, <https://www.sidewalk-talk.org/about-us> [<https://perma.cc/4SGX-CZGH>].

Galway, Ireland, shows that those who live in walkable communities have 80 percent more social capital than those who depend on vehicles.⁵² 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.⁵³

Both the sense of community and the physical activity on sidewalks translate into people living happier lives.⁵⁴ Furthermore, sidewalks are where everyone is exposed to people from all walks of life,⁵⁵ even if they do not interact, making citizens informed voters.⁵⁶ In fact, planners are now advancing the concept of “sticky streets” or “places where people linger and stay around.”⁵⁷

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]core⁵⁸ point can increase the price of a home by an average of \$3,250 or 0.9%.”⁵⁹ This figure will probably be higher after COVID-19 lockdowns.⁶⁰ The effect varies depending on the

52. See Kevin M. Leyden, *Social Capital and the Built Environment: The Importance of Walkable Neighborhoods*, 93 AM. J. PUB. HEALTH 1546, 1549 tbl.3 (2003).

53. Matthew Reid, *The Unlikely Secret to a Happy Community? Sidewalks*, WICKED LOC.: WATERTOWN (Sept. 5, 2019, 5:15 PM), <https://watertown.wickedlocal.com/news/20190806/unlikely-secret-to-happy-community-sidewalks> [<https://perma.cc/DJ4Q-RYL9>] (this comment by Sen. Markey was part of his sponsorship of the Complete Streets Act) (quotation marks omitted).

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).

56. See Vanessa Casado Perez, *Privatizing Sidewalks* 58 (Working Paper No. 3685459, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3685459.

57. Oscar Holland, *Our Cities May Never Look the Same Again After the Pandemic*, CNN: STYLE (May 9, 2020), <https://www.cnn.com/style/article/cities-design-coronavirus/index.html> [<https://perma.cc/SVEZ-8F6P>] (quoting Professor Jordi Honey-Rosés).

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/YM2L-JCA3>] (last updated 2021).

59. Goldstein, *supra* note 23.

60. Brendan Ward, *Report: Home Prices Increase in Tampa’s Walkable Neighborhoods*, TAMPA BAY BUS. J. (Dec. 8, 2020, 7:03 AM), <https://www.bizjournals.com/tampabay/news/2020/12/08/report-walkable-neighborhoods-in-tampa-see-larger.html> [<https://perma.cc/HH65-AV87>] (noting “[homes] in walkable Tampa neighborhoods are seeing a larger price increase than those in areas dependent on cars”); Peter Lane Taylor, *COVID-19 Has Changed the Housing Market Forever. Here’s*

area's density, among other factors, but it is significant no matter whether you live in San Francisco or in Phoenix.⁶¹ Moreover, the increase in value is more pronounced once a certain level of walkability is achieved.⁶² 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.⁶³

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,⁶⁴ 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.⁶⁵ Urban areas were dirty, bustling, and had sidewalks. Not having sidewalks signaled their difference from urban areas.⁶⁶ 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.⁶⁷

Where Americans are Moving (and Why), FORBES (Oct. 11, 2020, 7:30 PM), <https://www.forbes.com/sites/petertaylor/2020/10/11/covid-19-has-changed-the-housing-market-forever-heres-where-americans-are-moving-and-why/?sh=4d4cc10861fe> [<https://perma.cc/Y96L-SNCA>] (emphasizing that Americans seek walkability).

61. Bokhari, *supra* note 23.

62. Cortright, *supra* note 23.

63. *Id.*

64. Mark Hinshaw, *From Village to City: Bellevue, Washington*, in SUBURBAN REMIX: CREATING THE NEXT GENERATION OF URBAN PLACES 219, 221 (Jason Beske & David Dixon eds., 2d ed. 2018); Eleanor Cummins, *The Surprising Politics of Sidewalks*, POPULAR SCI. (Apr. 10, 2018), <https://www.popsci.com/politics-versus-sidewalks> [<https://perma.cc/G9AL-JAFA>].

65. See ROSS, *supra* note 55, at 15–16.

66. This is not a question of the past; today city councils face opposition when they propose sidewalks. For example, in the Twin Cities, suburban residents resisted the installation of sidewalks, saying sidewalks would “citify” their neighborhood. John Reinan, *A Concrete Case for Suburban Sidewalks?*, STAR TRIB. (June 17, 2016, 12:25 AM), <https://www.startribune.com/a-concrete-case-for-suburban-sidewalks/383363851> [<https://perma.cc/PZ9F-K5CC>]; John Reinan, *Fight Over Suburban Sidewalks a Window onto 21st-Century Life*, SEATTLE TIMES (Nov. 28, 2014, 2:01 AM), <https://www.seattletimes.com/nation-world/fight-over-suburban-sidewalks-a-window-onto-21st-century-life> [<https://perma.cc/BWJ9-YKJS>].

67. David Young, *Suburbs See Sidewalks as Strands in Social Fabric*, CHI. TRIB. (July 22, 1990), <https://www.chicagotribune.com/news/ct-xpm-1990-07-22-9003010831-story.html> [<https://perma.cc/TFX4-GMVF>]; Malcolm Kenton, *Ask GGW: Is There Any Reason Not to Have a Sidewalk?*, GREATER GREATER WASH. (Jan. 21, 2015), <https://ggwash.org/view/37058/ask-ggw-is-there-any-reason-not-to-have-sidewalk> [<https://perma.cc/SAT4-4CLQ>].

Another argument suburban residents use against sidewalks is that the presence of sidewalks compromises their privacy.⁶⁸ 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,⁶⁹ but there is no evidence.⁷⁰ In fact, others argue quite the contrary: Sidewalks will invite pedestrians, and more eyes on the street should increase safety.⁷¹ Perhaps the argument about crime is connected to the fear that sidewalks would invite in “people who do not belong.”⁷²

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,⁷³ perhaps via a prescriptive easement.⁷⁴ 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.⁷⁵

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

68. *Retrofit Sidewalks: What are Some of the Reasons that Some People Don't Want Sidewalks?*, PERILS FOR PEDESTRIANS, <https://www.pedestrians.org/retrofit.htm> [<https://perma.cc/YW9Y-RA4G>] (last updated Nov. 4, 2012) [hereinafter *Retrofit Sidewalks*]; Scott McFetridge, *Some Suburbanites to Sidewalk Backers: 'Stay off Our Lawns'*, SEATTLE TIMES (Nov. 20, 2016, 6:55 PM), <https://www.seattletimes.com/nation-world/some-suburbanites-to-sidewalk-backers-stay-off-our-lawns> [<https://perma.cc/879D-682T>].

69. See Kenton, *supra* note 67.

70. See generally Brian Christens & Paul W. Speer, *Predicting Violent Crime Using Urban and Suburban Densities*, 14 BEHAV. & SOC. ISSUES 113 (2005) (studying the population density in relation to crime in suburban areas and finding there was no positive correlation).

71. Peters, *supra* note 22. Sidewalk safety can also be analogized with the safety of trails. See TAMMY TRACY & HUGH MORRIS, RAIL-TRAILS AND SAFE COMMUNITIES: THE EXPERIENCE ON 372 TRAILS 15 (1998), https://safety.fhwa.dot.gov/ped_bike/docs/rt_safecomm.pdf [<https://perma.cc/59D5-5G3S>].

72. Cummins, *supra* note 64 (quoting urban planning expert Anastasia Loukaitou-Sideris).

73. *Retrofit Sidewalks*, *supra* note 68. El Dorado County (California) sets setback requirements from “the property line or the edge of the easement—whichever is closest.” *Building Services: Measuring Building Setbacks*, EL DORADO CNTY., https://www.edcgov.us/Government/building/pages/measuring_building_setbacks.aspx [<https://perma.cc/DP93-GZCV>].

74. Sue Dremann, *Land Owner Narrows Road to Enforce Property Line*, PALO ALTO ONLINE (Sept. 8, 2017, 6:51 AM), <https://paloaltoonline.com/news/2017/09/08/land-owner-narrows-road-to-enforce-property-line> [<https://perma.cc/9GYK-DSLFL>] (noting prescriptive easements are “rights to use property” that are “obtained by regular use and [are] not purchased, negotiated or granted,” however, “the user does not gain land title”).

75. JOHN G. SPRANKLING & RAYMOND R. COLETTA, PROPERTY: A CONTEMPORARY APPROACH 901 (3d ed. 2015). For an example, see Lauren Abbate, *Camden Could Seize Woman's Land for Sidewalk*, BANGOR DAILY NEWS (Aug. 23, 2020), <https://bangordailynews.com/2020/08/23/news/midcoast/camden-could-use-eminent-domain-to-take-womans-land-for-sidewalk> [<https://perma.cc/6F8Y-BSS2>].

debris to the sewers and waterways.⁷⁶ 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.⁷⁷ 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.⁷⁸

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.⁷⁹ Sidewalks, however, often require more than just pouring concrete. Curb, gutter, connections, trees, and ADA required accessibility adds quickly to the tab.⁸⁰ 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.⁸¹ 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.⁸² In some places, like Boston, the local government shoulders the costs of sidewalks.⁸³ Who is responsible for paying for sidewalks is not explained by

76. Peter Hebert, *The Adverse Environmental Impact of Sidewalks*, PATCH (Jan. 5, 2019, 12:50 PM), <https://patch.com/maryland/rockville/adverse-environmental-impact-sidewalks> [<https://perma.cc/WG8K-SLgW>].

77. See *Soak Up the Rain: Permeable Pavement*, EPA, <https://www.epa.gov/soakuptherain/soak-rain-permeable-pavement> [<https://perma.cc/7YLG-QWCH>] (last updated Nov. 24, 2020).

78. Bruce Lieberman, *Your Sidewalk Is Soaking Up Carbon Pollution*, YALE CLIMATE CONNECTIONS (Feb. 23, 2017), <https://yaleclimateconnections.org/2017/02/your-sidewalk-is-soaking-up-carbon-pollution> [<https://perma.cc/SN6S-5XY7>].

79. SYRACUSE METRO. TRANSP. COUNCIL, SUSTAINABLE STREETS: SIDEWALK REFERENCE MANUAL 6–1 (2014), https://2z5ifp15gecb2z5r2a2wqr8x-wpengine.netdna-ssl.com/wp-content/uploads/2019/12/20140617_FINAL-REFERENCE-MANUAL.pdf [<https://perma.cc/EgZU-H5RD>] [hereinafter SUSTAINABLE STREETS].

80. FORT WORTH PLAN. & DEV. DEP’T, WALK! FORT WORTH 53–59 (2014), <https://www.fortworthtexas.gov/departments/tpw/walkfw> [<https://perma.cc/3SRR-D222>] (noting “costs, prioritization, and potential funding sources”).

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,⁸⁴ and sometimes varies from municipality to municipality.⁸⁵ 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.⁸⁶ 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;⁸⁷ weed cutting; and litter clean-up on the sidewalk in front of their property, while the city cleans up the roads.⁸⁸ This is an example of how cities prioritize the automobile over pedestrians.⁸⁹ 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.⁹⁰

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

84. Randy Garbin, *Where the Sidewalk Funding Ends*, BLOOMBERG CITYLAB (July 27, 2016, 1:13 PM), <https://www.bloomberg.com/news/articles/2016-07-27/why-making-homeowners-fund-sidewalk-repairs-hurts-walkability> [<https://perma.cc/LgUW-36MB>].

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 Unclogged, Issues Remain*, KINDER INST. (Aug. 28, 2019), <https://kinder.rice.edu/urbanedge/2019/08/28/who-manages-repairs-fixes-sidewalks-houston> [<https://perma.cc/CE47-2Q5A>] (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 “requir[e] that property owners clear the sidewalks that cross their property after every snowfall”).

88. *E.g.*, PRINCE GEORGE’S CNTY., MD., CODE OF ORDINANCES, § 23-150 (2021).

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 . . .”).

90. Zipper, *supra* note 10; Meghan E. Irons, *Boston’s Rich and Poor Neighborhoods Show Sidewalk Repair Disparity*, BOS. GLOBE (Mar. 4, 2018), <https://www3.bostonglobe.com/metro/2018/03/04/sidewalk-analysis-city-finds-inequality/qvnLJIMyVCfRxJKjKwrzYK/story.html?arc404=true> [<https://perma.cc/FW7C-GZAX>]; LOUKAITOU-SIDERIS ET AL., *supra* note 16, at 203.

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

91. Vicky Taylor, *Residents Speak Out Against Sidewalk Requirement*, PUB. OP. (Jan. 21, 2017, 1:51 PM), <https://www.publicopiniononline.com/story/news/2017/01/21/residents-speak-out-against-sidewalk-requirement/96829580> [<https://perma.cc/8EA8-M758>].

92. See generally ALTA PLANNING + DESIGN & WATSON ACTIVE, WALK/BIKE NORTHAMPTON: PEDESTRIAN & BICYCLE COMPREHENSIVE PLAN ANNEX (2017), http://www.northamptonma.gov/DocumentCenter/View/6670/Walk-Bike-Northampton-Annex_1-4-2017-Final [<https://perma.cc/8ENS-U5NG>] (detailing comprehensive plans to better enable pedestrian and bicycle transportation in the City of Northampton, Massachusetts).

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).

94. Eleanor Barkhorn, Opinion, *Rules for Using the Sidewalk During the Coronavirus*, N.Y. TIMES (Apr. 5, 2020), <https://www.nytimes.com/2020/04/05/opinion/coronavirus-walk-outside.html> [<https://perma.cc/5E8L-HZYS>]; Katherine Bindley, *Can You Socialize Whole Social Distancing? Sort Of.*, WALL ST. J. (Mar. 26, 2020, 10:41 AM), <https://www.wsj.com/articles/can-you-socialize-while-social-distancing-sort-of-11585233703> [<https://perma.cc/5YHB-LJDQ>]; Zipper, *supra* note 10.

95. David Meyer, *New Yorkers Ignore 'One Way' Instructions on Lower Manhattan Sidewalks*, N.Y. POST (June 30, 2020, 7:09 PM), <https://nypost.com/2020/06/30/new-yorkers-ignore-one-way-instructions-on-sidewalks> [<https://perma.cc/N355-PNDF>].

96. Aviles, *supra* note 81.

97. NAT'L ASS'N CITY TRANSP. OFFS., *supra* note 37.

98. Laura Bliss, *What Ends up on the Sidewalk*, BLOOMBERG CITYLAB (Aug. 17, 2018, 11:37 AM), <https://www.bloomberg.com/news/articles/2018-08-17/san-francisco-scooter-and-poop-wars-hit-the-sidewalk> [<https://perma.cc/3UXP-UADP>]. The myriad of public and private rights brings them under the umbrella of the term, "semi-commons," coined by Henry Smith. See generally

will not necessarily mitigate all conflicts,⁹⁹ 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,¹⁰⁰ 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.¹⁰¹ This is not a new initiative; New York closed some streets for disadvantaged children to play as early as 1914.¹⁰² 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.¹⁰³ 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 areas¹⁰⁴ (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] semicommons exists where property rights are not only a mix of common and private 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*, STREETS BLOG 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>].

101. Laker, *supra* note 47.

102. *A History of NYC’s “Play Streets”*, THIRTEEN, <https://www.thirteen.org/program-content/a-history-of-nycs-play-streets> [<https://perma.cc/3T7A-QU3Y>].

103. See Jane Margolies, *Dining in the Street? As Restaurants Reopen, Seating Moves Outdoors*, N.Y. TIMES (Nov. 10, 2020), <https://www.nytimes.com/2020/06/16/business/coronavirus-restaurants-outdoor-seating.html?action=click&module=RelatedLinks&pgtype=Article> [<https://perma.cc/Q987-64HP>]. In June 2020, during New York’s Phase Two reopening, Governor Andrew Cuomo allowed outdoor dining, essentially requiring New York City bars and restaurants to secure permits to operate on the sidewalk. Tanay Warekar, *Many New York State Restaurants Can Start Outdoor Dining Thursday*, EATER N.Y. (June 3, 2020, 4:00 PM), <https://ny.eater.com/2020/6/3/21279610/new-york-outdoor-dining-phase-two-cuomo> [<https://perma.cc/7UNW-KAFF>].

104. Margolies, *supra* note 103; James Porter, *Converting Parking to People Space on 75th Helps Reenergize Black-Owned Restaurant Strip*, STREETS BLOG CHI. (Sept. 10, 2020), <https://chi.streetsblog.org/2020/09/10/converts-parking-to-people-space-on-75th-helps-reenergize-the-black-owned-restaurant-strip> [<https://perma.cc/RJ47-VQQT>].

could see pedestrians), taking the idea of a parklet¹⁰⁵ to a whole new level.¹⁰⁶ 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.¹⁰⁷ 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.¹⁰⁸ Second, it reduces traffic and pollution and increases safety. If the road is narrower, traffic slows down, and pedestrians are safer.¹⁰⁹ 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.¹¹⁰ 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.¹¹¹ Additionally, rethinking requirements for off-street parking could boost sidewalks, as "[p]arking lots and garages deaden sidewalks."¹¹²

During the lockdown, some street closures have been made with plastic cones or, at best, Jersey barriers.¹¹³ 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

105. Margolies, *supra* note 103; Porter, *supra* note 104. For more information on parklets, see Casado Perez, *supra* note 56, at 39–41.

106. Another example is Oakland. It plans to open 10 percent of its streets. Holland, *supra* note 57.

107. Noah M. Kazis, *Transportation, Land Use, and the Sources of Hyper-Localism*, 106 IOWA L. REV. 2339, 2360 (2021).

108. 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>].

109. 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_daisa.pdf [<https://perma.cc/V8PR-ZDVH>].

110. EUROPEAN COMM'N, DIRECTORATE-GENERAL FOR THE ENV'T, *supra* note 2, at 18–19.

111. Eric Jaffe, *The Strongest Case Yet That Excessive Parking Causes More Driving*, BLOOMBERG CITYLAB (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/CT9C-DPJJE>]. For a comprehensive account of the different costs that oversupply of parking entails, see generally DONALD SHOUP, THE HIGH COST OF FREE PARKING (2017).

112. ROSS, *supra* note 55, at 205.

113. Zipper, *supra* note 10.

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

114. Martin Kuebler, *Green Cities: Making Brussels Fit for Walking and Cycling*, DEUTSCHE WELLE (Feb. 28, 2020), <https://www.dw.com/en/brussels-green-traffic-urban-planning-mobility-congestion-european-green-deal/a-52256405> [https://perma.cc/76SC-NFMA].

115. *Id.*

116. Jim Saksa, *Who Owns the Streets of Philadelphia? It's Complicated...*, WHY (July 13, 2015), <https://why.org/articles/who-owns-the-streets-of-philadelphia-its-complicated> [https://perma.cc/T6ZC-PZJ9].

117. *See id.*

118. *Id.*; Water, PHILA. WATER DEP'T, <https://www.phila.gov/water/pages/default.aspx> [https://perma.cc/3BZM-4TH3].

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/inventor/graphics/agencies/Ao85-100.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.

121. *See* Andrew Small, *CityLab Daily: Sidewalks Are a Dumping Ground for Bad Urban Policy*, BLOOMBERG CITYLAB (Aug. 17, 2018, 12:40 PM), <https://www.bloomberg.com/news/articles/2018-08-17/citylab-daily-sidewalks-are-a-dumping-ground-for-bad-urban-policy> [https://perma.cc/K2B9-8ZPR].

sidewalk—in others, it arrives at the center of the road.¹²² In the latter cases, the public has a right of way, which may exist—even over their front yards¹²³— 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.¹²⁴ 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.¹²⁵ This could change, and the federal government could push sidewalks to the top of the agenda. Transportation bills have included funding for sidewalks.¹²⁶ The FAST Act of 2015, recently reauthorized,¹²⁷ 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.¹²⁸ 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.

124. JUDON FAMBROUGH, EASEMENTS IN TEXAS 1–4 (2013), <https://assets.recenter.tamu.edu/documents/articles/422.pdf> [<https://perma.cc/5N58-UJGJ>]; *What is the Highway Right-of-Way?*, CORNELL UNIV., https://www.clrp.cornell.edu/q-a/009-right_of_way.html [<https://perma.cc/V664-X794>] [hereinafter *What is the Highway Right-of-Way?*]; Carol Rose, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property*, 53 U. CHI. L. REV. 711, 731 (1986). In some jurisdictions, any transfer of rights to the municipality for the purposes of a street is understood to be an easement, not a fee simple, unless expressly stated. *What is the Highway Right-of-Way?*, *supra*; *Kiely v. Graves*, 271 P.3d 226, 231 (Wash. 2012).

125. Gregory H. Shill, *Should Law Subsidize Driving?*, 95 N.Y.U. L. REV. 498, 552 (2020).

126. Zipper, *supra* note 10.

127. Tom Ichniowski, *Near Deadline, Trump Signs Spending Bill with 1-Year Highway-Transit Extension*, ENG’G NEWS-REC. (Sept. 30, 2020), <https://www.enr.com/articles/50228-at-deadline-trump-signs-spending-bill-with-1-year-highway-transit-extension> [<https://perma.cc/VD3L-ZJEJ>]; see also Press Release, U.S. Senate Comm. on Env’t & Pub. Works, Congress Passes One-Year Extension of Highway Funding (Sept. 30, 2020), <https://www.epw.senate.gov/public/index.cfm/2020/9/congress-passes-one-year-extension-of-highway-funding> [<https://perma.cc/6XXG-RPLV>].

128. *Funding for Complete Streets*, N.Y. STATE DEP’T OF TRANSP., <https://www.dot.ny.gov/programs/completestreets/funding> [<https://perma.cc/N7N3-DPHB>].

... 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

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/9Q5A-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.

131. Zipper, *supra* note 10.

132. Robin Paul Malloy & Sarah K. Spencer, *Sidewalks and the Americans with Disabilities Act*, 41 ZONING & PLAN. L. REP., no. 4, 2018, at 1, 3 (2018).

133. *Id.*

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

135. Doron Dorfman & Mariela Yabo, *The Professionalization of Urban Accessibility*, 47 FORDHAM URB. L.J. 1213, 1237–42 (2020).

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 1525, 1542 (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).

140. Robert Steuterville, *Cities Benefit from Restoring Two-Way Traffic*, PUB. SQUARE (July 9, 2019), <https://www.cnu.org/publicsquare/2019/07/09/cities-benefit-one-way-two-way-conversions> [<https://perma.cc/P5GV-BTWZ>].

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/E8UW-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

142. Zipper, *supra* note 10.

143. *Id.* (“They’re ‘the most bizarrely funded thing ever,’ says Emiko Atherton, Vice President for Thriving Communities at Smart Growth America. ‘Depending on your jurisdiction, the homeowner or the city has to pay for it.’”).

144. See Cummins, *supra* note 64.

145. FORT WORTH, TEX., THE CHARTER OF THE CITY OF FORT WORTH ch. 22, § 14 (1983). However, the landowner will only be charged up to the value of the improvement. See *id.* § 7. “New York City law requires property owners to, at their own cost, install, construct, reconstruct, repave and repair the sidewalk adjacent to their properties” *Sidewalk Inspection and Violations*, N.Y.C. DEP’T OF TRANSP., <https://www1.nyc.gov/html/dot/html/infrastructure/sidewalk-inspection.shtml> [<https://perma.cc/BP56-NZKV>] (last updated 2021).

In Champaign, Illinois, “[w]hen there is no public sidewalk on the public right-of-way of the street frontage of a lot, and a building permit is being applied for to construct a structure other than a single- or two-family residence on the lot, issuance of the building permit shall be conditioned upon the applicant’s construction of a sidewalk on the public right-of-way” CHAMPAIGN, ILL., CODE OF ORDINANCES § 30-454(a) (2021).

In Salt Lake City, Utah, “[t]he repair or replacement of a deteriorated sidewalk, drive approach, and curb and gutter in a public way is the responsibility of the adjacent private property owner.” *Sidewalk Program*, SLC.GOV, <https://www.slcc.gov/mystreet/sidewalk-program> [<https://perma.cc/F5M5-PUWL>]. However, for residential properties there is a 50/50 share program where the city pays for 50 percent of construction. *Id.*

In San Diego, California, abutting property owners are responsible for maintaining the sidewalks, and the city also has a 50/50 cost-share program. *Sidewalks*, CITY OF SAN DIEGO: ST. DIV., <https://www.sandiego.gov/streediv/services/roadways/sidewalk#:~:text=There%20are%20over%205%2C000%20miles,the%20Right%20of%20Way> [<https://perma.cc/U4DPQP5C>] (last updated 2021). In January 2020, the city began waiving the \$2,000 permit cost to encourage property owners to repair sidewalks. David Garrick, *San Diego Waiving \$2,000 Fee to Encourage More Sidewalk Repairs*, SAN DIEGO UNION-TRIB. (Jan. 14, 2020, 11:52 AM), <https://www.sandiegouniontribune.com/communities/san-diego/story/2020-01-14/san-diego-waiving-2-000-fee-to-encourage-more-sidewalk-repairs> [<https://perma.cc/GV8D-5GS8>]. This fee was charged on top of what owners would pay the contractors for repairs. *Id.*

146. FORT WORTH, TEX., THE CHARTER OF THE CITY OF FORT WORTH ch. 22, § 14 (1983). Fort Worth discussed the idea of allowing existing neighborhoods without sidewalks to opt-out from this policy, but it was not enacted. RANDLE HARWOOD & DOUG WERSIG, *SIDEWALKS POLICY: FORT*

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.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.¹⁴⁸ Revision of these discretionary exceptions is necessary. Furthermore, waiving building permit fees for those putting in sidewalks could further incentivize installing them.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.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.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.¹⁵²

WORTH 23–26 (2016), http://fortworthgov.granicus.com/MetaViewer.php?view_id=2&clip_id=2495&meta_id=295170 [<https://perma.cc/N2SL-4F4Y>].

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.

FORT WORTH, TEX., THE CHARTER OF THE CITY OF FORT WORTH ch. 22, § 14 (1983). Austin, Texas, also has a fee-in-lieu structure. *Frequently Asked Questions About Sidewalk Fee in Lieu*, AUSTINTEXAS.GOV, <http://austintexas.gov/page/frequently-asked-questions-about-sidewalk-fee-lieu> [<https://perma.cc/6KXU-X5GV>].

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.” 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. 20080214-096 (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).

149. HARWOOD & WIERSIG, *supra* note 146, at 13, 15.

150. Nashville & Davidson Cnty., Third Substitute Ordinance BL2016-493 (Aug. 28, 2017).

151. *Id.* § 17.20.120.C.

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,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.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.

153. Kate Lowe, *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).

154. Boca Raton, for example, after residents requested sidewalks, has approved a substantial budget for sidewalk repair and construction. See *OFF. OF MGMT. & BUDGET, CITY OF BOCA RATON, FLA., FY 2019–20 APPROVED BUDGET* 160, 168, 268 (2019), <https://myboca.us/DocumentCenter/View/23569/Fiscal-Year-2019-2020-Approved-Budget-PDF> [<https://perma.cc/78LS-HTZQ>].

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.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.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.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.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.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.¹⁶⁰ Those fees fund a sidewalk fund that the city may spend on sidewalks prioritizing the best

155. Anthony S. Guardino, *Challenges to Off-Site Condition Requirements*, N.Y. L.J. (Mar. 23, 2011, 12:00 AM), <https://www.law.com/newyorklawjournal/almID/1202487431811/challenges-tooffsite-condition-requirements> [<https://perma.cc/X4HT-CLXQ>].

156. For the history of this development, see Michael T. Kersten, *Exactions, Severability and Takings: When Courts Should Sever Unconstitutional Conditions from Development Permits*, 27 B.C. ENV'T AFFS. L. REV. 279, 285–88 (2000).

157. *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994) (“rough proportionality”); *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 837 (1987) (“essential nexus”); Timothy M. Mulvaney, *Proposed Exactions*, 26 J. LAND USE & ENV’T L. 277, 281–82 (2011).

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

159. Cheryl Cort, *Developers Should Provide Sidewalks, Not Just Road Capacity*, GREATER GREATER WASH. (Apr. 18, 2012), <https://ggwash.org/view/12870/developers-should-provide-sidewalks-not-just-road-capacity> [<https://perma.cc/38V2-H35L>].

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 fee 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.¹⁶¹ In Austin, the city may exempt a subdivision from providing sidewalks if the director determines that the new development does not generate pedestrian traffic.¹⁶² This is a pretty loose standard.

In new developments, after a traffic study, the developer commonly builds extra road capacity near the subdivision.¹⁶³ 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.¹⁶⁴ 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.¹⁶⁵ Furthermore, more road capacity translates into more driving, so cars other than those in the subdivision may find driving more attractive.¹⁶⁶ Second, wider roads with more cars make biking and walking less safe.¹⁶⁷ 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.¹⁶⁸ Fourth, this road capacity mandate makes sprawl more attractive.¹⁶⁹ Building new developments in fill-in or already somewhat dense areas is more expensive because more road capacity must be built.¹⁷⁰

161. See SUSTAINABLE STREETS, *supra* note 79, at 6-7 to 6-8; *Sidewalk Installation*, CITY OF BELMONT, CAL. (July 1, 2017), <https://www.belmont.gov/departments/community-development/planning-and-zoning/sidewalk-installation-policy> [<https://perma.cc/4SJV-EM5K>].

162. AUSTIN, TEX., CODE OF ORDINANCES § 25-6-353 (2008).

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 requirements¹⁷¹ or reducing parking requirements.¹⁷² 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.¹⁷³ 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.¹⁷⁴ Developments in dense areas with jobs and schools will have a lower

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-falls-short> [<https://perma.cc/9ZPY-ELD3>] (“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) [t]he 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.localhousingolutions.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]inimum [r]emovals [a]cross the [United States].” See *Ending Parking Minimums*, STRONG TOWNS, <https://www.strongtowns.org/parking> [<https://perma.cc/PG44-PqJ8>]. 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 (2013). 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%20Review/DDC-Subchapter-14.pdf> [<https://perma.cc/JS7E-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,¹⁷⁵ 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.¹⁷⁶ We are a car-centric culture and projecting future demand is based on current practices; therefore, it is politically unpopular to reduce car dependency.¹⁷⁷ 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.¹⁷⁸ 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.¹⁷⁹ 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.¹⁸⁰

175. *Id.*

176. In many jurisdictions, parking requirements have been used to discourage more dense development. See Katherine Levine Einstein, David M. Glick & Maxwell Palmer, *Neighborhood Defenders: Participatory Politics and America's Housing Crisis*, 135 POL. SCI. Q. 281, 282–84 (2020). See generally Robert Cervero, Arlie Adkins & Cathleen Sullivan, *Are Suburban TODs Over-Parked?*, 13 J. PUB. TRANSP. 47 (2010) (surveying multi-family housing complexes' parking requirements).

177. Stahl, *supra* note 163, at 2453–54.

178. David Gerard & Lester B. Lave, *Implementing Technology-Forcing Policies: The 1970 Clean Air Act Amendments and the Introduction of Advanced Automotive Emissions Controls in the United States*, 72 TECH. FORECASTING & SOC. CHANGE 761, 762–63 (2005); Brigham Daniels, Andrew P. Follett & Joshua Davis, *The Making of the Clean Air Act*, 71 HASTINGS L.J. 901, 929 (2020).

179. *Free Transit and Commuter Benefits*, STAN. TRANSP., <https://transportation.stanford.edu/transit/free-transit-and-incentives> [<https://perma.cc/5ES2-LJPL>] (identifying the transit incentive programs available to Stanford employees); *Clean Air Cash Temporarily Suspended*, STAN. TRANSP. (June 21, 2020), <https://transportation.stanford.edu/news/clean-air-cash-temporarily-suspended> [<https://perma.cc/D8CT-V635>] (explaining the Stanford Clean Air Cash initiative and the pause placed on the program due to the COVID-19 pandemic). Stanford has been required by Santa Clara County to not add commuter trips with past expansions. The county is imposing an even heightened standard for future projects. Marisa Kendall, *Stanford Drops Massive Expansion Plan After Hitting Impasse with County*, MERCURY NEWS (Nov. 4, 2019, 3:43 PM), <https://www.mercurynews.com/2019/11/01/stanford-withdraws-massive-expansion-plan-after-hitting-impasse-with-county> [<https://perma.cc/JFJ4-CLTN>].

180. See generally Arlie Adkins, Jennifer Dill, Gretchen Luhr, & Margaret Neal, *Unpacking Walkability: Testing the Influence of Urban Design Features on Perceptions of Walking Environment*

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.