Cities Fit for People:

The Urban Bill of Rights

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This paper presents a proposed "Urban Bill of Rights," consisting of eleven personal space rights, and seven public space and access rights. The purpose of the Urban Bill of Rights (henceforth the "UBOR") is to provide rights-based principles to guide change in the urban built environment and the processes that create it. It is intended to maintain livability in the current planning context, ensuring that cities become and remain humane and sustainable. The UBOR should be viewed as a critical and constructive partner to contemporary planning prescriptions such as smart growth and New Urbanism, as well as to any traditional urban planning or design approach. With cultural modifications, it can also help rapidly developing countries to build better cities from the outset, cities clearly grounded in the needs of the human beings that inhabit them.

My purpose in this paper is fourfold. Part I, "Naming and Claiming Urban Rights," explicitly states our urban rights. The act of claiming rights rests on the groundwork of naming rights. When confronted suddenly with deservedly unwelcome developments and loss of livability, or even good developments that need refinement, affected citizens are often unable to articulate precisely what their needs are, what aspects of their existing quality of life they feel are at risk, and why these elements are important. The Urban Bill of Rights will help clarify and simplify these issues, adding power to the voice of the people, and defining specific livability goals for decision makers overseeing growing cities.

Part II, "Rights and Wrongs: The Moral Foundation of the UBOR," places urban rights in the moral context of natural law, personal and human rights, access to the commons, and equity, and divorces the right to good quality of life from the property-rights tradition. Property (land)-based thinking dominates our approach to the urban landscape and our jurisprudence, undermining the commons and the needs of those who do not own real property. The right to good quality of life must be based on personhood, not property ownership. The UBOR focuses therefore on human rights, for the most part expressing already recognized human rights in spatial terms. Applying the UBOR means creating urban spaces in which human rights can be exercised.

Part III, "Ideals and Realities," explores how the UBOR fits into current planning practices and urban realities. The built forms, spaces, and networks of a city may be attractive and/or impressive, but they do not create healthy and sustainable cities. Therefore the UBOR focuses not on the designs of spaces, but on the principles and functions that support human health and well-being, that is, what people need and how they get their needs met within the environment. Inevitably this is tied to utilitarianism, to top-down vs. bottom-up planning, to prescription vs. proscription, to political processes, to law enforcement, and to the other causes of the gap between the optimistic planning and the mediocre (or worse) realities of urban life.

Part IV, "What People Need" explains and demonstrates the need for each urban right and the harm that comes from ignoring these rights. The goal is to foster among urban dwellers a sense of entitlement to good quality of life, and the awareness and expectation of the specific attributes that create this quality of life. People cannot effectively claim what they do not feel entitled to, and the rules that deliver rights cannot be enforced merely by police action; the overwhelming majority of people must obey any rule voluntarily. This means the people must accept the legitimacy of, and the need to protect, the "right" that they are either demanding for themselves or refraining from taking from somebody else.

The paper concludes with a summary.

PART I: NAMING AND CLAIMING URBAN RIGHTS

The Urban Bill of Rights

The purpose of the following rights is to ensure human health and well-being in the urban environment, within private and public spaces and the political processes that create them.

Personal space rights

1. The right to see the sky, the sun, and significant greenery (e.g., a vista, a yard, a park, a planted streetscape, or a balcony for plants) from within one's dwelling unit.

2. The right to enjoy natural passive ventilation within one's dwelling unit.

3. The right to enjoy peace and quiet within one's dwelling unit with windows open, especially at night.

4. The right to sleep and experience night without excessive artificial ambient light, and to view the stars in the night sky from a location within one-half kilometer (a quarter mile) of one's dwelling unit.

5. The right to be free in one's home and neighborhood from pollution of air, water, soil, and plant life.

6. The right to be free from undesirable local environmental change caused by poor design and upkeep of public spaces, such as wind and noise canyons, absence of sun or shade, impaired drainage or groundwater supply, etc.

7. The right to neighborhood surroundings free from excessive visual blight.

8. The right to neighborhood surroundings that respect and maintain the cultural integrity of the community.

9. The right to adequate space for storage, hobbies, and other personal activities in and around each dwelling unit, including interior and exterior play space for children in family housing.

10. The right to automobile parking space for each household, usually one to two spaces per household.

11. The right to personal security in one's neighborhood, and to equal and adequate police, fire, and emergency services, which shall not be infringed on the basis of income or neighborhood character.

Communal space and access rights

12. The right of equal access to urban and rural mobility, regardless of income. If automobile use is discouraged through pricing mechanisms, then local, regional, and national transit must be available, adequate, and low cost.

13. The right of access within walking distance of one's dwelling unit to nature, recreation, outdoor exercise, and potential discovery, including parks, open space, and areas inhabited by wildlife.

14. The right of convenient access, on foot if possible, to basic daily needs, such as good quality food at reasonable prices, daily household and medical supplies, and laundry facilities.

15. The right of reasonable access, by foot, private vehicle, or transit, to public schools and places of employment.

16. The right of equal access to the commons and to taxpayer-funded and other public facilities, such as government buildings, libraries, museums, parks, bridges, and roadways, and to public meetings.

17. The right of access to places to sit, and clean and safe public restrooms, in urban public spaces and commercial districts that are intended for use by substantial numbers of people for several hours or more.

18. The right to participate in and guide, through equitable, representative, open, and democratic processes, land use and other policy decisions that affect oneself, one's neighborhood, and one's community.

The goal of the Urban Bill of Rights is to guarantee livability for all urban residents as we increase urban density, so we can build much more healthy and functional cities for the twenty-first century than most of us live in now. The rights are intended to guarantee personal well-being, comfort in the home, and access to urban facilities, resources, amenities, and services.[1] In addition, planning cities according to the eighteen listed urban rights yields the following five important environmental, social, and economic benefits:

1. Reduction of urban sprawl and protection of greenspace: Since ancient times the wealthy have used their country homes to escape the filth, noise, and crowds of the city, but this escape is now becoming environmentally insupportable. Despite some heartening news that a few well-designed urban centers have recently managed to attract young professionals and seniors,[2] urban flight to the suburbs, even in traditional "livable" European cities, continues. The reason is simple: mediocre or poor urban quality of life.[3] By making urban life more attractive and viable for more people, honoring the urban rights will keep more people in cities and thereby protect greenspace and agricultural land from suburban sprawl. In addition, by promoting our own (human) access to nature, and promoting respect for our own (human) environment, the urban rights will encourage our respect for the environments of other species.

2. Reduction of the carbon footprint: By increasing quality of life and preventing overcrowding, the urban rights ensure that most people can live happily in relatively compact urban areas over the long term. This will reduce the carbon footprint of the human species

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[1] Although they are part of the built environment, I do not include in the UBOR those things that are already legally required or essentially guaranteed in American cities, such as structural integrity and minimal habitability of buildings, and access to water, basic services, and utilities. The UBOR is intended to address matters that concern urban planners and designers.

[2] However, the affluent seniors that are returning to cities for access to excitement and culture often retain homes elsewhere for rest and relaxation, so their occasional "return" does nothing to reduce urban or rural sprawl.

[3] A 1997 study showed that only 9% of people wanted to live in a large city, and another 22% in a small or medium-sized city (for source, see note 89, p. 12). According to a 1985 survey, the top reasons for dissatisfaction among city dwellers were noise, crime, traffic, and litter. Overall neighborhood satisfaction was the lowest in cities, higher in suburbs, and the highest in rural areas. Except in the largest metropolitan areas, noise surpassed crime as the greatest perceived problem. "While cities are often thought to offer better services in exchange for putting up with other problems, few people in any areas noted services as a problem and there was little difference by type of area." Source: Alden Speare and Michael J. White, "Optimal City Size and Population Density for the 21st Century," NPG (Negative Population Growth) Forum Series, October 1990, http://www.npg.org/forum_series/optimal_city_size.htm (accessed 12/29/10).

because of the energy efficiencies of urban living.

3. Increased social equity: Because so many low income people live in cities, and these rights apply equally to all people and neighborhoods, the greatest beneficiaries of the urban rights will be the poor, which will increase social and environmental equity. The rights provide critical protections for renters, who mostly occupy high density urban areas. In the future, as suburban life becomes more expensive, the percentage of lifetime urban renters will probably grow. Measures that ensure that renting in urban areas is pleasant for the long term increase both the well-being of individual residents and the health and stability of neighborhoods and communities.[4]

4. Increased personal and social health: The urban rights help create healthy communities by guaranteeing that the basic physiological, psychological, and social needs of human beings are met. Generally speaking, healthy and stable neighborhoods require a diversity of ages. By addressing the needs of children, long-term livability, and the ability to "age in place," the urban rights not only benefit individuals, but also neighborhood health and community continuity.

5. Economic efficiency: By creating healthy communities, fulfilling the urban rights will ultimately save cities money. The downstream economic benefits of urban livability—better physical and mental health, more secure and curious children, reduced crime, increased confidence in government, increased participation in civic life, and so forth—are not as obvious and attractive to city officials as the quick taxes and fees generated by thoughtless development, but they are critical to a city's long-term fiscal health. .

Having named these urban rights, let me immediately state that I propose these rights in the American cultural and economic context and for an American audience. Although I believe basic human needs are universal, other cultures will have different values, expectations, priorities, and resources, and hence different livability standards, and can formulate their own rights based on these.[5] Nonetheless, promulgating a list such as this may prompt developing cities in other countries to proactively incorporate their own livability standards into their planning before solidifying their built environments. It is easier to incorporate standards into a new city than to retrofit an existing city.

The UBOR is a declaration of human rights and adds to the package of modern social

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[4] Although neighborhoods usually overlap with community, I will generally use the term "neighborhood" when emphasizing a physical space, and "community" to emphasize a cohesive and functional social unit.

[5] For example, I have not included in the UBOR any right to visual privacy, that is, protection from outsiders having views into others' dwelling units. The reason is in part customary: our residential tradition minimally protects privacy through setbacks and leaves the rest up to individuals, who have considerable ability to protect their own privacy as much or little as they wish using landscaping, fences, curtains, and other window treatments. And the decision is in part practical, because in compact settings, "not looking in" (designs that guarantee privacy) is largely incompatible with "looking out" (natural access rights #1 and #2, and the common desire to survey one's surroundings from windows, including providing "eyes on the street"). In short, in the trade-off between privacy and views, Americans tend to be outward-oriented, and it is easier to put up curtains than to add new windows or to access views and air without windows. Other cultures, however, may place higher priority on privacy. For example, on views and privacy in ancient Middle Eastern planning, see Besim S. Hakim, "Mediterranean urban and building codes: origins, content, impact, and lessons," *Urban Design International*, 2008, 13 (Palgrave Macmillan Ltd.) p. 21-40.

justice movements.[6] But before looking at the UBOR in the tradition of human rights, let's look at why the UBOR is necessary. The need for guarantees of urban livability has been greatly hastened by acute concern over environmental degradation and climate change. Human rights are most at risk when people are frightened. The looming specter of global warming has created a "crisis mindset" that now permeates urban planning. Although crises galvanize needed change, they also galvanize hysteria and create openings for those with ideological or self-interested agendas, which they advance to cure the problem at hand. Nervous and chaotic environments also tend to expand the power of moneyed interests and the tyrannical tendencies of governments, and decisions made under the influence of hysteria are rarely good ones. So, as useful as crises are in finally focusing attention on their causes, it is equally important to control the consequences of overreaction.

Whether you call it smart growth, compact development, urban intensification, or densification, compact urban living will be a large part of our future because of its efficient use of energy, space, and time. Most smart growth ideas are good ones, and would be welcomed by neighborhoods if presented respectfully to the people. But unfortunately, smart growth has become the new planning orthodoxy—even "groupthink"—and academic refinements of smart growth are lost at the policy level. Many smart growth advocates in city planning departments are ideologues, performing social engineering experiments with little concern for real human beings or the realities of human behavior. Even those with desirable ideas on the built environment often have authoritarian and undemocratic ideas about public process. For example, an early smart growth handbook, *Smart Infill* by Stephen Wheeler, [7] which otherwise contains many good ideas, advocates gutting local zoning laws and presents various strategies for disempowering citizens in the planning process. Typically, smart growth advocates believe that the loss of individual rights is more than justified by the critical work of saving the planet.

Before Jane Jacobs died a few years ago, she bemoaned in an interview the fact that smart growth planners now display the same hubris, top-down mindset, and lack of creativity as the large-scale redevelopment planners she struggled against 50 years ago. Yet there is also a lot of constructive momentum behind the reformation of cities to create sustainable, high quality living, if we can channel this energy in the right direction and prevent widescale mistakes. This is why citizens need to articulate clearly at this moment what they want, and what they will not accept, in urban planning. Instead of merely fighting bad developments—although that, too, is vital—citizens need to present decision makers with a clear vision based on their own living experience, to either augment or counter, as the case may be, the hasty densification agendas of the planning and development communities. "Smarter growth" must balance the efficiencies of compact living with basic acknowledgments and protections of human rights and guarantees of humane urban environments.

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[6] Social justice movements seek a socially just world where human rights and equality are manifest in the daily lives of all people. Equality can mean either procedural equality or equality of outcome; social justice movements usually emphasize the latter. Likewise, the UBOR sets minimal standards for outcomes, because procedural rights alone have proved unable to create good urban quality of life.

[7] Stephen Wheeler, *Smart Infill: Creating More Livable Communities in the Bay Area,* published by the Greenbelt Alliance, San Francisco, California, 2002.

PART II: RIGHTS AND WRONGS: The Moral Foundation of the UBOR

Human Rights

Human rights are a combination of moral and legal rights that "aim to secure for individuals the necessary conditions for leading a minimally good life."[8] Not surprisingly, peoples who have experienced the worst political abuses and most deplorable quality of life tend to write the most comprehensive rights, which the rest of us can look at with envy.[9] People who actually enjoy rights are not so driven to codify them.

Few if any of the underlying principles or even stated rights in the UBOR are actually "new" in the history of the philosophy and legislation of human rights.[10] What the UBOR does is to translate existing human rights into functional requirements for environmental design. In other words, the UBOR expresses human rights in terms of functions fulfilled through objects, spaces, and movements in space. Architect Graeme Bristol has already advocated a "rights-based" architecture with his organization, Centre for Architecture & Human Rights (CAHR).[11] Lamenting the tendency of architects to divorce themselves from the political implications of their work, he writes: "The traditional means to protect and promote human rights are through legal instruments – laws, constitutions, declarations, treaties, covenants, conventions. Clearly, though, we don't have to restrict our struggles for rights to courtrooms and parliaments. That struggle occurs equally on the streets (and steps) of the city."[12]

It is generally thought that human rights achieve the most practical force when codified in law, but this is only true for people with the resources to successfully sue a powerful adversary, often the state itself. Citizens can rarely effectively exercise their legal rights in the face of opposition by governments or wealthy private parties such as developers. The only real, long-

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[8] For the philosophy of human rights, see Andrew Fagan, "Human Rights," *Internet Encyclopedia of Philosophy*, updated: 7/5/2005, originally published: 1/10/2003, http://www.iep.utm.edu/hum-rts (accessed 12/29/10).

[9] See, for example, Chapter 2 of the 1996 South African Constitution, which includes over 100 first, second, and third generation rights in 27 categories. At http://www.info.gov.za/documents/constitution/1996/96cons2.htm (accessed 12/29/10). Also, the organization Friends of the Earth International, which works largely with disempowered indigenous peoples, organizes its list of rights as follows: Category 1, Sustainable Societies, includes (1) the right to a sustainable livelihood, (2) the right to a clean and healthy environment, (3) the right to water; and (4) the right to food safety and security. Category 2, Information, Participation and Security, includes (1) collective rights; (2) the right to know; (3) the right to decide; and (4) the right to resist. Category 5, Redress, includes (1) rights for environmental refugees; (2) right to claim ecological debt; and (3) right to environmental justice. Source: "Our Environment, Our Rights," August 2004, issue 106, (Friends of the Earth International), http://www.foei.org/en/what-we-do/solidarity-work/environmental-rights-are-human-rights (accessed 12/29/10).

[10] Human rights and their underlying natural rights were first conceived primarily as individual rights, and have gradually expanded to include recognition of man's communal needs. The first generation of rights are rights to security, property, and political participation, attaining fruition in the Enlightenment and articulated in the American and French revolutions. Second generation rights are socioeconomic rights, such as the right to education, food, housing, health care, and leisure. These rights are expressed in the Universal Declaration of Human Rights, other international covenants, and some twentieth-century constitutions. The third generation of rights have been developing in recent decades in conjunction with the environmental movement and the struggles of indigenous peoples and minorities, and include such things as the right to a clean, functioning environment, cultural integrity, and community self-determination. Source: Fagan, note 8.

[11] CAHR's website is at http://www.architecture-humanrights.org (accessed 12/29/10). CAHR is focused on the rights of the poor in developing cities. In this regard, see also the "World Charter for the Right to the City" at http://www.urbanreinventors.net/3/wsf.pdf (accessed 12/29/10).

[12] Graemi Bristol, "Background" page at Centre for Architecture and Human Rights website, http://www.architecture-humanrights.org/index_files/Page327.htm (accessed 12/29/10).

term option for protection of rights is cultural change, which means embedding the desired rights within the pervading value system of the culture. It is a behavioral ethic, not laws against murder, that keeps most people from murdering each other. Likewise, people will stop creating noise pollution, not when some policeman with a decibel meter catches them in the act, but when they and the rest of society have internalized respect for other people's earspace. This is why changing consciousness is more effective than changing laws, although changing laws can also be a means to change consciousness.[13] Bills of rights usually enter the fray first as a means of changing consciousness, and later in law.

Because they must have popular appeal and be readily understood, bills of rights are usually expressed in simple and positive language. If they are legally adopted, like the U.S. Bill of Rights, then over time courts define and delimit them. However, many human rights are only slowly encoded into law, and sometimes remain indefinitely lists of aspirations and guiding principles for legislators and others, with moral authority but little if any legal authority. This is necessarily the case if the implementing authority does not have the resources to live up to its aspirations. Poor countries with recent constitutions tend to have the most sweeping and comprehensive lists of rights, but with the proviso that many of the rights will only be honored as resources become available to do so. In already built environments, the urban rights, too, must be realized gradually, although the rights relating to personal living spaces should be implemented immediately in new buildings in a society rich enough to do so.

Underlying the doctrine of human rights is the philosophy of *moral universalism* derived from *natural law*. "The basis of the doctrine of natural law is the belief in the existence of a natural moral code based upon the identification of certain fundamental and objectively verifiable human goods. Our enjoyment of these basic goods is to be secured by our possession of equally fundamental and objectively verifiable natural rights."[14] According to moral universalism, because moral rights derive from human nature, they too are universal. Moral relativists, however, argue that moral systems are created by human beings, and differ from society to society. They also point out that individualistic cultures have dominated the definitions of moral rights, at the expense of more communal cultures. However, it is not necessary to accept the universality of human rights, the sanctity of human rights, or even the metaphysical existence of human rights to use human rights as tools for change. Bills of rights are simply lists of aspirations with a moral basis created by people. As political tools, they have effectively influenced moral codes to become more inclusive, equitable, and healthy for humans and other beings. However, universal or not, they must resonate with the values of the culture in order to be politically effective.

The UBOR reflects a kind of natural law philosophy: that all human beings have a common nature based on how the human body and brain evolved over time, which creates universal physiological, psychological, and sociological requirements for well-being. Of these, humans are least adaptable in our physiology, more adaptable in our psychology, and most

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[13] Although common sense tells us that attitudes create behavior, psychological studies and history show that the reverse is also true. Forcing people to behave in a certain way often changes their attitudes to conform to their behavior, in order to avoid "cognitive dissonance" (inconsistency between ideas and actions). Related to this is the gradual adaptation to worsening living conditions ("creeping normalcy") and "learned helplessness." Therefore, it is critical that urban residents do not accept, either in thought or in deed, the "inevitability" of noise and light pollution, or lack of space, greenery, and other personal 'goods' in the urban environment.

[14] Fagan, note 8.

adaptable in our social expression. However, despite human adaptability, in each of these categories there are still certain minimal and optimal requirements for health and well-being, which I will call 'goods' along with the philosophers. I propose that good urban planning is planning that supports these physiological, psychological, and sociological[15] 'goods.'

Urban designs will always be culture-specific, and even within cultures must contain wide variety to permit individual expression, but all good design must respect the nature of man's physiology, psychology, and sociology. The UBOR sets out to apply the physiological, psychological, and sociological requirements for a "minimally good life" to the physical urban environment. To assist the discussion, I make a rough division between "personal" goods, which are mostly physiological and psychological, and "communal" goods, which are mostly sociopolitical. To determine the requirements for a minimally good life, I looked to empirical sources: first to my own considerable experience with compact and mixed use living and my experiences with other cultures, and then to science, history, the planning field, and other observers of human nature. Almost all the rights I identified experientially are already included in existing human rights documents, though usually in non-spatial language.

The philosopher John Finnis identifies "seven fundamental interests, or what he terms 'basic forms of human good', as providing the basis for human rights. These are: life and its capacity for development; the acquisition of knowledge, as an end in itself; play, as the capacity for recreation; aesthetic expression; sociability and friendship; practical reasonableness, the capacity for intelligent and reasonable thought processes; and finally, religion, or the capacity for spiritual experience…."[16] What Finnis has identified is very similar to what is required for "self-actualization" in Abraham Maslow's psychology. It is worthwhile keeping the breadth of these 'goods' or activities in mind when thinking about the emphasis on personal space rights in the UBOR, especially right #9.

The fundamental right to healthy surroundings is enshrined everywhere in human rights documents, usually with language similar to the South African constitution, which says: "Everyone has the right…to an environment that is not harmful to their health or well-being."[17] Article 12 of the United Nations Covenant on Economic, Social and Cultural Rights states: "Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health."[18] The California Environmental Quality Act is even more liberal in its view of what is "necessary" for mankind: "It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man."[19]

In an expansive definition of the human right to housing, the United Nations has included

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[15] In the category of "sociological," I include economic and political activities. In addition to these three categories, there is a fourth category of environmental rights, addressed below in this section.

[16] Fagan, note 8.

[17] "Everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that: prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development." South African Constitution, Chapter 2: Bill of Rights, #24: Environment, http://www.info.gov.za/documents/constitution/1996/96cons2.htm (accessed 12/29/10).

[18] The UN Covenant, adopted in 1976, is found at http://www2.ohchr.org/english/law/cescr.htm (accessed 12/29/10).

[19] California Environmental Quality Act, Chapter 1: Legislative Intent—Policies, Public Resources Code 21000, revised 1998.

not only personal space rights, but also access rights to work, services, and facilities:

> The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights….The right to housing…should be seen as the right to live somewhere in security, peace and dignity….As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means...adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost". Adequate housing includes the following: legal security of tenure, availability of services and infrastructure, affordability, habitability, accessibility, access to employment and social services and freedom from pollution, and finally, cultural adequacy, which means "the way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing."[20]

Political rights were among the first rights demanded by people and expressed in bills of rights. They are considered necessary to guarantee other human rights, and are expressed in UBOR right #18. They are succinctly summarized by Friends of the Earth International as the right to know, the right to decide, and the right to resist, that is, the right to information, participation, security, and redress.[21] Friends of the Earth and others emphasize, too, the right to compensation for loss of 'goods' required for human survival, health, or well-being. This is usually applied to indigenous people and their lands. It is also reflected in the attempts by smart growth advocates to quantify the economic value of the communal and access 'goods' of the UBOR. We currently lack equivalent means to quantify other aspects of livability, which disadvantages the personal urban rights in policy making. Even though in an ideal world, human rights could not be sold, in reality they are regularly either sold or stolen,[22] and currently urban rights are being stolen. Just compensation for lost livability might stop its loss in some cases and, in the meantime, it would at least raise consciousness, increase fairness, and make people more amenable to constructive change.

In addition to physiological, psychological, and sociopolitical rights, human rights declarations now often include environmental rights. The term "environmental rights" has several meanings. It often means the right of (usually indigenous) peoples to survive in their environment, as expressed by Friends of the Earth International: "Environmental rights are human rights, as people's livelihoods, their health, and sometimes their very existence depend upon the quality of and their access to the surrounding environment, as well as the recognition of

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[20] Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing (Sixth session, 1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003). Excerpts are from the University of Minnesota Human Rights Library, http://www1.umn.edu/humanrts/gencomm/epcomm4.htm#one (accessed 12/29/2010).

[21] http://www.foei.org/en/what-we-do/solidarity-work/environmental-rights-are-human-rights (accessed 12/29/10).

[22] Another way of expressing this is: When rights are still unrecognized, they may be stolen; when they are recognized as values but not yet rights, they may be sold; and when they are fully recognized as rights, they cannot be stolen, sold, or waived.

their rights to information, participation, security and redress."[23] It can also mean the right of the natural environment itself to survive; Ecuador is the first country to recognize the rights of nature in its 2008 constitution, and to give any person legal standing to act on nature's behalf.[24] These rights of nature belong to an ecocentric rather than anthropocentric definition of environmental rights,[25] and therefore logically stand alongside, rather then within, the human rights tradition.

Although nothing in the UBOR would be incompatible with the ecocentric view of environmental rights, for urban rights purposes it is only necessary to apply an anthropocentric and narrowly utilitarian view of environmental rights, that is, the right to an environment that is not harmful to people's health or well-being. The World Health Organization expands on this: "Good health and well being require a clean and harmonious environment in which physical, physiological, social and aesthetic factors are all given their due importance. The environment should be regarded as a resource for improving living conditions and increasing well being."[26] In other words, people are shaped by their environments, and therefore human well-being depends on a healthful environment.

Environmental rights for urban dwellers is the right to exist in a healthy ecosystem that supports human well-being. The urban environment will soon be the primary environment for most of the human species. It is as "worthy" an environment as any other, a rich and diverse ecosystem of built objects and intangible institutions and thousands of kinds of flora and fauna, including ourselves. The ecosystem includes areas of low, moderate, and high densities and diversities of human and nonhuman inhabitants and objects. All inhabitants must live in symbiotic harmony with each other and with the surrounding non-urban environment. As with all ecosystems, diversity of urban inhabitants, systems, and forms is key to a city's vitality, evolutionary success, and sustainability. And as with other ecosystems, it is risky to tamper with the urban ecosystem's functioning parts without understanding its complexities and requirements at the micro levels of individuals, homes, and neighborhoods.

The ultimate irony, then, is that although smart growth claims to be an environmental idea, many of its practitioners appear to have no respect for the urban environment. These "environmentalists" would never advocate marginal, artificial environments for other species, but in their lust for urban density, for humans they propose an unpleasant and even inhumane urban environment, often devoid even of the basic requirements of good health. They are eager to sacrifice the urban environment and its inhabitants to save the "natural" environment— although there is no evidence that this trade-off is necessary or even that it would work. For example, smart growth advocates in California at the state, regional, and local levels are currently engaged in a major effort to undermine the 1970 California Environmental Quality Act

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[23] Friends of the Earth, http://www.foei.org/en/what-we-do/solidarity-work/environmental-rights-are-human-rights (accessed 12/29/10).

[24] The 2008 Ecuadorian Constitution's "Rights of Nature" chapter gives an ecosystem the "right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution," and "every person, people, community or nationality, will be able to demand the recognitions of [these] rights." Jennifer Koons, "Ecuador OKs constitution giving rights to nature," Greenwire, 9/30/2008, http://www.greenchange.org/article.php?id=3389 (accessed 12/29/2010).

[25] For a discussion of anthropocentrism and ecocentrism in natural rights philosophy, see Bebhinn Donnelly and Patrick Bishop, "Natural Law and Ecocentrism," *Journal of Environmental Law* (2007), vol. 19, no. 1, p. 89–101.

[26] World Health Organization/Pan American Health Organization, abridged version of the *PAHO Reference Document on Health in Housing Policies*, Havana, July 2000, http://www.bvsde.paho.org/bvsasv/e/iniciativa/rejecutivoingles.pdf (accessed 12/29/2010).

(CEQA). The goal of CEQA is to prevent the degradation of both urban and non-urban environments. It is a profoundly progressive law that maximizes public input into land use decisions, forces both developers and policy makers to study the consequences of decisions, and encourages the least destructive ways to accomplish policy goals. However, because this process stands in the way of rapid densification and some other planning goals, smart growth planners have joined with self-interested developers to weaken CEQA and oppose its application whenever possible. Sadly, too, current LEED standards to protect the environment by increasing energy efficiency are weighted to increase density, while ignoring or even deliberately diminishing personal space 'goods' and livability for human beings.

After watching so many smart growth advocates lionize urban life in words while destroying it in deeds, I began to attribute their disrespect for the comforts of city dwellers to the dualistic environmental model. In this model, man and nature are separate and unequal: nature is pure, noble, and innocent, while man is guilty and defiles whatever he touches. [27] Over the twentieth century, this philosophical duality increasingly became an earthly reality. Industrial America treated the landscape as a soulless resource to be mined, dammed, polluted, paved, logged, and plowed over, destroying irreplaceable ecosystems, and ultimately, perhaps, the planet as we know it. No wonder, then, that environmentalists and other people of conscience might rightfully view human beings and their cities as a plague upon the planet. [28] This historical dualism probably accounts in large part for Americans' dislike of cities, [29] which has been reflected in a century of careless urban design and maintenance. Environmentalist William Cronon writes:

> "Idealizing a distant wilderness too often means not idealizing the environment in which we actually live, the landscape that for better or worse we call home. . . . [P]eople should always be conscious that they are part of the natural world, inextricably tied to the ecological systems that sustain their lives. Any way of looking at nature that encourages us to believe we are separate from nature . . . is likely to reinforce environmentally irresponsible behavior. . . . Home, after all, is the place where finally we make our living. It is the place for which we take responsibility, the place we try to sustain so we can pass on what is best in it (and in ourselves) to our children." [30]

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[27] After centuries of fear of the wilderness, in 19th-century America, already imbued with Rousseau's romanticization of the "primitive," the wilderness came to embody the American identity, the rugged individualist. It was viewed as noble, pristine, wild, free, and true—i.e., "sublime"—while civilization came to be viewed as corrupt, polluted, artificial, restraining, and false. Even though the "wilderness" had shared space with native Americans, missionaries, frontiersmen, and farmers for centuries, in the urban mind, only an entirely uninhabited, untouched wilderness was sublime, as reflected in the writings and paintings of the time. Source: William Cronon, "The Trouble with Wilderness; or, Getting Back to the Wrong Nature," http://www.williamcronon.net/writing/Trouble_with_Wilderness_Main.html (accessed 12/30/2010).

[28] In addition, since human beings are among the most adaptable of species, it is logical as well as moral to expect humans to be the ones to bear most of the consequences of human actions. However, humans have basic needs just like other species, and guilt is never a sound foundation for rational problem solving.

[29] Bias against cities in public policy and funding is as old as our country and continues, despite the national population shift from 95% rural to 80% urban. The institution of the Senate guarantees outsized representation and consequent subsidies for rural populations. Few American presidents have come from big cities, and Franklin Roosevelt and Lyndon Johnson were perhaps our only two presidents to look favorably upon cities and send significant resources their way. Obama's recent stimulus package gave cities control over less than 1% of projects. Source: Harry Moroz, "Washington's bias against cities is costing the country," *San Francisco Chronicle*, 5/9/2010, p. E2-E3.

[30] Excerpted lines from Cronon, note 27.

The UBOR embodies a holistic, not dualistic, view of man in his environment. It aims to make the city a nourishing, flourishing ecosystem that enhances the well-being of all its components, including human well-being as individuals and communities. In the words of Nikos Salingaros: "An urbanism that destroys the small scale and treats human beings as expendable objects will never respect the natural world. On the contrary, it is an expression of human arrogance regarding nature. A new urbanism, which respects our sensibilities in the built environment, would also appreciate our natural environment…[and] goes hand in hand with a modest architecture of human proportions and textures."[31] Instead of playing a zero-sum game, and honoring the wilderness above ourselves, we must visualize and realize a plan that maintains a humane and pleasant living environment for human beings and *simultaneously* nurses the non-urban environment back to health. In addition, we do not need to separate these two goals. For example, nature can be woven back into the suburbs by cultivating native species and diversity of flora in its greenspace, streams can be daylighted and run through cities, and so forth.

To summarize the UBOR's relationship to other rights and to physiological, psychological, sociological, and environmental 'goods', the table below shows the UBOR rights on the left, related accepted human rights in the center, and the categories of 'good' on the right.

Urban Bill of Rights

spatial right (UBOR)	human right	category of 'good'
Personal space rights		
1. The right to see the sky, the sun, and significant greenery (e.g., a vista, a yard, a park, a planted streetscape, or a balcony for plants) from within one's dwelling unit.	*right to nature and environmental orientation*	physiological
2. The right to enjoy natural passive ventilation within one's dwelling unit.	*right to natural air*	physiological
3. The right to enjoy peace and quiet within one's dwelling unit with windows open, especially at night.	*right to natural air and freedom from noise pollution*	physiological
4. The right to sleep and experience night without excessive artificial ambient light, and to view the stars in the night sky from a location within one-half kilometer (a quarter mile) of one's dwelling unit.	*right to air, nature, and diurnal biorhythms, and freedom from light pollution*	physiological
5. The right to be free in one's home and neighborhood from pollution of	*right to a healthy environment, freedom*	physiological

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[31] Nikos A. Salingaros, "Towards a New Urban Philosophy,"
   http://utsa.academia.edu/NikosSalingaros/Papers/106333 (accessed 12/30/2010), p. 8.

	air, water, soil, and plant life.	*from pollution*	
6.	The right to be free from undesirable local environmental change caused by poor design and upkeep of public spaces, such as wind and noise canyons, absence of sun or shade, impaired drainage or groundwater supply, etc.	*right to experience the local outdoors and its resources, right to local environmental sustainability, freedom from local environmental destruction*	physiological psychological environmental
7.	The right to neighborhood surroundings free from excessive visual blight.	*freedom from visual pollution, right to visual pleasure and well-being*	psychological perhaps physiological
8.	The right to neighborhood surroundings that respect and maintain the cultural integrity of the community.	*expression and preservation of cultural identity*	psychological sociopolitical
9.	The right to adequate space for storage, hobbies, and other personal activities in and around each dwelling unit, including interior and exterior play space for children in family housing.	*right to healthy childhood and personal development and freedom of identity, self-expression, and self-actualization*	psychological
10.	The right to automobile parking space for each household, usually one to two spaces per household.	*right to mobility and access, freedom of movement, ability to access other goods, and right to self-expression*	psychological sometimes physiological
11.	The right to personal security in one's neighborhood, and to equal and adequate police, fire, and emergency services, which shall not be infringed on the basis of income or neighborhood character.	*right to personal safety and security in one's body, property, and home*	physiological psychological sociopolitical

Communal space and access rights

12.	The right of equal access to urban and rural mobility, regardless of income. If automobile use is discouraged through pricing mechanisms, then local, regional, and national transit must be available, adequate, and low cost.	*right to mobility and freedom of movement, right to access other goods*	sociopolitical
13.	The right of access within walking distance of one's dwelling unit to nature, recreation, outdoor exercise, and potential discovery, including	*right to nature, exercise, health, recreation, and expression*	physiological psychological environmental

	parks, open space, and areas inhabited by wildlife.		
14.	The right of convenient access, on foot if possible, to basic daily needs, such as good quality food at reasonable prices, daily household and medical supplies, and laundry facilities.	*access to life-supporting supplies*	physiological sociopolitical
15.	The right of reasonable access, by foot, private vehicle, or transit, to public schools and places of employment.	*access to employment*	sociopolitical
16.	The right of equal access to the commons and to taxpayer-funded and other public facilities, such as government buildings, libraries, museums, parks, bridges, and roadways, and to public meetings.	*access to the polity and the commons, and to knowledge, recreation, and expression*	psychological sociopolitical
17.	The right of access to places to sit, and clean and safe public restrooms, in urban public spaces and commercial districts that are intended for use by substantial numbers of people for several hours or more.	*access to the commons, and maintenance of health for some people*	physiological sociopolitical
18.	The right to participate in and guide, through equitable, representative, open, and democratic processes, land use and other policy decisions that affect oneself, one's neighborhood, and one's community.	*right to political participation and self-determination*	sociopolitical (and means of access to other three categories of 'goods')

Personal Rights and Property Rights

Philosophy and law divide rights into two broad types: personal rights and property rights. I propose that all the rights in the UBOR are personal rights, independent of property ownership. Rights whose exercise is limited to certain locations are so designated: "within one's dwelling unit," "in one's home and neighborhood," etc. However, this is related to the *use* of the space and not its ownership. "Upgrading" livability rights to personal rights helps guarantee that the urban rights are not protected unequally, due to the property bias of the legal system and current nuisance codes as well as ingrained public attitudes. It is also vital to ensuring equity between tenants and homeowners, and assisting tenants in livability conflicts with landlords.

Personal rights are rights over one's body, but also include some psychological rights, such as the protection of one's reputation and privacy. *Property rights* are rights over the ownership, use, and disposition of objects. While many philosophers consider the personal rights of life and liberty to be natural rights, they disagree about property. Rousseau thought

private property was the root of all social evils, but Locke thought that private property (including the body itself) is the means by which life and liberty are obtained. For Locke, private property is created when human labor is added to raw materials; it is the addition of human labor that gives property both its nobility and its moral value. Under a property rights approach, one does not damage an object belonging to someone else because to do so violates the rights of the object's owner. It follows that objects without human owners have no legal protection.[32] Although Locke believed people shouldn't take more than their share of resources, he also had a "use it or lose it" attitude toward property, which meshes perfectly with the Protestant work ethic, Manifest Destiny, and social Darwinism. Locke's ultra high regard for property permeates Western thinking and institutions.

Frequently rights and 'goods' conflict with one another. Most philosophers who accept the idea of human rights agree that human rights, which include personal rights, take precedence over property rights, unless the property right is intrinsic to another human right. In general, as Ronald Dworkin asserts, "considerations of [human] rights claims must take priority over alternative considerations when formulating public policy and distributing public benefits. Thus, for example, a minority's possession of rights against discriminatory treatment should trump any and all considerations of the possible benefits that the majority would derive from discriminating against the minority group."[33] Therefore, urban rights will be most effectively protected if they are recognized as personal and human rights, not property rights, and furthermore, simplistic utilitarianism cannot justify violations of human rights (utilitarianism is discussed in Part II).

Along with the property-rights bias is a related American cultural fondness for action and distaste for inaction. It is part of the Protestant ethic, and very much inherent in Locke, that human beings should always *do* something to "improve" whatever raw materials they have (including themselves and their time, as well as objects and land). Although observers may quibble over the details, the basic activity of "developing" or "improving" a property is valued, and people who object to new development are always on the defensive. Notwithstanding the recent popularity of the term "sustainable," for Americans *maintaining* something (such as livability or ecosystems) is almost never as sexy as *building* something. The culturally accepted goal is to put every piece of land to its "highest and best use," which does not mean a morally good use, but whatever use maximizes the owner's net profit, much as real estate jargon defines putting a strip mine in the Grand Canyon as an "improvement." Before a zoning commission, the property owner/developer is assumed to have the right to do almost as he or she wishes; it is assumed also that whatever that use is, it is probably not damaging, especially if it is within code; that even if it is damaging, it may well still be justified; and the burden of proof is on the opponent to show that any livability concerns outweigh the presumption of "improvement."

Conversely, "A man's home is his castle" is the common law defense for those whose livability is under attack from nearby developments and other activities.   This ancient concept offers legal protection from obnoxious encroachments on the "quiet enjoyment of one's home." In the context of the UBOR, this concept partially transforms some human rights into property

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[32] This is why it is vital to understand that "the commons" is jointly owned, not unowned. An abuse of the commons is a personal violation against all those in the defined user group. Also, the protection of the environments of indigenous peoples depends on others recognizing their "ownership" (in common) of large areas of "unused" land. Neither the peoples (nor the land) can survive if the prevailing view is that the indigenous people are simply lucky enough to have had the use of as-yet-unclaimed land in hard-to-reach places.
[33] Fagan, note 8.

rights: that is, owned real estate becomes a proxy for personal space, or for the space in which many of the personal space rights will be exercised. Therefore, some human rights are protected by property rights. But the inadequacy of this protection leads me to emphasize again that the right to a healthy living space must be divorced from property ownership, and even from physical locations in many cases. It is a right that accompanies the human body from place to place.

In theory, many of the personal urban 'goods' and livability rights in the UBOR are protected under nuisance ordinances. Nuisance ordinances protect the "health, safety, and welfare of the public" from public and private nuisances like excessive noise, light, blight, and so forth. However, these laws do little to protect livability. The very name "nuisance" implies that the subjects of these laws are of little importance, and this is exactly how law enforcement agencies see them (see Part IV/Response). For them, the person complaining (the claimant) is usually the nuisance, and a violation must be egregious, lengthy, ongoing, and accompanied by vociferous public outrage, before any action will be taken.

Nuisance ordinances also have the property-rights bias; reading such ordinances, it almost appears that nuisances, both public and private, are experienced by property and not by people. Sometimes the claimant must be a property owner, even though the nuisance is as likely to be experienced by a tenant.[34] Often the basis for a claim rests on use of property or the diminution of property values.[35] In general the consistent prioritization of property subtly undermines the value of the human beings who actually experience the nuisance.[36] The pro-property bias is generally a feature of the political right, but ironically, in left-leaning political environments, the property bias leaves those who object to nuisances open to the charge that they are selfishly trying to "maintain their property values," rather than advancing the presumably more noble goal of protecting their environment! But of course, high property values represent good living environments.

Public nuisances are defined as "minor" crimes that threaten the health, morals, safety, comfort, convenience, or welfare of a community. The crime harms the public as a class, not just one person or a discrete group, and usually impacts public spaces. Public nuisances are only legally remedied through criminal prosecution; there is no civil remedy available to a private party who is harmed (unless he or she can prove a private nuisance also exists). Therefore, if a city fails to take action to protect public spaces, the damage will continue. Since individuals have little legal remedy to protect public spaces—which, ironically, are *their* spaces, the commons—major and minor forms of vigilantism may result.

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[34] For example, "The purpose of this chapter is to provide a method for private property owners to gain restoration of views and sunlight lost due to tree growth by another private property owner..." From section 16-2.204 of the Contra Costa County (California) nuisance ordinance.

[35] For example, a nuisance includes "the maintenance of premises so out of harmony or conformity with the maintenance standards of adjacent properties as to cause substantial diminution of the enjoyment, use, or property values of such adjacent properties" or the action is "materially detrimental to nearby properties and improvements" or "that the capacity [of nearby property owners] to pay taxes is reduced." From section 5-1.201, Specification of Nuisances of the Antioch (California) Municipal Code.

[36] For example, this municipal nuisance code section places the "enjoyment of life" after two economic values: "The City Council finds that the increase of graffiti on both public and private buildings, structures, and other places creates a condition of blight within the city that can result in the deterioration of property values, business opportunities, and enjoyment of life for persons using adjacent and surrounding properties." From section 5-1.401, Specification of Nuisances of the Antioch (California) Municipal Code.

A private nuisance is "an interference with a person's enjoyment and use of his land. The law recognizes that landowners, or those in rightful possession of land, have the right to the unimpaired condition of the property and to reasonable comfort and convenience in its occupation."[37] A private nuisance is therefore a violation of a property right. It is a civil wrong that can be remedied only if the victim is able to mount a private lawsuit, which means that there will be unequal enforcement based on education and income. In weighing accountability for an alleged nuisance, the criteria the court uses are in large part utilitarian. Among them are the "social value of the plaintiff's use of his or her property or other interest" and the "value of the defendant's conduct, in general and to the particular community."[38] A large defendant (like a nightclub owner serving hundreds of patrons) is likely to be able to demonstrate greater "value" to the community than a small claimant (like a resident who wants to sleep). And although under the law, many of the rights of property ownership accrue to lessees of property, the property owner generally has an easier time demonstrating the "value" of his or her interest than a lessee. In practice, nuisance laws grounded historically in property ownership are largely ineffective at protecting personal rights.

For this reason, tenants are most at risk of losing their personal urban rights, both in disputes with neighboring property-owning neighbors and, perhaps more frequently, with landlords. As the property owner, the landlord has great latitude in the use of his or her property. The substantial body of law protecting tenants' rights in relation to their landlords, and even powerful rent control laws in a handful of American cities, are of limited help in issues of livability. The power imbalance between the landlord and the tenant, and the intimate impact the landlord has on the life of his tenant, is so huge that few tenants avail themselves of legal mechanisms for confronting a landlord. So landlords may usurp spaces that tenants are legally entitled to, they may modify their buildings in ways that deprive tenants of the use of their windows, storage, or parking, they may install bright lights or noisy equipment, they may allow their buildings to deteriorate, they may lease to uncivil tenants, and so forth. Even if they take actions that are patently illegal, like modifying their buildings for extra units without permits, the tenants will be the only people that know about it and the last people to report it. If the landlord modifies the building legally, the tenants (and future tenants) will be most affected but will be afraid to contest it. Cities serious about compact livability must create effective mechanisms for anonymous, proactive monitoring and maintenance of the livability of rental housing.

Equity

The final moral argument for the UBOR is that it increases equity. Unfortunately, many smart growth policies—especially densification, mixing incompatible land uses in small areas (which has been prohibited since ancient times), and concentrating housing on transit corridors—increase inequities in quality of life within the city. They add to the burden of inequity that already exists due to traditional zoning. Zoning regulations are meant to protect quality of life, permit diversity in lifestyle, and create the security of predictable surroundings, and to some extent they are successful at all three. But ironically, they are also the means by which huge differences in quality of life are enshrined in law and perpetuated; they are a nearly unchallenged form of class discrimination. In every city, people in low density neighborhoods have few

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[37] *The Free Dictionary* by Farlex, http://legal-dictionary.thefreedictionary.com/Private+Nuisance (accessed 12/30/2010). From *West's Encyclopedia of American Law*, ed. 2, (The Gale Group, Inc., 2008).
[38] Ibid.

livability problems and are pretty good at defending their interests; decision makers give painstaking consideration to protecting the views, air, privacy, and sunlight of homeowners in the better parts of town. But residents of higher-density neighborhoods are not so lucky: they have lots of problems and probably little political clout, and dozens at a time will be deprived of their urban 'goods' with only a crocodile tear or two shed by decision makers. Renters are at particular risk of being negatively impacted by poor development, both as neighbors of poorly designed rental projects and their inhabitants.

Contrary to the anti-NIMBY rhetoric of smart growth enthusiasts, most urban residents who are subject to densification and other infill intrusions are not part of an elite class trying to hang onto their privileges. They are part of a sacrificial class that already lives in or next to high density areas or transit corridors. They already endure poor quality of life. Current high density living is less pleasant, less quiet, less peaceful, less attractive, less healthy, less safe, more toxic, more stressful, has less community cohesion, and provides less freedom and access to nature than low density life. Traffic and buses are directed straight through high density neighborhoods, subjecting the most people and the poorest people to the most unhealthy environment. These high density residents mostly do all the "right" things: walk a lot, drive little, consume little, live in little spaces, have little if any yard space, and tolerate being a little too crowded. High-income people consume much more, utilize many more resources, and contribute much more to global warming than low-income people. Yet almost all the detriments of man's environmental abuse and atonement are borne by the poor and are often funneled into high density areas. Then, to add insult to injury, high density residents also pay financially for their poor quality of life, for example, in lost time and dollars from crime, lost time and dollars from stress-related health issues, innumerable parking fees and fines, and loss of property values from neighborhood deterioration.

It is self-deluding to think that most people live in high density areas by choice, because they want an interesting and "vibrant" lifestyle. A few do, but the vast majority live there because they are limited by income, and they eagerly move up the zoning ladder and down the density ladder as soon as they can. Every indicator shows that for most people the main advantage of high density living—ready access to diverse and stimulating people and cultural activities—does not outweigh the disadvantages.[39] Most people want access to commercial and entertainment venues, but want to live a comfortable distance from them, and it is easy for people in "safe" residential zones to team up with planners and developers to conveniently place these activities in higher-density or poorer neighborhoods. In cities attempting to increase density and mixed uses, there may be a loosening of zoning and nuisance standards in designated parts of town: for example, a noise level that was considered unacceptable twenty years ago is now permitted. From this one must conclude that either policy makers believe in extremely rapid evolution of human noise tolerance (in which case they need some remedial biological education), or that they are entirely aware of and condone increased (formerly unacceptable) noise in this part of town. Nonetheless, their claim is always that the new activities will improve life in the poor neighborhood—but then, why wouldn't they also improve life in the wealthy neighborhood? The physiological, psychological, sociological, and environmental needs of human beings are the same no matter where they live—or even no matter where they *choose* to live, if they have a choice. And they do not change in a few decades.

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[39] Speare and White, note 3.

To improve equity, then, in addition to upgrading the quality of life in compact areas, we must also acknowledge that most residents in high density areas are not there by choice, but nonetheless "pay" disproportionately to reduce the environmental damage caused mostly by others. In any liberal and progressive society, legally sanctioned inequities such as these must be examined periodically to see if they are necessary, and if so, how they can be made more tolerable. Instead of seeing struggling neighborhoods as appropriate areas for even further densification, privatization, and pollution, planners should look at the list of personal urban rights, and if the residents of the neighborhood are already missing many of them, city officials should take immediate remedial action, and planners should look elsewhere to increase density.

The Commons

The *commons* is any tangible or intangible space, resource, or institution that is shared, or used in common, by a defined user group, usually the public. The public uses the commons, but might not own or control them. They may be privately owned (like media), or public-private partnerships (like some museums, telecommunications, transit). Private property not open to the public, such as historical and cultural resources, is still part of the commons insofar as it is a necessary and contributing part of a coherent environment. The commons is a very important concept behind the UBOR. This is because urban rights are personal rights, and many of them accompany the individual into public spaces, guaranteeing healthy surroundings and access to necessities. In compact living scenarios, not only must we take better care of the commons, we must greatly expand our conceptual umbrella of the commons.

Rural and suburban life to a great extent isolate people and allow them to dissociate themselves from the concept and reality of the commons, but urban life, with its close quarters and limited private space, makes shared common spaces particularly important. In a compact environment, a lot of time is spent in public spaces (though not as much time as many new urbanists believe), and the public spaces must be attractive and usable because the private spaces alone are not large enough to sustain the health and well-being of humans and other urban residents. In addition, public spaces impact private spaces more in dense areas, and especially mixed use areas, than they do in less dense areas. Because the urban individual is so dependent on the public space, then, most of the rights relating to the *quality* of the public space (as opposed to its access functions) are listed in the UBOR as personal space rights—the right to everyday surroundings that are healthy, reasonably pleasant, equitable, respectful, and well maintained and policed. We cannot tolerate public spaces that are inhumane and noxious, as we did in the twentieth century. The denser the area, and the more mixed its uses, the harder it is to achieve a healthy commons, but it must be done.

Compact living means that more of our private spaces and actions will have to fall under the rubric of the commons and increased regulation, because everyone's behavior affects the immediate environment of many others. Homeowner associations usually have strict regulations governing the house colors and other aspects of the "visual commons." Residents of some other countries are used to rules governing, for example, how and when to hang out their laundry. Most Americans view such rules with either amusement or trepidation, but if we want to ensure an acceptable urban environment, we will have to follow the example of cultures that have spent centuries living in close quarters. For example, many American cities already have laws governing use and treatment of trees and other flora in private greenspace, beyond the usual open space regulations or what is visible to the public, because in a compact urban environment, a

network of greenery in "private" yards is vital to the ecosystem and part of the "common wealth."

History reveals a continuous tug-of-war between the expansion and the "enclosure" of the commons. These days, more privatization is usually the agenda of the right, and more "commonism" has been the agenda of the left. With their emphasis on public spaces and public transit, smart growth planners and new urbanists appear to be mostly "commonists." But this is deceptive. Insofar as urban planners privatize the commons by expanding building envelopes,[40] reduce urban greenspace, replace the local cultural commons with new construction, exacerbate urban noise and light pollution by densification and mixed use design, engage in "code-busting,"[41] and reduce citizens' political power through "streamlining" and other means, they reduce and damage the commons. Unfortunately, smart growth planners do all these things at least as much as planners of previous generations.

The rationale for reducing the commons is that the privatization is offset by some public benefit, such as more housing or faster transit. Before reducing the commons, though, not only should people assure themselves that the supposed benefits are, indeed, benefits (and for whom), decision makers must assess the tradeoff with the proper formula. The formula must recognize both the increased value of the commons, and the expanding umbrella of the commons, under increasingly dense living conditions. Mathematically speaking, planners should value the commons much more in high density areas, but instead they value it much less, and reduce it in all the ways described in the previous paragraph.

A commons is not a free-for-all space. A successful commons requires constant protection and, in crowded conditions or under high demand, it requires considerable proactive caretaking. A commons is used by a particular user group through time. Urban planners must not only design public spaces that attract the desired user groups, and design spaces that can in practice be taken care of, they must concern themselves with exactly how—and how well—the common space will be maintained over time. A city is a dynamic system, not a static object. Planners must ensure that the objects they design support the system and that the system supports the object over time. Otherwise you get well-known commons problems: "the disputed commons" (arguments over who uses the commons), "the abused commons" (overuse leading to degradation), "the polluted commons" (usually applied to the natural environment), and "the privatized commons" (taking of the commons by private parties). Decaying areas of American

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[40] Use permits that expand the building envelope or its use constitute incremental privatizations of the commons. Society has negotiated rules limiting private property rights impacts, both upon other private property and upon the commons (greenspace, parking, views, etc.). Zoning ordinances embody these rules. Use permits usually create exceptions to these rules; they turn bits and pieces of the commons over to private citizens (developers). For example, if the prescribed building height is 30 feet, and a developer gets a permit to build to 40 feet, he has taken for his own profit 10 feet of the commons, intended to provide others with light and views, to limit overcrowding, etc. Thus use permits that create zoning exceptions are essentially permits to privatize the commons.

[41] There are many forms of code-busting, in addition to the overapplication of use permit exceptions. State mandates also tend to trample local zoning codes, and many other processes either furtively or autocratically (e.g., undemocratically) undermine the community values represented in existing codes. The New Urbanist division of the American Planning Association declares that its purpose is "to provide planners, public officials, and other decision makers with the information, support, and tools needed to eliminate restrictive conventional development regulations and allow new urbanism patterns to be incorporated in all communities" (http://www.planning.org/divisions/newurbanism/index.htm, accessed 12/30/2010). It is fine if people choose, in an open, democratic process, to change their zoning codes, but many of the "tools" used by planners are far from open or democratic.

cities are peppered with another well-known phenomenon, "the forsaken commons."

The forsaken commons is a cycle of initial degradation of the commons, which is ignored by authorities, followed by the revulsion, alienation, and disengagement of those who use the commons, which permits further degradation. This cycle occurs with noise, crime, blight, and school systems, to name a few. In urban space, the forsaken commons usually begins with noise and/or blight, which is ignored because police would rather chase robbers. But at some point those who formerly enjoyed the commons no longer enjoy it; they retreat behind headphones, close their windows, and sleep with earplugs. They install fences, air conditioning, thick windows and drapes. Developers and architects adapt to the degraded commons by designing buildings that shun street life, whose users need not interact with the outside environment. Because in an urban setting the public spaces are the major arena for communal activities and for access to nature (through parks), the physiological and psychosocial impacts of losing use of the commons in cities are especially great.

As residents disengage from the public space, they care less and less about further degradations and further reduce their oversight of the commons, increasing crime and policing expenses. By neglecting the commons, the residents collude in their own dispossession of it. New residents may not even remember a time when the commons was pleasant and people felt entitled to enjoy it; this is a dangerous turning point. [42] Finally, when the civil population has abandoned the commons, the abusers of the commons have free rein. By this time the neighborhood is looking and feeling like a slum. Even without any extra stressors, this process can ruin a neighborhood in less than twenty years. However, if instead of retreating, the citizens demanded their urban rights, and cities acknowledged these rights and never let the degradation begin, we could maintain the commons that are so vital to compact living.

In the end, it is only the community, assisted by public officials who respect urban rights, who maintain urban spaces. It's pointless to redesign, and perhaps fatal to densify, any area where these two elements are not already working effectively together, and it's questionable whether one *should* tamper with any area where they *are* working together. In the words of Jane Jacobs, "We will have to admit that it is beyond the scope of anyone's imagination to create a community. We must learn to cherish the communities we have; they are hard to come by."[43] So don't mistake new buildings, redesigned spaces, or a sudden blip in street activity for a healthy community, or even for design success. In fact, one of the silliest things planners and designers do is to give out awards for projects that have not withstood the test of time, awards based only on form, theory, and hope.[44] We must always look behind the façade: sometimes within a few years, if not immediately, these projects are actively contributing to the deterioration of their communities.

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[42] This is another reason neighborhoods need long-term residents. The gradual, unperceived adaptation to a worsening environment is called "creeping normalcy." The idea that people who have experienced little of life outside the current poor-quality urban environment will determine the shapes of our future cities is frightening.

[43] Jane Jacobs, *The Death and Life of Great American Cities,* (Vintage Books, Random House, New York, 1992), p. 336.

[44] Some activists the term "faith-based planning" to refer to the implementation of untested planning ideas, "market-driven" planning, and ideas and forms that contradict human nature. I call it "experimentalism," which is good in science and art, but not so good for creating complex living environments. My 85-year-old mother recently remarked, "Sometimes it seems like planning organizations exist for the sole purpose of giving awards to architects who have just made enormous fools of themselves in public."

PART III: IDEALS AND REALITIES

The problems with high density living are partly caused by poor design of physical spaces and partly by poor stewardship of the spaces. Designers, users, and stewards must work together. Health and social welfare organizations attempt to influence physical design through the bully pulpit, including human rights documents, but have little legal authority, so it is up to urban planners to translate their ideals into action in space. Municipal police departments rarely if ever proactively initiate discussions with planning departments on livability and enforcement issues. Urban planners, designers, and architects who concern themselves only with the designs of spaces and access networks, and not their maintenance, exacerbate the problems of unlivable cities. Compact living can only be excellent if it is thoughtfully designed and implemented with public approval, and then protected with a good community support system aided by law enforcement. This part of the paper explains why this rarely happens.

Utilitarianism

Smart growth planning is top-down planning with its roots in the global environmental movement. It aims to resolve regional transportation problems by focusing on economies of scale, and although it proffers urban access 'goods' as a positive byproduct, smart growth does not focus on individual human beings. Instead, it is a strong expression of utilitarianism in a "big picture" context. *Utilitarianism* is the moral philosophy that the 'good' is whatever brings the greatest good to the greatest number of people. The morality of a decision, therefore, is based on its consequences (for people), not its intentions or some other criteria. Utilitarianism can be more or less simplistic. Wise people try to interpret "the greatest good" with a long-term perspective, favoring deeper, sustainable well-being or "happiness" (including a sustainable global environment) over short-term pleasures. Many believe that, in addition to happiness, other values like justice or equity are part of the greater good in their own right, not simply because in the long term they might maximize happiness. Capitalists and communists are both utilitarians, just disagreeing about what happiness is and how to get there. The utilitarian viewpoint is built into democracy, governs almost all modern policy making, and is perhaps most graphically acted out in land use decisions. This paper too reflects a utilitarian viewpoint.

Simplistic utilitarianism drives almost all local land use decisions, as decision makers weigh, for example, thirty people's right to go to sleep against 300 people's right to drink late at a bar plus the city's need for the taxes that generates.[45] When it comes to macro-level planning, it is not too much to say that smart growth is the poster child for cool (if not cold) utilitarianism, as planners try to discern what is best for the most people, even if a few local communities suffer. Even if densification damages the well-being of many millions of city dwellers, smart growth planners advocate it anyway because saving the planet is the more important goal. The premise of this paper, however, is that keeping people happy in cities has an equal or better chance of saving the planet, and in the meantime will help people instead of hurting them. It's hard to help a million people by harming a thousand neighborhoods.

Utilitarianism has its good and its bad points. When it appeared during the

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[45] This is a typical mixed use problem with a predictable outcome. Mixing incompatible uses always means that some 'goods' will be lost, while simply separating the activities slightly would allow both 'goods' to be maximized.

Enlightenment, it challenged aristocratic elitism by being egalitarian, because a core belief of utilitarianism is that each person's interests are equally valuable. In addition, searching for alternatives to better maximize the good (as in today's environmental assessments and their alternatives) is an important and constructive aspect of utilitarianism. Under utilitariansm, "progress" marches forward, the lives of most people gradually improve, and what happens to the "losers" is dismissed and forgotten because history is written by the winners. But since utilitarianism is what has brought us to our current planetary environmental crisis, it might be time to reassess both the idea and how we apply it.

Utilitarianism mandates top-down, future-oriented policy making. Some entity must be in charge of adding up the aggregate happiness before a policy decision can be made about the creation and distribution of 'goods'. If such an entity exists, it might be some super-knowing actor or a room full of calculating bureaucrats, both of which conjure up unpleasant authoritarian images. In land use, it is the planner or planning agency. Wise utilitarianism also requires the ability to predict the future, because that is when the greatest good will materialize. Some entity must decide what is best for most people later, even though most people are probably too dumb to see it for themselves now. Have urban planners shown themselves to be extra good at predicting the future? Apparently not, since both smart growth and new urbanism are reactions to the best laid urban plans of two generations ago.

In addition, decision makers, like most people, have a natural tendency to think the majority consists of people more or less like them, and that the greater good is what would make a lot of people just like them happy.[46] This is dangerous when coupled with top-down, large-scale planning, because if the assumption is wrong, a very large mistake has been made, and in any case, it reduces diversity. In a diverse culture such as ours, actually asking people what they want would open up a huge can of conflicting values, and be suicidal for utilitarian decision making, so planners avoid it. This is not to say that we shouldn't make decisions according to some wise version of utilitarianism. But it is good to remember that a top-down planner is someone who is comfortable in the role of a disinterested, altruistic, all-knowing Übermensch who can predict the future and doesn't need any help from the people. That is, after all, the "smart" part of smart growth, and the part that gives smart growth and its practitioners their distinctive totalitarian aroma.

Under utilitarianism, once the course is set to benefit the majority, the rights of the minority are likely to get trampled. Protection of individual or minority rights is usually valued only as a means to maximize the majority's well-being (e.g., to preserve diversity, to honor moral tenets, to make people feel good, or to assuage fear of someday being in the minority). Utilitarianism sets the stage for policy debates in which individuals that stand up for their personal rights are labeled "selfish," because they appear to stand in the way of the good of the majority. This is rampant in land use decision making. After all, we can't let a few hold-outs stand in the way of "progress," can we? However, in the longer view, it may be that preserving the personal rights of individuals is the course to the greater good—as, for example, the American Civil Liberties Union has always believed. People call the ACLU many things, but rarely "selfish," because by standing up for one they are protecting all.

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[46] Of course, natural law philosophy and bills of rights (including the UBOR) ultimately have the same flaw. Because I don't have all the answers, I propose the UBOR for community discussion, assuming modifications based on public response, and emphasize that the UBOR is culture-specific.

In addition, nonhumans tend to fare poorly under utilitarianism, both because most of them (or its) cannot experience the primary 'good' (be it happiness, justice, equity, or whatever), but also because even if someone acts on the nonhuman's behalf, these representatives, coming from a human frame of mind, cannot know what is intrinsically 'good' for their client. A person must depart from a strict utilitarian approach if one wishes to attach intrinsic (not instrumental) value to such nonhuman entities as other creatures, nature, or biodiversity.

I propose that smart growth be accompanied by the UBOR to create "smarter growth" because bills of rights are a necessary constraint on simplistic utilitarianism. They are instrumental for wise utilitarianism. In everyday life they protect the rights of the minority and individuals from the tyranny of the majority. As a by-product, they slow down the speeding train to the Greater Good, just in case the engineer has read the map wrong. If the train happens to be on the track to Big Mistake, at least the basic 'goods' of human well-being will still be intact. By preventing the erosion of a variety of human 'goods', bills of rights are insurance policies not only for the social contract, but for evolutionary diversity.

Rights-Based Planning

The UBOR is a rights-based and function-based, not a form-based, approach to urban planning and design. Certainly proper arrangements of spaces and resources support human well-being and community, but form cannot be codified to ensure well-being. Many forms can provide the same 'good' (or essential element of well-being), and conversely, one can be denied the 'good' even if the form is adequate. This is why the UBOR uses the 'goods' as the principles to guide forms, which remain flexible. The urban rights can be maintained with two-story buildings or 20-story buildings or both, with compact living or suburban living or both, with active sidewalks or quiet sidewalks or both, with freeways or lanes or both. Although it takes much more care to maintain the rights under some physical scenarios than others, form itself rarely guarantees or eliminates a right. It's how the form is used by people over time that protects or diminishes most of the urban rights. How it is used is determined by the health and nature of the community and its relationship to the form; by the using culture, its values and socioeconomic qualities; by law and code enforcement (the need for which increases with density); and by public policies which, by providing or withholding resources, determine if the community will remain healthy for the long term.

In reality, local discussion of form is often used as a red herring, to distract community members from the deeper issues of livability. Cities and developers use design discussions to mollify neighbors, who have no meaningful input into the most important aspects of development projects, like scale, use, density, and upkeep. Many community members are sucked into this discussion because it's fun to design things, push little models here and there, and imagine a new world. And in fact public input virtually always improves the design of a building, and often its scale and functionality as well. But new forms will not save old neighborhoods if the old neighborhood is disintegrating because the urban rights of its residents are not being realized.

The city is an ecosystem, with beings operating in space through time. Planning of cities must therefore include the sustainability of the spaces in a healthy condition. Smart growth planning takes into consideration the sustainability of the planet, and new urbanist design tries to address the vitality of public spaces, but neither addresses the sustainability of specific urban spaces over a year or a decade or a generation or a century. Part of the reason for this is the

types of people who have been entering the planning field in the smart growth era. Many of them are driven by macro-environmental concerns, and are more interested in reducing the damage done by cities to nature than the damage done by cities to people. The designers come from visual design fields; they live in a world of imagining, drawings, and models. Very few come from behavioral or human sciences like psychology, sociology, social welfare, or health sciences.[47] So the bottom line is: planners don't know much about human beings. It is little wonder, then, that planners don't address the long-term functioning and fate of a community; they seem to be satisfied if they return to a street they designed and see more people sitting at outdoor cafes—although you can drive anybody into public spaces by making private spaces small and uncomfortable. If planning academics are incorporating into their work the economic, sociocultural, and political resources necessary to maintain the spaces over time, their ideas are definitely not trickling down to planning practitioners.

The UBOR favors localized, bottom-up planning. The rights themselves may need to be legally protected at the "top," because often we have to look to the federal or state governments to ensure rights that local jurisdictions would happily eliminate. We should never underestimate the ability of local communities to deprive the weak of their rights. But only planning that is controlled at the local and neighborhood levels is likely to be flexible enough to ensure that the urban rights are reflected within local environments. Therefore the UBOR is entirely consistent with the many urban planners and designers today who are arguing for more organic, flexible, community-initiated and -controlled planning—as long as the urban rights are respected. In this respect the UBOR is in tension with smart growth planning, which is very top-down. The dominant smart growth decision-makers focus on regional goals and not on local quality of life, and they devote minimal resources to assessing or improving the human outcomes of development.

Besim Hakim raises the issue of *proscriptive* and *prescriptive* rules in the context of the history of urban planning.[48] He writes:

> Prescription is the laying down of authoritative rules or directions, usually associated with a central administration that has jurisdiction over the area where the rules will be imposed. It is a top-down mechanism designed by officials who may or may not be familiar with the area in question. Such stipulations, by their very nature, dictate absolute solutions to a problem regardless of the local conditions. Proscriptive rules, on the other hand, tend to allow freedom of action and initiative within a framework of prohibitions—for example, the freedom to make changes to one's property provided no damage is inflicted on a neighbor. Due to their flexible framework, proscriptive codes tend to evolve over long periods of time and rely on accumulated experience…Due to the community roots of proscriptive rules, they need to be viewed as a bottom-up system of self-regulation, and thus democratic in spirit.[49]

The UBOR is a proscriptive approach to planning. The UBOR states, essentially, "You

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[47] This is one reason that the scientific methodology used in urban planning is relatively poor. It would be an improvement if urban design and planning degrees were graduate degrees requiring an undergraduate major in a social or behavioral science.

[48] See Besim S. Hakim's two articles cited in notes 5 above and 49 below.

[49] Besim S. Hakim, "Julian of Ascalon's Treatise of Construction and Design Rules from Sixth-Century Palestine," *Journal of the Society of Architectural Historians*, vol. 60, no. 1, March 2001, p. 22.

can design any form you want, provided you provide this for people and do not take that from people." So in terms of form, planning under the UBOR can be organic, adaptive, community-driven, responsive to the local landscape and culture, and so forth. The UBOR has "community roots" insofar as the values implicit in the UBOR are traditional values in Western cultures. However, like all bills of rights, it contains values that are nascent but not necessarily yet fully embedded in the culture, and obviously is subject to cultural acceptance. In addition, insofar as the urban rights are based on universal 'goods', once broadly accepted they could not be waived by local preferences. So although the resulting urban design can be bottom-up and flexible, the rights themselves, once accepted, would be inviolate as governing principles, though subject in practice to the limits of physical and economic resources.

In urban planning and design, each situation is different, details matter, and decision makers cannot foresee every contingency. Is it feasible to assign quantitative standards to such items as tree preservation, view and shadow impacts, or cultural integrity? Can we anticipate every way in which a landlord might compromise his tenants' use of their windows or balconies, or how light or noise might reflect under certain conditions? No. Protecting these kinds of urban 'goods' requires flexible, situation-based decisions based on what is experienced by the people affected. This is why it is vital to set discretionary limits on form-based zoning ordinances, for example, by prohibiting development that is detrimental to the health or well-being of the neighbors or community. Even with such limitations, however, zoning commissions regularly approve the most detrimental developments in the most fragile parts of town. This is not only because of their property-rights and pro-building bias, but also because they have no explicit, enumerated, rights-based approach to their decisions, nor a requirement to state the reasoning or balancing of rights guiding their decisions. Without these, careless reasoning and faulty judgments are certain—and also provide good cover for bad intentions.

Despite the authoritarianism of smart growth, many planners and urban designers argue passionately for generative, bottom-up planning and design at local levels. The benefits of such planning in maintaining local culture and diversity, creating humane and interesting spaces, creating and maintaining neighborhood identity, promoting humane architecture, and maintaining a connection with local landscape and climate, have been well articulated by many and need not be repeated. But local control does more than improve the design and functionality of urban spaces; it is vital to maintaining urban rights. This is because human voices don't carry very far.

Feedback

The only way to know if people are enjoying their urban rights is to listen to people. It would be nice if we had proactive livability inspectors wandering around our cities, clipboard in hand, asking people about their well-being and checking off a list of 'goods'.[50] But we don't. So the main and sometimes only way policy makers know what people are experiencing is to hear negative feedback when something goes wrong. When people's quality of life is under threat from development or inadequate law enforcement, their cries of pain are heard immediately at neighborhood association meetings, at the planning department, at City Hall, and sometimes at the city attorney's office, but not (or too late) by regional and state policy makers. Regional and state policy makers work in abstractions; real people and neighborhoods are just "collateral

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[50] Although I did so when I went house-hunting, and found it very useful.

damage" for them as they pursue their utilitarian goals. However, local officials pay attention to human voices because too many angry people living near them is unpleasant and may even cost them their jobs. And they can see the results of their decisions around town every day.

Just as our political rights are largely defined and strengthened through lawsuits when a potential violation occurs, so too negative feedback is the all-important ingredient for maintaining urban rights and a livable urban environment. But when local officials hear that people are suffering, they must be able to do something about it. This is difficult if they are under densification mandates from the state, or if a regional body has already decided to destroy areas of their city with a massive transit system. Therefore, maintaining livability requires as much local power over the immediate environment as possible, including neighborhood control at the building level. Only these local bodies can know whether the urban rights are being enforced sufficiently to sustain long-term residency, which is critical to healthy neighborhoods.

We must ensure, then, that the channels for feedback on livability issues are numerous, open, respected, and effective in bringing about corrections. What does this mean? It means people must have the knowledge and time to provide feedback, and that public officials must be willing and able to make timely corrections based on the information received.

The first ingredient is having people qualified to give good feedback. People with deep knowledge of an area who are committed to its long-term health provide more useful feedback than visitors or other people who don't know about the area or who have no stake in its future. In maintaining urban rights, the feedback of neighbors, often vilified as NIMBYs, is much more valuable than the opinions of tourists or planners. Tourists and visitors to neighborhoods are often attracted by the very things that are most damaging to local communities, such as a vibrant nightlife, interesting but damaging architecture, or noisy, poorly regulated public events. City planners, as I have said, know very little about human behavior and rarely live in the neighborhoods they design or modify. Planners who advocate high density living have rarely lived in high density neighborhoods in the American context long enough to understand their problems, so they advocate something they haven't experienced and don't understand. They could fix this easily by moving to such neighborhoods and living there for several decades, or by intensively interviewing those who live in them about their experiences. I have not known any planners or decision makers who have done either.[51] The NIMBYs, on the other hand, are the de facto stewards of their local environments, the protectors of threatened and often irreplaceable 'goods' and resources.

Other times, design consultants descend on a troubled area to test out their latest urban design theories. They will tell people who have lived there for decades how to create "vibrant" commercial centers and healthy communities by rearranging their physical space, perhaps adding a few kiosks, benches, sidewalk cafes, and public art. In addition, the area is sure to need more and bigger transit, fewer cars, less parking, bigger buildings, more cutesy businesses, and most importantly, more people. Once those are all in place, everything else will automatically take

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[51] Jerry Brown, mayor of Oakland, California from 1998 to 2006, initiated a revitalization project to attract 10,000 new residents to downtown Oakland. To his credit, Mr. Brown lived in a downtown loft for several years (not decades), but just as things started to become "vibrant," he left for a "very quiet" house in a wealthy residential area (not mixed use) in the nearby hills. Brown also weakened state environmental protections for Oakland neighborhoods in order to "streamline" his development project. The fate of less privileged Oakland residents won't be known for decades.

care of itself. But long-term residents know this is not true. They know that these public space "improvements" will diminish private spaces and personal urban 'goods' and change the business component of the neighborhood, so the residents will be able to buy twenty-five different kinds of coffee, but not a single nail or tube of toothpaste.   As Salingaros points out, "Urbanism is an easy field in which to make wild new proposals without having to prove their effectiveness."[52]

The bottom line is that the input of the public—with its wealth of life experience, common sense, local knowledge, and concern for the future of their neighborhoods—is the most important element in urban planning. Successful cities have learned that they must revive themselves from the bottom up, working with neighborhood residents who care about their environment, instead of from the top down, rearranging spaces and ignoring residents' calls for physiological, psychological, sociological, and environmental 'goods' in planning. Only bottom-up planning can prevent expensive physical mistakes and the deterioration of neighborhoods. This is the long-term efficiency of local knowledge.

The next ingredient for effective feedback is time: gradualism in introducing change, time for understanding and feedback by the public, and speed in correcting errors. Learning involves a continuous feedback loop and adjustments. Top-down planning means that wholesale changes are introduced at one time, which makes it difficult to repair mistakes before too much damage is done. If mistakes are made, the ponderous pace of higher-level government makes it slow to change policy. At the local level, too much building at one time is disruptive in a city, and a fast pace makes it impossible for developers and neighborhoods to learn from each others' mistakes before the next building goes up. Because extracting building materials from natural resources, and the construction of new buildings and infrastructure, entail a huge environmental footprint, the environmental costs of unnecessary changes and urban planning mistakes are enormous. Even without mistakes, true environmentalism generally favors the preservation and re-use of existing structures over the construction of new ones.

For existing cities wanting to densify, infill development is an important tool, or perhaps their only tool. But if infill projects are too numerous, or larger or denser than the existing neighborhood, or attract a new demographic, they disrupt stable communities. Naturally, the more stressed or weaker the existing community and its resources, the more disruptive the infill will be. Simply adding more people doesn't solve existing problems, it only exacerbates them or moves them. However, even in the best scenario, it is important to remember that, unlike new development, infill development and densification means adding more people without advance planning for them and without adding more exterior space for them. Therefore, personal space livability is bound to decrease. In fact, the difference between compact living (which is fine) and overcrowding (which is bad) is the existence of the space, infrastructure, and personal urban 'goods' adequate for the population density. Good infill is difficult because usually the existing streets, parking, greenspace, and other 'goods' cannot handle the increased population. This is especially true in older parts of cities. Therefore, urban areas wanting to increase urban livability need to moderate their infill projects, and look for other means to increase density, such as more compact design of newly constructed neighborhoods, and sensitive densification of suburban areas that have adequate infrastructure and abundant open space. Ironically, however, planners often try to increase density precisely where it is most damaging—in existing high-density urban

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[52] Salingaros, "New Urban Philosophy," p. 10.

areas.

Let's look at a common overcrowding scenario in a low-density single-family urban neighborhood, and its impact on livability. Due to economic circumstances, or sometimes because of immigration by cultural groups accustomed to living at higher population densities and/or with extended families, more people than anticipated come to live in each housing unit. If multiple adults live in one household, more vehicles are added to the neighborhood. Once the private and street parking are both exhausted, people begin to pave over areas of their yards to create extra parking spaces. Front yards become cement parking pads (whether or not a city has laws against this), increasing visual blight and removing greenspace and greenery. If crime is also a problem, residents next put up security fences around their front yards to protect their parked vehicles as well as their houses. Once the front yard is secure, people begin to use it as a storage or work area, which they need because their homes are overcrowded, contributing even more visual blight (in areas with apartments, the junk goes on the balconies for all to see). The residents also realize that, now having the fence, they can add a dog with little additional expense, which increases noise levels. A once modest but comfortable neighborhood with plenty of parking, green yards, and permeable boundaries between private and public spaces now has the appearance and sociology of a row of fortresses. Surely nobody wants to take a walk or spend time in the street/sidewalk commons of this neighborhood. If the climate is warm, the expanses of concrete make it hotter and guarantee that people will spend little time outdoors; they may even have to install air conditioning in an otherwise moderate climate. Such a neighborhood has lost most of its personal space 'goods', not to mention its community life, not because the population density itself is particularly high, but simply because it acquired too many people for the available parking and other space. To some extent, almost all infill developments create unforeseen downstream impacts, because it is hard to create adequate spatial resources to accommodate significantly more people within existing neighborhoods. Often when outsiders see such slummification, they do not analyze its spatial causes, but city planners should.

But there are also good reasons that even appropriate and well-designed infill projects can run into opposition. One problem is that land use permits "run with the land," not the permit holder. That is, once the permit is issued, any future owner of the property can put the property to the permitted use forever. This means that impacted neighborhoods must assume the worst-case scenario and react accordingly. I have seen neighbors tell responsible developers whom they like, with apologies, that they must oppose the developer's project because the community cannot predict or influence what will happen when the property changes hands. For a responsibly managed apartment building to change into an unmanaged "animal house," for example, is a nightmare scenario for any neighborhood. Since a single bad person or property can destroy a neighborhood's livability, along with the property values of innocent neighbors, almost overnight, the stakes are too high for a neighborhood to take a nonchalant attitude toward their lack of control over the future owners, users, and uses of a project. Nor can they believe that future damage will be prevented by enforcing use permits or nuisance laws, as we will see in the next section. The community's only option is to oppose the project or constrain it to the smallest possible size and impact.

It is also becoming a common practice for commercial property owners to finish the lengthy permitting process, and then sell the land-with-permits for a high price to buyers who

remain entirely unknown during the process. A community might make livability concessions to get a needed supermarket for an underserved part of town, and end up with a pricey specialty food store instead. In these cases, the planning staff does little more than facilitate a value-added business transaction between developers, rather than helping the city welcome a wanted and known business into the community. This is yet another triumph of property rights over community relationships. If the use of a building could be revisited when a building changes hands, and revised at regular intervals based on the track records of building owners or users, it would make infill development and mixed uses much more attractive to residents and much less likely to destroy neighborhoods.

If infill is difficult, what about larger-scale neighborhood redevelopment? This has been controversial for decades on sociological and moral grounds. It appears to revitalize neighborhoods, but it usually does so by driving older residents away and replacing them with younger people with more money. Naturally the appearance and the economic indicators of the area improve and make the city proud. However, the community itself has disappeared, and no new community will arise to replace it unless the new development includes adequate personal-space 'goods' to foster long-term residency, including design that makes community possible. This design is particularly difficult with multi-story residential buildings, because elevators and hallways are not the sociological equivalent of sidewalks and front yards. In any case, it will take a generation or more to create a new community.   As for the former residents themselves, none of their problems have been solved, just scattered to the wind. The long-term sum of urban livability might have been increased more by working with the existing community to resolve problems while adding a moderate number of new residents.

Some top-down planners don't care if they destroy communities, because they are looking at a mid-term perspective in which the demographics of neighborhoods change, and over time people rearrange themselves into neighborhoods that suit them. They are correct that a neighborhood full of tiny apartments and cafes will eventually attract people who like tiny apartments and cafes, and who will be happy there, at least for a while. Considering the local housing pressure, one planning director defended unlivable developments by saying, "Whatever we build, somebody will be willing to live there." We can call this variation on "market-driven planning" the "race to the bottom." Such planners are not concerned about the sociology of neighborhoods, and even less about individuals driven from their neighborhoods by deteriorating quality of life. In fact, the fewer long-term residents there are to interfere with planning, the easier it is for municipal planners.

But it is not necessarily easier for cities or their residents. Wise cities, with a longer term perspective, know the difference between "communities" and "buildings full of people," and in the long run only the former will contribute more to a city than they require in services. As the mayor of one successfully revitalized city said: "If we end up with a population without a sense of belonging, we will have lost the war. Commerce depends upon investment. Investment depends on stability. Stability flows from neighborhoods and neighborhoods are based on roots. It's the domino theory in reverse." [53] Jane Jacobs also wrote eloquently about this. She writes that a community is formed by "a continuity of people," and that when too many people move out too fast, a slum is created. Conversely, when successful people stay in troubled neighborhoods, it gradually increases the neighborhood's long-term health. She points out that

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[53] *Human Behavior: the community*, (Time-Life Books, 1976), p. 165.

people whose incomes are "too high" for their neighborhood but stay anyway should be thanked, but instead they are usually disparaged as victims of inertia, who need a push to move to better areas instead of pestering City Hall with requests for service in their slummy neighborhoods.[54] When such people move, it harms the city as well as the neighborhood.

Allowing adequate time for feedback from the public is critical to good urban planning. There must be public input during the planning process at all levels, from projects to regional plans. However, in a process euphemistically called "streamlining," the times designated by law or custom for feedback on proposed developments is deliberately reduced.[55] Highly favored by developers and planners with unpopular agendas, streamlining does not permit the slow and messy processes of learning, feedback, and democracy to take place. It prevents the exchange of information and ideas that would help decision makers create a better city. And it destroys the public's relationship to their government. Cities that prevent constructive input early in a project can expect a lot of negative feedback on the result. If the negative feedback takes the form of moving to the suburbs, the primary goal of smart growth will have been defeated.

Another tactic of top-down planners is to try to move the level of environmental review from the project level up to the area plan level or even higher. Obviously there must be area and even regional planning, but it cannot substitute for project-by-project analyses. Those who fashion area plans cannot consider all the details of daily life, and trying to anticipate cumulative impact all at once from a distance is much harder than seeing it occur piecemeal, and responding with continuous corrections. All problems and loopholes cannot be anticipated and included in an area plan, and developers need not honor the intentions of area plans if they can take advantage of their technical mistakes. Project-level environmental assessments also teach developers (and planners) a great deal about how to improve their projects and the next ones, and about the community they are working with. This is a huge future benefit, though largely invisible.

Response

The last requirement for a successful feedback loop is an authorizing entity with the desire and ability to respond to the public input and provide the urban 'goods'. This might be planning staff, but much more likely it will be elected officials. Therefore, all the known problems that interfere with contemporary democratic government in the United States, and all the idiosyncrasies of local politics, affect this part of the feedback loop, although they are beyond the scope of this paper. However, you cannot have good planning without good government, so planners should make government their business.

Likewise, it is difficult to design in an uncivil society. Good design of public spaces has always been a hallmark of civilizations. But the social realities of crime and homelessness stand as testaments to America's urban incivility, precluding good design and severely constraining the utilization of all public and some private spaces. If public benches must be designed so that people cannot lie on them, if most other potential seating surfaces must be roughed up so that people can't sit or skateboard on them, if parks must close at night so people can't sleep in them, if public bathrooms must be closed so criminals can't deal drugs in them, if people don't ride

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[54] Jacobs, note 43, p. 271-283.
[55] "Streamlining" is what created the 2010 Gulf Oil Spill by mandating deadlines for federal decisions on drilling permits that were too short for adequate environmental analyses.

bikes because of the hassle of locking them, if greenery must be cut down and bright lights turned on at night so criminals can't hide in the dark, then cities and urban designers cannot possibly provide urban 'goods' to the general populace. If urban designers really want to do their jobs well, and provide the kinds of public and private spaces we all dream of and are common in more civilized places, the profession must join the political struggle for a civil urban society, instead of merely designing around an uncivil one.

Economic policies also prevent good planning. In fact, one could argue that there can be no such thing as urban planning in the United States as long as our economic policies create empty local public coffers. This is because implementing a plan requires three things: a vision or goal, the authority to achieve the goal, and the resources to achieve the goal. Cities have the first two, but not the third. Planners, elected officials, or the public may decide in a broad sense what they need and where they need it, but most cities cannot deliver the 'goods', because customarily we leave that up to the private sector and because discretionary local government funds are so scarce. Developers and large businesses are the ones with the resources, so they decide what they want to build and what 'goods' to provide. Cities can try to tweak a developer's plan to satisfy a public need, but their tweaking ability is limited by the developer's property rights and ability to finance lawsuits. If cities are desperate to have something built or some 'goods' provided, they have to kowtow to the developer or business, and usually cede livability requirements—over neighborhood objections.

The attitudes of local officials is a major factor in their response to public feedback on livability issues. Of course they must understand that the feedback loop and those who participate in it are necessary and constructive purveyors of information and contributors to public policy, not annoyances or obstructionists. They must also be convinced that all densities and income levels of urban life can be, should be, and must be high quality. It will help if they accept the premise of the UBOR: that people have a personal right to well-being in urban spaces. They must likewise accept the possibility of a society in which the urban 'goods' predominate. How many city decision makers truly believe that their city can and should be filled with nature, acceptably quiet and dark at night in all residential areas, and full of roomy apartments where a diversity of people are happy to live their whole lives, with streets that are safe and clean even in poor neighborhoods? Most people think this quality of life is limited to suburban and rural life, and a few very wealthy urban residents.

One of the greatest attitudinal impediments to urban livability is the cultural idealization of home ownership. Obviously, common sense, family economics, sustainability, and population pressures all mitigate against home ownership as the norm. A great many people do not want to spend their time fixing their roofs and weeding the garden, but they buy houses anyway. This is in large part because they cannot get their needs met by the poor quality of rental housing available in American cities.[56] The reason for that poor quality is the assumption that rental housing is for the poor, or perhaps for elderly people without hobbies or much personal property (who are they?), but mainly that it is temporary housing for young people who are not yet able to buy a home. These assumptions result in rental units without adequate space, features, storage, or parking for long-term or midlife residency, or anyone with children or space-consuming

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[56] Other reasons include incorrect calculations regarding the relative costs of owning and renting, and benefits to governments of having citizens expending time and resources on maintaining homes instead of questioning government policies.

leisure-time activities. Our culture must do an about-face, so that renting is not seen as the poor cousin of home ownership, for people too poor, lazy, or irresponsible to buy a home, but as the desirable option for most people. Cities must build rental units and a variety of other forms of compact housing that is comfortable for lifelong habitation for people of means, people who have many kinds of leisure-time activities and perhaps even low-impact in-home businesses.

Another cultural change that is necessary for Americans to facilitate urban 'goods' in a compact living environment is the creation of institutions of sharing. An individualistic culture rich in space and resources, Americans are not used to sharing private space or property, and our conceptual, customary, and legal mechanisms for doing so are very limited. This must change if we are to use urban spaces more efficiently, especially in the areas of greenspace, vehicles, parking, and some rights of way for pedestrian pathways across private property. Insurance regulations and liability issues are a major impediment to the public use of private property, to informal forms of transit, and to the sharing of private vehicles among friends and unrelated members of households, which would reduce residential parking pressures. Car-sharing enterprises and carpooling are small inroads into this realm, but neither can meet most people's physical or psychological transportation needs.

Since changes to the urban environment are expensive, local decision makers do not want to make mistakes. In our science-driven and belt-tightening era, they increasingly demand quantitative evidence from "experts" that one decision or another will improve the urban fabric. They are supported in this quest by the "experts" themselves: academics and economists. But the infiltration of quantification into land use decision making works against humane planning and design. Density, energy use, and urban sprawl are easily quantifiable, but livability and happiness largely are not. Superficial surveys are cheaper to fund than longitudinal studies or focus groups. Short-term benefits are more easily quantifiable than long-term benefits. Obvious gains in urban 'goods' (like housing near transit) are generally more visible and quantifiable than gradual losses (like health, quiet, or culture). So the demand by policy makers to see the quantifiable advantages of one kind of planning over another disadvantages livability and all its fuzzy nuances. Quantified results are also easy to oversimplify and misuse, and easy for special interest groups to put into glossy campaign literature. Therefore, if we wish to maintain urban 'goods' over the long term, we must resist the trap of quantification. When it comes to livability, the people—not academics, planners, designers, or economists—are the experts.

Unfortunately, since smart growth planners consider themselves to be the experts, people subject to smart growth planning often find themselves in very unpleasant political environments. "Pushback" by angry citizens is the usual reaction to overzealous densification and consequent reduction in quality of life for existing residents. To the extent that the smart growthers and new urbanists are convinced that their new cities are going to be "vibrant" and lots of fun for everyone, the only way they can explain people's negative reactions to their plans is to conclude that the opposition is ignorant, stupid, selfish, backward, and/or "afraid of change." (I'm sure the planners that brought us the previous generation of monolithic architecture and instant slums believed the same thing about their critics.) The arrogance of the smart growth advocates is insufferable, fueled by the utilitarian righteousness of the "greater good," and their conviction that those who talk about livability and stand up for their personal rights are selfish and myopic. Obviously, planners and developers have found that calling people NIMBYs is the most powerful way to crush neighborhood opposition, so they do it early and often. The name-

calling and stereotyping leaves little room for rational discussion of humane ways to implement compact living at the micro level, respecting people, neighborhoods, and local knowledge.

Although smart growth planners favor maximizing most of the communal access rights, they might question the practicality or even the desirability of realizing many of the personal space rights. Indeed, under the usual disjointed planning and densification practices, the personal rights are difficult or impossible to achieve. Current municipal codes do not incorporate the rights, and planners have limited ability to force developers to create livable spaces. So "business as usual" and traditional planning practices will not yield the urban rights. Cities will have to have a major attitude shift and spend considerable time and money to incorporate these rights into the built environment, with benefits that will be decades away and largely invisible, and they will not do so unless citizens demand it. Smart growth planners with an agenda of rapid densification will resist the personal space rights wholeheartedly (not in public, but in practice), although some new urbanist designers might support the rights. Citizens might also get support from enlightened police departments, code enforcement personnel, and health and social welfare departments, but those departments are strapped for resources to handle their own day-to-day obligations and have little left for proactive programs.

The final link in this discussion of government response to issues of livability is enforcement. Many American cities are just embarking on densification, and do not yet realize that compact living only works in conjunction with vigorous law enforcement. As mentioned earlier regarding the commons, behavior in compact settings must be more restricted than most Americans are used to because of its immediate impact on so many other people. As an urban culture Americans will have to relinquish our customary freedom to misbehave without much consequence, and extend more courtesy to those who are not immediate neighbors. Cities must counter the economic incentives that encourage builders and businesses to dump noise, light, and other pollution into the commons with awareness, regulation, enforcement, and penalties. A city consists of people, and without enforcement of personal livability rights, all talk of "sustainable" cities is nonsense.

Will there be a loss of freedom that comes with better livability in compact settings? Absolutely. Direct regulation of personal behavior would increase under the UBOR, because things like light and noise pollution and blight, which often emanate from private property, would no longer be tolerated. The corollary, however, is enjoying freedom *from* gratuitous unpleasantness, and other forms of freedom should also increase. Relative to rural and suburban life, city dwellers today already endure a huge loss of freedom, which appears "normal" to those who have never lived outside of cities.[57] The losses include but are not limited to the freedom to safely explore and go where one wants, freedom for children to entertain themselves outside, freedom to enjoy the night, and freedom to engage in activities that require an outdoor setting. These losses come mainly from two factors: lack of space and fear of strangers. City planning guided by the UBOR would tend to ameliorate both these existing constraints. Personal space and access to space is quantitatively protected in rights #9, #10, and #13. Fear of strangers is caused by sheer numbers of people, their transience, and crime; insofar as the UBOR would

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[57] The aging generation of city dwellers with its childhood roots in suburban and rural areas may be the only people who can create healthy cities at this time, because those who grow up in a city in front of a television or computer are unaware of or unconcerned about the unhealthy constraints they have always known. However, the fact that a caged animal has never lived outside a cage or has stopped fighting does not make the caged life any healthier for it. Inhumane regimes pass their major hurdle when finally nobody remembers the previous life.

moderate density and enable long-term residency, it should reduce these sources of fear.

Enforcing regulations requires balancing the legitimate needs and legal rights of pollution creators and others who benefit from their activities, against the needs and rights of those subjected to unwanted and unhealthy pollution. Nuisance ordinances are comprehensive and generally include enough objective and subjective criteria to enable adequate enforcement, so lack of enforcement derives mostly from lack of will. When it comes to noise, light, and blight, most municipalities hope that victims will ignore the pollution, or that polluters and their victims will achieve some tolerable truce without municipal involvement. It's fair to say that cities rarely proactively or routinely enforce nuisance ordinances, though they may use them as weapons in "bigger" battles.

There are two regulatory approaches to quality-of-life issues like noise and light pollution: objective regulations and subjective regulations. Objective regulations rely on standards based on measurement of pollutants (i.e., in decibels, lumens, or parts per million), and are enforced by professionals with meters. Objective regulations let people know what to expect, are "fair" (the same for everyone) and are legally upholdable when the data is clear. However, the application of standards is surprisingly difficult: What should the standard be, and what kinds of readings are most appropriate for each situation? How, where, and when should readings be taken? Metering requires expensive equipment, training, and manpower, which often prevents enforcement entirely. There will be loopholes because it is impossible to write the code to cover all contingencies, and polluters can legally create the annoyance right up to the cutoff point. Finally, objective regulations and their enforcement tend to reflect and favor property rights over human rights, tenants, and the commons. On the other hand, because they are concrete, objective regulations are easier to uphold in court.

Subjective regulations are based on experiential criteria. For example, noise ordinances may ban noises that are audible from a certain distance, disturb "reasonable" people of "normal" sensitivities, or endanger the "health or safety" of people or animals. An officer is able to enforce many subjective regulations simply by observing an infraction and applying a simple formula like "Can I hear this noise 100 feet away?" Subjective regulations have the advantage of being able to protect more people in more places more of the time. They work well when there is political will to enforce them, because they require relatively little administrative expense, don't require technical expertise or equipment, and give enforcers considerable freedom. But subjective regulations also have problems: they are often vague and subject to dispute in enforcement. Because subjective standards are hard to combine with stiff enforcement or penalties without legal challenges by offenders, violators tend to get warnings rather than penalties. However, in the arena of noise, despite some legal challenges, it appears that cities that are beginning to take noise seriously are opting for more subjective regulations.

Cities are remarkably uninterested in enforcing laws governing quality of life problems like noise and blight. But they are even less interested in enforcing conditions attached to land use permits,[58] especially those regarding expansion of commercial or favored institutional uses (schools, churches, hospitals, etc.) into residential areas, because of the general favoritism shown

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[58] When part of the commons is privatized through a use permit, often conditions are placed on the use permit in order to reduce the damage. For example, a developer may be permitted to provide less-than-prescribed parking, but only under the condition that he provide valet parking to maximize his spaces. When the valet disappears, the inadequate parking stays.

such uses over residential claims. Once a permit is issued, planning staff does not track outcomes over time. Instead, the entire enforcement regime depends on complaints from the public. But because of the ignorance of the general public of the existence of use permits and their conditions, violations become egregious and damage neighborhoods for many years before some citizen researches the issue and makes a complaint.

The "complaint-driven" system of code enforcement universally used by cities to address quality of life issues is untenable on both moral and practical grounds. It is morally unjustified because it puts an undue burden on the complainant, who is not a paid enforcement officer, in terms of knowledge, research, persistence, and even risk of damaging relations with neighbors. It implies that violations that do not generate complaints are ipso facto "okay," inoffensive, or unimportant: "Why are you the only one complaining?" is a common municipal reaction. In a neat Catch-22, it also implicitly throws the blame for non-enforcement on citizens or neighborhoods who fail to complain, as in: "Nobody complained, so [implicitly] we assumed that you and your neighbors had no objection to large piles of trash on this corner." And finally, complaining requires psychological fortitude, because nobody likes to see themselves as a complainer or tattle-tale, and because overworked city bureaucrats usually trivialize and ignore the few people who have the nerve or energy to complain.

The complaint-driven system is also practical*y* ineffective because the vast majority of people don't know the code and never know that a violation is occurring; they just think the annoying activity is "normal," at least for their neighborhood. Even if they do know, most people won't report it for the reasons just cited. The police, who are the only city officials who encounter violations in progress on a regular basis, do not enforce quality-of-life laws. How often do you see a police officer cite someone for a loud muffler or for littering? Never. But any violation that comes and goes over short time periods cannot be addressed by a complaint-driven system, because the pollution or violation almost always disappears before the complaint reaches City Hall.

When it comes to "stationary" violations, the complaint-driven system is almost equally ineffective. I have already mentioned why tenants will not report landlord violations, but homeowners also have their reasons for not reporting land use violations. Often homeowners who want to make changes to their property have ambivalent or even hostile relationships with their municipal building and planning departments. Even assuming a property-owner knows that a zoning or building permit is required for their proposed project (and homeowners may not, especially for minor projects), they hesitate or fail to obtain the permits, because either they know or fear their desired project will either not be permitted at all, or will be permitted only with annoying if not prohibitive "red tape," fees, and costly conditions. With almost no risk of being caught or penalized for most minor unpermitted projects, and a very great "cost" of following legal channels, I daresay that a majority of homeowner building projects in most cities are done without permits. This is damaging to neighborhood livability because the zoning regulations prevent neighborhood deterioration and the privatization of the commons, and the building permits guarantee safe and habitable dwellings.

However, the impact of unpermitted construction is far more insidious. Once a homeowner has engaged in unpermitted construction, that person will almost never report the illegal construction of a neighbor, even if he was otherwise inclined to do so and the construction is egregious.   So the man who put a window in his garage without a permit, and the woman who

added a deck without a permit, and the couple who turned their basement into a room for their college-age daughter without a permit, all of which are nondetrimental and would have been permitted, will not report their neighbor who adds an illegal unit or two behind his house, which is highly detrimental and would not have been permitted. Cities should do everything they can to encourage people to "improve" their living spaces in ways that do not increase the building (or hardscape) footprint or the population density beyond desired levels. But unpermitted projects that add density while removing open space, greenery, and public parking are a common form of illegal "infill" that inevitably damages neighborhood livability.

This illegal "infill" is disturbingly common, and more damaging to low-income and high-density neighborhoods (which are already short on space, greenery, and parking, and the money to ensure safe construction) than high-income neighborhoods, but the solution is unclear. Obviously establishing permitting processes without unnecessary restrictions, perverse incentives, regressive economic burdens, and overly severe penalties would encourage more adherence to the law. But even clean-nosed neighbors do not like to report on neighbors, nor do we want Big Brother poking around excessively. One solution might be to address the problem when the property is sold. At that time, the city could verify and deal with illegal changes in building footprints and numbers of units, the two elements which are the most damaging and which are easy to ascertain, without delving into other aspects of the building, unless, perhaps, there are safety issues (and commercial properties might be treated more stingently than owner-occupied properties). This would be a regular part of all real estate transactions, and appropriate fines (with interest) and/or costs of remediation would be legally recouped by the city from the proceeds of the property sale. Simply anticipating the financial consequences of altering the footprint or units would hugely disincentivize the most detrimental projects while not intruding into minor infractions, and permit the remediation of neighborhood damage each time a property is sold.

The commons fares especially poorly under complaint-driven enforcement. To be healthy and well used, the commons must be kept free from abuse at all times. It is well known in social psychology that when responsibility for action is shared by many people, each individual is less likely to intervene when they see a problem, or take responsibility for whatever happens. This is especially true of public spaces in the United States, a country where people value freedom, tend to mind their own business, and even incorrectly misconstrue the commons as a place owned by no one instead of by themselves. So in the absence of determined proactive municipal stewardship, the maintenance of the commons depends on the very few people who report its abuse. But overworked municipal officials ignore, isolate, or vilify these people unless they organize and lobby City Hall as a group. Lower density neighborhoods tend to have neighborhood associations for this purpose, but people in high density settings generally have little sense of community,[59] so it is especially difficult for them to organize, or even know that others are bothered as they are. This is why proactive municipal stewardship of the commons is critical. Cities that do not have funds to devote to extensive policing of the commons should not increase their densities. And police departments must realize that they cannot police the commons without honoring the input of the residents who assist them.

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[59] In fact, many people move to cities because they want anonymity and they avoid, rather than seek out, community. Since the anonymity of the city is partially voluntary and will not go away despite good design efforts, it must be taken into account in planning and allocating enforcement resources.

What happens after a complaint reaches City Hall? Currently, without social or municipal appreciation of the need for law enforcement for livability violations, city officials often balk at enforcement of even obvious and outrageous violations, and hand out trivial if any penalties. Sometimes a city will even reward the violator by legalizing the violation: "This is not allowed, but if you want to keep doing this, here's how to get an exception." So to adequately protect urban rights, we need an entirely new attitude toward, and system of, code enforcement. Wherever possible, enforcement should be proactive by police and not involve citizens at all.[60] Otherwise, citizens should have to do nothing more than make a single, anonymous phone call. This is especially true for land use permit violations. After all, a use permit is a contract between the applicant and the City; it is not the public's job to enforce it.

The unfortunate thing about land use decisions is that in land use, the destruction occurs slowly and under the radar, a little at a time, and the consequences are often masked by other socioeconomic factors, making it hard to tell what role the land use decisions played in the overall picture.[61] In addition, unlike many public policies, the results are often either irreversible (such as loss of historical resources), or only reversible over many lifetimes (such as loss of trees or greenspace, local environmental changes like wind canyons, replacement of good living units by poor ones, etc.). Morality dictates that we should not compromise the rights and 'goods' of future people any more than we should oppress a living minority, and the goal of "sustainability" requires the same respect for the future.

PART IV: WHAT PEOPLE NEED

It is not possible to draw bright lines between personal 'goods' and communal 'goods'. And we need not agree on which are more critical than others; both must be honored. However, urban planners must plan for reality, and continuing suburban sprawl shows that people have voted with their feet on this issue: The personal 'goods' of quiet, space, greenery, and safety are more important to most Americans than the communal 'goods' of ready access to employment, entertainment, and shopping. The neighborhood with more personal 'goods' than communal 'goods' is the suburb. The neighborhood with some communal 'goods' but few personal 'goods' is the slum, or future slum. Residents of slums may have bus stops and convenience stores, but they have very poor housing quality, little greenery, and little pleasure in their dwellings or neighborhoods. The goal of building "cities for people" is to avoid making future high-density neighborhoods fit this description.

Since smart growth planners emphasize resource efficiency rather than people, others will have to speak loudly for the personal 'goods', probably for some decades to come. The motivation behind the UBOR is that smart growth development is rapidly depriving urban dwellers of personal 'goods', that is, minimal requirements for physical and psychological health

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[60] The average police officer does not like to enforce noise ordinances, so several college towns have creatively solved their student noise problems by hiring special officers who combine public education of youth with enforcing noise ordinances. Enforcement went up and noisy partying went down.

[61] The same is true for improvements in the urban environment. I have seen neighborhood improvements credited to changes in urban design without recognition that the neighborhood had simultaneously been inundated with economic and social programs and other upgrades.

and well being[62]—for example, through overdensification, promotion of mixed use zoning without residential protection, deprivation of personal mobility and access to nature, and destruction of neighborhood identity and community cohesion.

Why do we need to pay special attention to personal urban 'goods'? First, city dwellers spend most of their time at home, where they establish their identities in space over time. Second, personal well-being[63] demonstrably deteriorates most rapidly when physiological and psychological 'goods' are inadequate, and knowing this, people seek to put personal 'goods' first in housing choices. Third, personal 'goods', not communal 'goods', are more at risk in higher density areas where most people are going to live. Fourth, people are very adaptable in satisfying their communal requirements, as evidenced by the historical diversity of community infrastructures that function well. And fifth, urban planners, particularly smart growth planners and new urbanist designers, devote most of their attention to public spaces and little to private spaces.

In smart growth jargon, "livability" appears to be a synonym for public transit, even though transportation is only one of many factors contributing to livability, and far from the most important to most people, [64] as the attraction to suburbia shows. Government funds devoted to "livability" projects disproportionately fund regional transportation projects and a little transit-oriented development. The Obama Administration's 2010 Partnership for Sustainable Communities is one example. This joint project between the Department of Transportation, the Department of Housing and Urban Development, and the Environmental Protection Agency is guided by six "livability principles."[65] They are, in order: (1) *Provide more transportation choices.* The accompanying text addresses only the communal 'good' of public transportation, not the personal 'good' of automobility. (2) *Promote equitable, affordable housing.* The accompanying text focuses on housing location, access, and cost, but does not mention the livability or quality of housing. (3) *Enhance economic competitiveness.* The text addresses the communal 'good' of timely access to employment, education, and markets. (4) *Support existing communities.* The text says: "Target federal funding toward existing communities—through such strategies as transit-oriented, mixed use development and land recycling—to increase community revitalization, improve the efficiency of public works investments, and safeguard rural landscapes." So the title appears to be a personal 'goods' objective (urban rights #8 and #11 at least), but the text mentions everything *except* the integrity of existing communities, and safeguards rural landscapes but not urban landscapes. (5) *Coordinate policies and leverage investment.* This aims to make coordinated planning more efficient, which usually means top-down planning and code-busting. (6) *Value communities and neighborhoods.* The text reads: "Enhance the unique characteristics of all communities by investing in healthy, safe and

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[62] Previous forms of city and transportation planning also were also damaging and deprived people of their urban rights, but the name "smart growth" implies that its practitioners are "smarter" than they were, so we can hold them to a higher standard.

[63] Here I admit to the individualist bias. However, a community is composed of individuals, so it is difficult to imagine a healthy community that is composed of unhealthy individuals.

[64] A recent in-depth study of Oakland, California's Chinatown, initiated as part of a transit-oriented development project, revealed that the residents themselves had the following goals: healthy, vibrant communities; pedestrian-friendly and safe environments; economic stability; cultural preservation; green jobs; clean air; and democratic participation. Source: Brenda Payton, "District makes its voice heard," *Oakland Tribune*, 12/12/2010, vol. 136, no. 295. p. A3f, col 1.

[65] U.S. Department of Housing and Urban Development, "Sustainable Communities" at http://portal.hud.gov/jamwiki/en/Sustainable_Communities (accessed 12/30/2010).

walkable neighborhoods – rural, urban or suburban." This text makes no mention of what are usually considered the "unique characteristics" of communities, which generally means their cultural, historical, and aesthetic character (urban right #8). And it also omits any direct mention of the quality of the personal spaces of the people that populate neighborhoods. And finally, placing the goal of "value communities and neighborhoods" at the very end of the list (which is typical in such lists; transit is usually first) reveals its true priority in smart growth planning: an afterthought and a sop to those who point out the macro-level focus and micro-level damage of smart growth planning.

Urban designers, especially those trying to humanize smart growth, also emphasize public spaces and communal life at the expense of private spaces. For example, a few principles in the New Urbanist Charter express personal space rights similar to those in the UBOR: "All buildings should provide their inhabitants with a clear sense of location, weather, and time," they should favor "natural methods of heating and cooling," and "preservation and renewal of historic buildings, districts, and landscapes [should] affirm the continuity and evolution of urban society."[66] However, the other 95% of the charter addresses regional planning and public spaces. New urbanist ideas arose in response to the previous era of devaluation and poor design of public spaces, and the supposed desolation and isolation of suburbia.[67] But in responding to these problems of low density living, they have ignored the problems of high density living. New urbanists' love affair with mixed use spaces and failure to acknowledge the damage that commercial spaces do to residential livability will have devastating impacts on cities unless it is reversed. It appears that contemporary planners and designers have too little personal experience with compact and mixed use living in the American context to correct this problem themselves. The bottom line is: If we leave it up to smart growth planners and new urbanist designers, we will lose our personal space rights.

The necessity and desirability of the eighteen rights in the UBOR are described below, and as space allows I briefly suggest ways of implementing the rights. Rights #1 through #11, the "personal space rights," guarantee the basics of good physiological and psychological health and residential livability, and the adequacy of communal spaces that individuals identify with and frequent on a regular basis. Top priority must be given to the interior livability of dwelling units because we spend by far the most of our time there, and the more crowded our external spaces become, the more we need this personal space. What we can do inside our homes is much more important than the exterior sizes, shapes, and designs of buildings. Rights #12 through #18, the "communal rights," concern our access to the commons and to the urban network. These are generally more difficult to implement because they involve larger numbers of people and major changes to the current built environment. Rights #14, #15, #16, and #17 all deal with access to amenities and are addressed together. These access rights are the focus of smart growth planners. They all potentially conflict in similar ways with most of the personal rights, so the difficult question is how to maximize them without damaging residential health and quality of life. To the extent that the communal rights imply more mixed use development, the personal rights become even more important: commercial and institutional proximity reduces

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[66] "Charter of the New Urbanism," (Congress for the New Urbanism, 1996), http://www.cnu.org/charter (accessed 12/30/2010).

[67] Studies show, however, that suburbia has considerable diversity, and voluntary communal organizations that provide a sense of community. Suburbanites are also less fearful of strangers than urbanites. Many spatial and cultural factors contribute to both community and isolation in both urban and suburban settings.

residential livability unless we take special protective measures for residents.

<div align="center">

The Urban Bill of Rights:

Explanations

Personal space rights

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1.   *The right to see the sky, the sun, and significant greenery (e.g., a vista, a yard, a park, a planted streetscape, or a balcony for plants) from within one's dwelling unit.*

      This is the first right because it is no less than the birthright of any animal to connect with the sky, the living earth, and the diurnal cycle, which are its evolutionary home. Or, as New Urbanists have expressed it, habitations should provide people with "a clear sense of location, weather, and time." Although people have known since time immemorial that nature is good for the soul as well as the body, scientists are now gradually coming to understand the provable psychological and physiological (stress-reducing) benefits of exposure to nature. We are also starting to understand that those who do not feel connected to the earth will not act to preserve it. If housing does not meet basic requirements for exposure to nature, therefore, we should reduce the density or improve the design and urban landscaping until it does.

      I once stayed in a tiny apartment in a Manhattan high-rise in which I could not see the sun and where the only window (which was on an air shaft) could not be opened. To know the weather in the morning, I had to descend 30 floors and walk to the corner where I could see the eastern sky. Such disconnection from the environment is all too common in high-rise housing, and inhumane for permanent living. Even with plenty of windows, north-facing units without any sun exposure are disorienting and depressing over time. But one can always angle buildings and design units to get at least a little sun. As for greenery, well-designed buildings can provide views of street trees, parks, greenery on their own property, or vistas of surrounding landscapes. However, close sensual encounters with nature are much better than distant vistas. Although vistas alone may accompany elegant penthouse living, often the wealthy have supplemental access to nature elsewhere. Poor areas, however, are often full of concrete and supply inadequate greenery even at low densities.

2.   *The right to enjoy natural passive ventilation within one's dwelling unit.*

      This is a no-brainer for comfortable living, and a green building necessity. Air conditioning takes lots of power and creates unpleasant noise. Few people in a mild climate should need one, and in moderate climates, even using a fan should be a rarity with good window placement and design. The minimum window requirements in building codes may not be enough for effective ventilation. The recent habit of designing apartments and condos with windows only on one side might conceivably permit outdoor air ventilation with a silent fan assist, but such designs are poor for other reasons, except perhaps for the smallest units. Of course, when developers replace open windows with mechanical ventilation, it is often to block out noise. It is also impossible to have passive ventilation if one must put up opaque window treatments to block out nighttime light pollution. Obviously, then, passive ventilation is not

possible unless noise and light pollution are also addressed.

3. The right to enjoy peace and quiet within one's dwelling unit with windows open, especially at night.

For the past four decades, noise has consistently ranked as the leading complaint among urban dwellers, greatly surpassing complaints about crime in all but the largest cities, where it approximately equaled crime.[68] Since numerous studies and other indicators from many countries show that noise is increasingly a leading cause of neighborhood dissatisfaction and of people wanting to move from their neighborhoods, noise reduction in cities is vital to any strategy to encourage urban living and discourage suburban sprawl.

A new approach to noise is necessitated by increased densification and mixed land uses. Increased urban density means that more residential noise sources of all kinds—more people, more voices, more cell phones, more stereos, more activities, more barking dogs, more trash pickups, more cars, more car alarms—are crowded into smaller areas, with more noise-reflective building surfaces. Mixed use means increased business activity, pedestrian activity, evening and night activity, and public transit and traffic activity in residential areas. Noise also impacts our daily experience of nature by driving insects, songbirds, and other animals from the urban environment. Undesirable noise reduces the amount of time people want to stay in an area, driving people from the commons and increasing crime. To maintain a livable environment, therefore, acoustical planning and an effective regulatory system must accompany any significant increase in residential density.

In the European Union, "noise pollution" stands alongside "air pollution" as two co-equal elements of "air quality." By 2007, every major city in the European Union was required to have mapped its traffic noise and found ways to reduce it.[69] But in the United States there is no concerted effort to address noise at any government level. Consequently, perceived urban noise has more than quadrupled in the past generation. In recent years, nighttime noise levels have also increased relative to daytime levels, largely due to nighttime trucking and deliveries. "Just in time" business practices have greatly increased the use of trucks relative to trains; the number of trucks on freeways doubled between 1990 and 2000, and each 18-wheeler emits noise equivalent to 28 passenger cars. SUVs and light trucks make more than twice as much noise as smaller passenger vehicles.

Although it is a favorite goal of planners, changing personal driving patterns will be the slowest and least effective way to reduce urban traffic noise impacts, because the need and desire for personal mobility are deeply embedded in the culture. A faster way is to manipulate the following factors: vehicle sizes, traffic speed, amount of stopping and starting, road surfacing and tire design (almost all passenger vehicle noise is tire noise), more local supply of commodities, more regulation of and disincentives for trucking, acoustical building façade treatments near roads, careful positioning of new residential density to avoid noise from traffic arterials, and enforcement of laws relating to construction and delivery vehicles, idling trucks, and loud vehicles. Housing above transit corridors should be avoided, because noise levels tend

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[68] Speare and White, note 3.
[69] Alan Burdick, "Ooh La Loud," *Discover*, April 2005, p. 88.

to increase with altitude unless offset by distance. [70]

Besides traffic, the other two causes of urban noise are stationary sources and human activities. Almost all noises emitted from buildings (e.g., from HVAC systems, transformers, etc.) and other stationary sources are easily preventable. Yet commercial and institutional buildings continue to dump their noise into the commons. Many gratuitous behavioral sources, such as loud vehicles, barking dogs, stereos, and parties could be addressed at any time with political will. But creating or enforcing noise regulations is a very low priority in most American cities, and designing buildings that are anything but huge noise reflectors is rarely done. Every city should have an acoustical engineer on staff to guide and assist planning staff, enforcement officers, and the public.

To protect residential livability, the current promotion of mixed use development must be addressed with great caution. Here is a noise description from a 2008 environmental impact report on a California shopping center:

> Sources of on-site noise from operations/activity at the shopping center would include patrons to the 24-hour businesses such as fast food establishments and the anchor tenant. Additional sources would be from truck deliveries, loading dock activity, heating and ventilation units, and air-conditioning and other mechanical equipment. Noise sources typically associated with commercial delivery activities include truck engines, back-up horns, beepers and signals, truck-mounted refrigeration/generator units, forklifts, handcarts, roll-up doors, PA systems, and voices from drivers and store employees. Roof-mounted heating/cooling systems are proposed on all or most of the stores…

These commercial noises also occur with institutional uses such as schools, group living quarters, hospitals, socially active churches, etc., and in significant amounts these uses are also incompatible with nearby residential livability.

The health impacts of environmental noise are gaining scrutiny as rising health care costs lead health professionals to focus on disease prevention. Concerns about the direct correlation between health and social class in America is likewise leading to increased study of long-term environmental stressors, of which noise is one. Health experts now realize that noise is toxic just like other environmental pollutants, with significant health consequences. In addition to contributing to hypertension, heart disease, and other chronic illnesses, environmental noise reduces productivity at work; increases the rate of accidents; degrades performance at school; interferes with cognitive development, learning, and reading progress in children; intensifies the development of latent mental disorders; and negatively impacts mental well-being and social behaviors such as aggression and altruism. Living in a lively part of town, even by choice, does not reduce a person's susceptibility to the impacts of noise; studies show that there is no physiological adaptation to noise. On the contrary, long-term residency in a noisy area increases the need for areas of "escape" from the noisy environment. Things people do to avoid noise,

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[70] M. David Egan, *Architectural Acoustics*, (McGraw-Hill, Inc., 1988), p. 260. This is because there are many fewer noise obstructions up high than there are at ground level, and it is also easy to verify this empirically. Planners should consider separating transit corridors from residential areas by at least a half block of noise-abating spaces, including: (1) commercial and/or institutional buildings with sound-absorbing facades, and with their activity areas concentrated on the street side and attractive step-downs to the residential area; (2) parking lots, either multistory to block sound, or surface to provide an area of acoustic fall-off and dispersion; and (3) grassy greenspace to reduce noise by fall-off and absorption.

stress, and sensory overstimulation create social detachment, loss of community, and ultimately, higher crime rates. Thus noise pollution is both a public health and social equity issue, and permitting noise to pervade the less affluent parts of town is no more justifiable than allowing industrial pollutants to do so. Since low- and moderate-income people increasingly have little choice but to live in high density and mixed use areas, social equity demands that we pay special attention to noise pollution in these areas.

The most important impediment to noise ordinance enforcement is that it is usually complaint-driven, so it depends on the public's determination to complain. But most Americans do not believe that noise is physiologically, psychologically, and sociologically important, or that they and others are entitled to live with comfortable and healthy noise levels. In this sense, noise sensitivity has not become a cultural value, so education is part of the solution. Cities will get noisier as long as decision makers believe that noise is just a part of urban life; that people who live in urban areas expect it, deserve it (they shouldn't have moved there if they didn't like it), and even like it (it's vibrant!); and that anyway nothing can be done about it. Nonsense. Noise is created by people and can be abated by people. It is possible to have a high density urban environment that is reasonably quiet in the daytime and very quiet at night; I know, because I lived in one for 25 years.[71]

4. *The right to sleep and experience night without excessive artificial ambient light, and to view the stars in the night sky from a location within one-half kilometer (a quarter mile) of one's dwelling unit.*

Light is one of the fastest-growing pollutants, and has now spread into many wilderness areas that are near cities. Astronomers and ecologists concerned about the ecological impacts of light pollution on wildlife and plants are on the forefront of addressing this issue. In July 2008, eleven members of Congress signed a bipartisan letter to the EPA urging action to reduce light pollution.[72]

Studies are just beginning, but they already show that light pollution affects trees (and by implication everything that depends on them), birds and their migrations over cities, turtles, fish, reptiles, frogs, bats, and insects in both urban and rural areas.[73] Very little is known about the effects of light pollution on humans, although growing evidence points to health problems associated with nighttime light. Almost all organisms have 24-hour circadian biorhythms affecting brain wave patterns, hormone production, cell regulation, and other biological activities. Disruption of this cycle, which controls from ten to fifteen percent of our genes, is linked to various medical disorders in humans, including depression, insomnia, cardiovascular disease, and cancer.[74] One disturbing study closely linked breast cancer with outdoor nighttime

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[71] For a comprehensive look at urban acoustics and noise issues, see my online document, "Urban Acoustics: Getting Started on Urban Noise," http://www.sharonhudson.com/urban_planning/urban_noise.html (accessed 12/30/2010).

[72] Luz Claudio, "Switch On the Night: Policies for Smarter Lighting," http://ehp03.niehs.nih.gov (accessed 12/20/2010). Originally published in Environmental Health Perspectives, 2009, 117, p. A28-A31.

[73] Ron Chepesiuk, "Missing the Dark: Health Effects of Light Pollution", http://ehp03.niehs.nih.gov (accessed 12/20/2010). Originally published in Environmental Health Perspectives, 2009, 117(1), p. A20-A27.

[74] Ibid.

light in urban settings in Israel.[75] Of course, it doesn't take a study to tell us that sleep disruption is bad for our health and well-being, and that sleeping with blackout shades prevents natural ventilation, natural awakening in the morning, and enjoyment of the night sky from indoors.

It is estimated that lighting accounts for about 8 to 9% of the electricity used in the United States.[76] But "according to the National Park Service, 50% of the light from a typical unshielded light fixture is wasted, shining upward where it is not needed. About 40% of the light shines downward to illuminate the intended target. Light emitted horizontally tends to create glare."[77] Energy-saving light bulbs have actually exacerbated light pollution, because now property owners can increase lighting around their buildings with little operating cost. But ironically, brighter outdoor lighting does not necessarily increase security in our homes and streets.[78] Outdoor night lighting should therefore be very modest and directed only where it is needed. Using bright lights to compensate for lack of neighborhood health and safety and good law enforcement is ineffective and destructive to the planet and our personal health and well-being.

Some urban areas are so bright that people cannot see any stars, but the right to enjoy nature does not stop at sunset. Children need to understand their place in the universe. Urban glare should not extend into residential back yards, but many people do not have access to back yards or other natural places of darkness. In some cities, public parks close at night so people have no place to go to experience the night sky. Although the stars visible in the urban environment will always be limited, when people want to view everyday astronomical events, there should be nearby places to do it.

The solution to defending one's own right to darkness at home is to work together with neighbors to eliminate every unnecessary lumen emanating from private property. But most of the solution must be governmental. Cities should work with landlords and commercial building owners to reduce lighting around their buildings, and citizens should demand "greener" lighting in their streets and public spaces, and not accept excessive night lighting as a quick and dirty "solution" to crime.

5.   ***The right to be free in one's home and neighborhood from pollution of air, water, soil, and plant life.***

Pollution is the destruction of the commons for private gain. One index of environmental pollution constructed by Zero Population Growth showed that the environments of cities of over 250,000 were significantly poorer than those in smaller cities.[79] Increasingly, public health officials are finding themselves at odds with densification and affordable housing proponents, as air pollution threatens to limit housing near transit corridors. Pollution is a very important health issue, of course, especially for children, but it is also an equity issue, now usually called "environmental justice." The wealthy create the most greenhouse gases, primarily through their

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[75] Ibid. "The results showed a statistically significant correlation between outdoor artificial light at night and breast cancer, even when controlling for population density, affluence, and air pollution. Women living in neighborhoods where it was bright enough to read a book outside at midnight had a 73% higher risk of developing breast cancer than those residing in areas with the least outdoor artificial lighting."

[76] Luz Claudio, note 72.

[77] Ron Chepesiuk, note 73.

[78] Luz Claudio, note 72.

[79] Speare and White, note 3.

consumption, but almost all the pollution (including noise, visual, and light pollution as well as toxins) from the factories that create consumer goods, the vehicles that move them, and the means of their disposal ends up in poor neighborhoods. We should always be on the alert for environmental inequities such as these, and attempt to reduce them.

6.   *The right to be free from undesirable local environmental change caused by poor design and upkeep of public spaces, such as wind and noise canyons, absence of sun or shade, impaired drainage or groundwater supply, etc.*

These man-made urban environmental problems are not inevitable. We can have plenty of density without going overboard with rows of tall buildings that cause wind, noise, and shade canyons. Municipal area plans should carefully study micro climates and wind patterns before determining building envelopes, which may change parcel by parcel. Moderation and good design will prevent unpleasant micro environments, and make urban life, public spaces, outdoor activities, and walking much more enjoyable and attractive. Pleasant surroundings make it much more likely that people will go outside, get exercise, meet their neighbors, and keep a watchful eye on the commons. In areas of equivalent population density, open, sunny shopping centers with plenty of trees tend to attract more shoppers than shady rows of tall buildings. On the other hand, taller buildings can provide needed shade in hot, sunny climates, or constructively block excessive wind or noise. Environmentalists are just starting to understand the downstream environmental damage we are causing by overuse of nonporous surfaces, though the impact on city sewer budgets is obvious. Because most localized urban environmental damage arises from expensive infrastructure designed to last for generations, protecting this urban right is critical.

7.   *The right to neighborhood surroundings free from excessive visual blight.*

The basic 'good' of aesthetic experience is legally enshrined in zoning codes, our parks and scenic highways, and many other places. Nuisance ordinances, for example, are based on the idea that a clean, orderly, and reasonably attractive environment is necessary for good societal relations. Among urban affronts to the senses, rights #2, #3, and #4 protect us from noise and light pollution, and local nuisance laws and #5 will generally take care of offensive odors. This right addresses the visual pollution generally referred to as urban blight, such as litter, clutter, graffiti, blighted properties, and so forth. Like noise pollution, visual pollution is not only visually unpleasant, it has social consequences. It causes people to retreat from the commons, from walking, and from socializing in public spaces, and contributes to crime. It is also stressful on a daily basis, with the possible physiological consequences of stress, because in addition to being unpleasant, it sends three clear messages: Your neighbors are irresponsible and might be dangerous; those in power do not care about your neighborhood and those in it; and things will probably get worse. In short, blight signals a profound disrespect for the earth, people, and property, damaging the psychological well-being of those continuously exposed to it.

Laws against litter, clutter, graffiti, and blighted properties are rarely enforced in poorer neighborhoods except as a tactic to address more serious crimes. In fact, cities exacerbate the problem by poor location and oversight of litter-generating stores, bus stops, trash receptacles, etc. In public spaces, blights are legally public (not private) nuisances, and private citizens have little recourse but to fruitlessly harangue an unresponsive city bureaucracy. Although crime is ultimately caused by complex social and economic factors and not ugly surroundings, the

"broken window" theory of social deterioration[80] does have some validity, especially in neighborhoods just beginning their descent. Crime and blight go together, and blight presages the impending loss of other urban rights, as more demanding residents flee the neighborhood and leave it to deteriorate.

Considerable struggle goes into maintaining good views, especially for the wealthy (who actually have them), but the right to pleasant visual surroundings is limited. Remember, the UBOR is intended to provide minimum, not optimum, standards. Although preservation of private views, for example, is very desirable, and may be encoded in the law if a community wishes, the UBOR does not contain the right to a "good view" because as long as you can see the sky, the sun, and significant greenery from your dwelling, and are free from light pollution and unacceptable blight, a "good view" from your living room window is not necessary for a minimally acceptable quality of life.

8.   *The right to neighborhood surroundings that respect and maintain the cultural integrity of the community.*

This right applies to neighborhoods the recognized third-generation human right to cultural integrity. Cultural integrity can be promoted by design that facilitates traditional cultural activities, preserves historic and cultural landmarks, respects the aesthetics of the community, and acknowledges the relationship of the built environment to the natural landscape it inhabits. History, landscape, and neighborhood character, even if embodied in private property, is part of the cultural commons, and part of the identity of individuals who occupy the space over time. On the other hand, preservation of neighborhood character does not require or suggest that any neighborhood should remain static. Neighborhoods change their demographics and cultures over time, so citizens, planners, and architects must balance history and change.

A community's self-knowledge and sense of identity is constructed by members of the community over time. Long-term residents, neighborhood-generated events like fairs, as well as gathering places like neighborhood schools, churches, and parks, are critical to the process. Organized civic activities also contribute to the process, including electoral politics and land-use planning processes. Cultural integrity in spatial terms often means historical preservation, which usually requires local initiation and research, which brings people together and contributes to the community's cultural self-discovery. Historic preservation contributes to cultural integrity in space, increases property values, creates jobs more efficiently than new construction, increases tourism revenues,[81] and perhaps most importantly, is good for the environment because of the conservation of "embodied energy." The depreciated costs of older buildings are also critical to the economic health and diversity of neighborhoods.

However, historic preservation often conflicts with new development. In 1937, Nikita Khrushchev gave voice to the modern Soviet planning philosophy, saying, "We should not be

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[80] This is the theory that visible signs of deterioration (such as broken windows) send the message to residents that nobody is in charge, nobody cares, and the neighborhood is not worth preserving. This demoralizes residents, who give up trying to maintain their properties or the commons, and signals to criminals that this is a good place to victimize.

[81] Gerri Hirshey, "History Happened Here," *Parade Magazine*, 5/8/2005, http://mode-v.com/work/media/web/history/stories/history_happened.html (accessed 12/30/2010).

afraid to remove a tree, a little church, or some cathedral or other."[82] The result is that "Soviet-style" is now synonymous with overbearing, soulless buildings that crush the human spirit. Unfortunately, public officials in many American cities, not seeing many grand, 1000-year-old buildings around them, express similar sentiments about the value of old buildings. But preservation organizations at all levels have shifted away from the "trophy building" approach to preservation, to a contextual approach emphasizing local values and neighborhood character.[83]

This right intends a flexible interpretation of the word "community," since neighborhoods and cities must work together to protect a variety of cultural interests. Neighborhoods are usually communities, but so are larger districts and the city as a whole. When in conflict, whenever possible, the city should give the nod to the desires of local neighborhoods or affected cultural groups. People outside the neighborhood may not recognize the historic or cultural value of this or that building or space, but allowing uninvolved outsiders to decide what to preserve undermines diversity. Homogenization by majority vote is one of the dangers of democracy. If a neighborhood is blessed with good cultural character embodied in physical forms, maintaining the character of those spaces is beneficial not only for those residents but for the city as a whole.

9. ***The right to adequate space for storage, hobbies, and other personal activities in and around each dwelling unit, including interior and exterior play space for children in family housing.***

Jane Jacobs makes the point that high density living and overcrowding are two different things, and that people may choose to live in high density areas but do not voluntarily overcrowd.[84] In this country, overcrowding is primarily a psychosocial rather than a physiological or public health problem. Overcrowding is subjectively experienced as inadequate space, quiet, and privacy. Konrad Lorenz writes: "The close crowding of many individuals in a small space brings about a fatigue of all social reactions. Every inhabitant of a modern city is familiar with the surfeit of social relationships and responsibilities…That crowding increases the propensity to aggressive behavior has long been known and demonstrated experimentally by sociological research."[85] This means that some of the positive physical and energy efficiencies of high density living may be offset by some downstream social costs. For example, high density areas require more policing per person than low density areas.[86]

Many cities permit the construction of quite small housing units, but such units virtually guarantee short-term and low-income residents, and accompanying neighborhood problems. Cramming too many people into too small spaces is bad for individuals, bad for families, and bad for society, even if it forces people into the streets or cafes and makes them "vibrant." It forces people to use spaces for unintended purposes, which is hard on the people and hard on the

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[82] Joel Kotkin, *The City: A Global History,* (Modern Library, 2006), p. 107.

[83] Gerri Hirshey, note 81.

[84] Jacobs, note 43, p. 205-212.

[85] Konrad Lorenz, *On Aggression,* (New York, Harcourt, Brace & World, 1966), p. 252.

[86] See, for example, Helen F. Ladd, "Population Growth, Density and the Costs of Providing Public Services," *Urban Studies*, Vol. 29, No. 2, 1992, pp. 273-295. Reviewed online by George H. Conklin, "Article Review: Population Growth, Density, and the Costs of Providing Public Services," in *Sociation Today*, vol. 2, no. 1, Spring 2004, http://www.ncsociology.org/sociationtoday/v21/review2.htm (accessed 12/30/2010).

spaces.[87] Those who live in noisy, busy, crowded neighborhoods are most in need of dwellings that provide peace and refuge, but they are the ones most likely to be provided "rabbit warrens" to live in. And people tend to acquire goods as they get older. There's nothing "smart" about forcing people to move to the suburbs as they age, or about making people rent sprawling storage units far from their homes.

Instead of relying too much on high density housing, we can easily increase density several fold while retaining a high quality of life by clustering houses around communal lawns or using duplexes, triplexes, and fourplexes. All of these can have the kinds of spaces necessary for excellent quality of life with less land area per unit than single family neighborhoods. In existing neighborhoods, older buildings are precious because they often provide much more space per unit and per dollar than modern ones. Cities with problems getting developers to provide good housing for families might consider writing lists of requirements for family housing, and enforcing them.[88] As long as parents prefer to raise their children in suburbia, where they have space, yards, quiet, and safety, urban planning, design, and maintenance have not been a success.

Private space is where people construct intimate relationships, produce their own lives and identities starting with childhood hobbies, and sometimes even create new inventions while tinkering in the garage and yard. The American psyche is closely tied to spatial freedom, and shrinking the private space has enormous cultural implications. Shrinking our space means literally shrinking who we can become.[89] Without space for creation, our time is filled with consumption: the urban arts of eating, drinking, and shopping. The public space is where the consumption takes place. Philosopher Guy Debord writes about the society of the spectacle, or the consumer/entertainment society, in which people are groomed to consume, not create. The consumption of spectacle means disengagement from actively producing one's own life, and instead becoming part of the public entertainment. Modern planning's emphasis on the "vibrant" public space at the expense of private space provides the stage for this new form of being—and *only* this new form of being. Do Americans really want to be consumers instead of producers? It's for us to decide, not planners or developers.

In addition, to be healthy, our children need to spend much more time playing outside. Exterior play space (whether private or communal) must be designed so that parents can watch their children while engaged in other activities. The university near me recently built lovely new graduate student housing, but many student parents preferred the dilapidated old postwar housing in which children could play safely outside while parents studied at ground level nearby. Although more urban parks are desirable, we cannot rely on public parks to provide physical activity for young children, because healthy children need much more outside play time than the few hours per day or week that their busy parents can set aside to take them to a park.

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[87] For example, multi-unit building codes require more soundproofing in floors and ceilings of bedrooms than in living rooms. When people add roommates who sleep in the living room, or work or play in the bedroom, it damages both their own sleep and that of their upstairs or downstairs neighbors.

[88] For example, family-friendly housing would have requirements for closet space, kitchen counter and cabinet space, uncarpeted areas for eating and playing, bathtubs, ceiling lighting, non-lift parking, and so forth.

[89] Once, when I asked a visitor from Hong Kong what his hobbies were, he stated that he had no hobbies because he had never had space for them. "All I know how to do is work," he said.

10. *The right to automobile parking space for each household, usually one to two spaces per household.*

An operative principle of smart growth and localized living is that private automobile use should be a matter of choice, not necessity. Indeed, we should not eliminate that choice. In America, a car means personal freedom and access to nature, discovery, and opportunity, which should be available to everyone. Access to our wilderness commons requires a car. Visiting Grandma in another town requires a car. Transporting bulky objects requires a car. Efficient use of time requires a car. Use of a car maximizes one's potential exposures to culture and new ideas, and thus one's opportunity for personal development. Equity demands that this right should not be given to some and denied to others, nor should people be forced to choose between this right and urban living. There may be places for a little "car-free" housing in our cities, but generally all homes should be accessible by car. However, we should not need to use our cars as often as we do now, nor have our spaces dominated by them. Constructive (not punitive) traffic-calming measures can benefit both residential and street life.

This right to residential parking is often misread. It doesn't say the right to "*a*" parking space or "*an off-street"* parking space, nor does it say *how much* parking is required or *where* (private or on-street) it is required, since those depend on the nature of the neighborhood and its residents. In well-planned urban areas with good transit and local shopping, many families can get by with one vehicle, or can use their vehicles less often (though rarely used vehicles still need parking). In the urban center, those who want two cars and those who don't want any cars might balance each other out, yielding an average of about one car per unit. A few people don't want cars, especially students or young people, but they should be able to change their minds ("age in place") without having to move, especially out of town. Planners should bear in mind that the elderly use transit less than others; that two thirds of people over 75 drive; and that about 50% of those over age 85 require some care, often by caretakers with cars. [90]

A lot of smart growth planners apparently don't understand how the automobile interacts with culture, lifestyle, shopping habits such as chaining of errands and bulk buying, and Americans' use of time. For example, they don't make a distinction between *owning* a car and *using* a car, nor do they distinguish the different parking needs of different kinds of shopping. They merely recommend less parking in almost every situation. But a solution is not a solution unless it works—physically, socially, and politically. Not providing adequate residential parking simply causes most people to live elsewhere, discriminates against the poor, and reduces demographic diversity in the city. It does nothing to reduce greenhouse gases and may even increase them by forcing people who want or need to own cars to live in the suburbs, where they will use their cars much more.

11. *The right to personal security in one's neighborhood, and to equal and adequate police, fire, and emergency services, which shall not be infringed on the basis of income or neighborhood character.*

Although all cities tacitly approve it, income and neighborhood inequities in police

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[90] Genevieve Giuliano, "Travel Patterns of the Elderly: The Role of Land Use," (School of Policy, Planning and Development, University of Southern California), http://www.metrans.org/research/final/00-08_Final.pdf (accessed 12/30/2010), p. 50, 20, and 6.

protection and code enforcement are unjustifiable.   Low-income residents and renters are not criminals and should not be expected to live among criminals; they deserve a nuisance-free neighborhood and law enforcement just like homeowners. Because high density, diverse, and (of course) transient neighborhoods have less sense of community than lower-density, more homogenous neighborhoods, they require much more care from public officials, but instead, they get less attention than their wealthier neighbors. Even so, they are resented and blamed for the policing and other remedial services they demand.

Bad physical planning has hidden but high downstream costs in social problems and crime. Poorly designed buildings and neighborhoods have lots more problems than well designed ones, and require more public stewardship per capita. This is because public order is not kept by the police, but by the people, and spaces must be designed so that people are willing and able to take care of them. Neighborhoods that are victims of "quality of life" infractions that have destroyed the commons, neighborhood livability, and sense of community will soon fall prey to violent crime. Which is to say, neighborhoods are killed off by cities that ignore livability issues until it is too late.

Most cities have police, fire, planning, building, public works, and code enforcement departments to deal with the built environment. But how often do planning departments coordinate with the other departments to create spaces that facilitate everyday livability, law enforcement, safety, and social health? How many cities have an administrator or public commission whose job it is to look at ongoing quality-of-life issues holistically and interdepartmentally? Certainly planning staff does not do so. It is left to citizens to concoct their quality of life piecemeal, by contacting one department or another, problem by problem. This is both inefficient and ineffective.

The design and creation of spaces cannot be divorced from the upkeep of the spaces. Before recommending increases in density, planners should ask questions like: Are nuisance codes and land use permits regularly enforced in this neighborhood now? Who are the caretakers of the neighborhood? Will the new development attract and enable more caretakers? Do the buildings have on-site management? How often and when will there be trash and recycling pickups, and how will this affect residents? Are emergency services able to handle this much population in this area (perhaps a flood or earthquake zone)? Generally speaking, planners want to add density to areas that are already relatively dense, and residents oppose it because they already know exactly what will happen—namely, more of the problems they already have.

Communal space and access rights

12.   ***The right of equal access to urban and rural mobility, regardless of income. If automobile use is discouraged through pricing mechanisms, then local, regional, and national transit must be available, adequate, and low cost.***

In truth, pricing mechanisms should not be used to limit freedom of movement any more than outright prohibitions or deprivations. In fact, outright prohibitions would be more fair, since they would not discriminate by income. However, governments seem determined to raise parking fees and experiment with toll roads and congestion pricing, so citizens, especially the poor, must loudly assert their rights to freedom of movement. User fees like toll roads and congestion pricing must not prevent urban mobility for the poor or access to what has

traditionally been considered the commons, including civic centers. Environmental equity means that nobody is denied access the necessities and common amenities of life on the basis of income or the location of their neighborhood. "Natural" developments like increasing gas prices or annoyance at long commutes may gradually reduce driving, or conversely, vehicles fueled by alternative energy sources might soon render irrelevant the climate-change consequences of driving. But in the meantime, when forming public policy, we should try to discourage unnecessary driving using carrots like local shopping and cheap and attractive transit, not sticks like tolls. Carrots make people happy; sticks make people mad—and stubborn.

13.   *The right of access within walking distance of one's dwelling unit to nature, recreation, outdoor exercise, and potential discovery, including parks, open space, and areas inhabited by wildlife.*

I place this right foremost among the access rights because it is more important to physiological and psychological health and well-being than the other access rights. While it is especially critical for children, everyone needs access to nature and outdoor exercise. History shows that people have plenty of ways to "work around" inconvenient access to jobs and shopping, but without nearby parks and recreational areas, people are much less likely to get adequate exercise. Natural environments provide peaceful walking opportunities for adults and places for children to exercise their curiosity and their bodies. Studies show health benefits to access to nature, quietude, and greenery,[91] and "nature deficit disorder" is becoming a recognized malady, with unstructured "green time" the suggested cure. But nature is not the only source of recreation, outdoor exercise, and potential discovery for children; their own neighborhoods and local business districts, school playgrounds, sports facilities, museums, and so forth are also opportunities, though they work best when access is relatively open and unregimented so children can fluidly explore the urban environment by themselves.   However, without basic security (personal right #11), many parents will not allow their children to explore the city or natural areas by themselves, greatly curtailing childhood opportunities for both exercise and discovery, and to develop independence.

Without many private yards, cities must have numerous accessible public greenspaces, preferably forming a healthy ecological network (the "urban forest" or "urban canopy"). No urban private yard can by itself support birds and other animals (squirrels, lizards, insects, raccoons, possums, skunks, etc., along with deer, coyotes, and other larger animals at the outskirts) unless the yard is part of an interconnected network of greenery, including other yards, street trees, parks, and perhaps animal corridors. Parks that are essentially monocultures of grass and trees are not ecosystems, do not support wildlife, and do not provide the opportunity for discovery, but most city parks do not include an understory of shrubbery because of crime, homelessness, or lack of space. But children must meet the other beings that inhabit the world; I pity the poor child that never happens onto a caterpillar or a snail. We must also reverse the noise and light pollution that are driving many species of insects, birds, and small mammals out of urban areas, even out of wooded areas near freeways.

Scholars are just starting to study the impact of neighborhood trees on health, crime, property values, and household energy costs. Indications are that appropriate trees have positive

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[91] See the very short summary of recent research by John Swartzberg, *Wellness Letter*, vol. 27, issue 3, 12/2010, (University of California, Berkeley School of Public Health), p. 3. See also note 94 below.

impacts on all four.[92] But trees have very high mortality rates in urban areas (especially in poor areas and among certain cultural groups), so municipal officials must come up with new ways to facilitate stewardship of neighborhood trees. The best way to create and maintain a functional urban canopy would be to initiate a public-private partnership for planting trees on private property, provide financial incentives for maintaining large trees, and start a public education campaign on the benefits of trees and how to take care of them.

Urban planners must never forget that human beings are animals; our animal nature is part of our human nature. We evolved in a natural environment and gain a profound tranquility from the sights, smells, sounds, and feel of the natural world.[93] People cannot drive off into the wilderness every time they want to connect with their human nature; it's not practical, ecological, or even possible for many, with the increased costs of driving and admission to public greenspaces like state and national parks (which itself is unacceptable). We must connect with nature where we live, every day, in an urban ecosystem that is nourishing and fulfilling. We should think of this as our vital "minimum daily requirement" of nature. Only by building into the city a connection to nature—which is our own nature—can we create personal health and livability for our species.

This approach is most likely to preserve the wilderness as well. Urban children must be the future stewards of our natural environment. But I have known urban teenagers who have feared to take a step into the woods. I knew a young man from Hong Kong who was delighted to finally have a tiny vegetable garden in the United States, and then chopped the entire garden to the ground after being traumatized by a tomato worm. Will those who do not feel "at home" in nature have a passion to maintain the natural world for their children and grandchildren? I fear not.

14.   *The right of convenient access, on foot if possible, to basic daily needs, such as good quality food at reasonable prices, daily household and medical supplies, and laundry facilities.*

15.   *The right of reasonable access, by foot, private vehicle, or transit, to public schools and places of employment.*

16.   *The right of equal access to the commons and to taxpayer-funded and other public facilities, such as government buildings, libraries, museums, parks, bridges, and roadways, and to public meetings.*

17.   *The right of access to places to sit, and clean and safe public restrooms, in urban public spaces and commercial districts that are intended for use by substantial numbers of people for several hours or more.*

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[92] For property values and energy bills, see *Science Findings*, issue 126, September 2010 (Pacific Northwest Research Station, USDA Forest Service, Portland, Oregon), p. 1-5. For health, see note 91. The crime results indicate that large trees some distance from homes (street trees) are negatively correlated with crime. See Geoffrey H. Donovan and Jeffrey P. Prestemon, "The Effect of Trees on Crime in Portland, Oregon," *Environment and Behavior*," XX(X), 2010, http://donovan.hnri.info/pubs/donovan_and_prestemon.pdf (accessed 12/30/2010), p. 1-28.

[93] "Biophilia" is the emerging science of the interactions of living organisms, including human evolution in the natural context. See Nikos A. Salingaros, "Life and the Geometry of the Environment," downloadable at zeta.math.utsa.edu/~yxk833/lifeandthegeometry.pdf (accessed 12/30/2010).

I address these four access rights together. Global warming consequences aside, urban design that reduces driving and promotes dispersion of, and local access to, shopping, schools, and jobs is good livability policy. Dispersion of shopping should reduce miles driven and commercial parking needs,[94] and increases environmental equity and quality of life, especially for the poor and disabled. Socioeconomic factors make the job issue more difficult. A "jobs-housing balance" has not proven to ameliorate traffic congestion much, but dispersion of employment provides more job opportunities for those who don't drive, distributes diverse activities around the city, and alleviates downtown crowding. When it comes to access to government buildings, parks, museums, libraries, and other public facilities, we must preserve environmental and social equity. It is hard to reconcile toll roads, congestion pricing, high-priced parking lots, or pricey transit options with equal access for the poor to the commons and to public buildings and events. We must reverse the trend toward pricing the poor out of the commons. Conversely, people who can afford it can choose to live places farther from public facilities, jobs, or shopping,[95] in which case their "convenient access" can be by automobile, and parking should be provided for them.[96]

Improving public transit is not a substitute for local shopping, schools, and jobs. The goal of public transit is to move more people, longer distances, faster, but the real goal in the twenty-first century should be to move fewer people, shorter distances, less often. It is much more "environmental" to reduce the need for mechanized travel than to marginally change the mechanisms of travel. Or, an ounce of proximity is worth a pound of transit. Nonetheless, many interest groups favor large-scale, predictable, inflexible transit systems like light rail. Planners want a justifiable place to concentrate population density, and developers profit as the routes are upzoned. Infrastructure projects bring cities construction jobs, status, and the tax revenues generated by shopping centers around the stations. Governments support this transit (and density) centralization by designating funds for infrastructure only, not transit company operating costs. Thus we have the irony of transit companies slashing neighborhood-serving bus routes, while simultaneously planning hugely expensive transit projects with stops that are actually farther apart and thus less accessible to riders. But instead of adding infrastructure, American cities should consider economic and other incentives for transit use, and decentralized, flexible transportation models, such as more coverage by smaller buses, or use of private jitneys, like in many other countries.

The goal of mixed land uses is to increase the communal and access rights, but the most problematic aspect of the access rights is that they tend to conflict with the personal urban rights. To avoid depriving people of the peaceful enjoyment of their homes—a fundamental right for

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[94] Here, planners should differentiate between "functional shopping," which is running errands, and "recreational shopping," which is a form of entertainment. The former requires relatively cheap parking right at the destination; for the latter, people may be willing to pay more and park farther away.

[95] Interestingly, a 2005 study on commuting in Austin, Texas revealed that, despite perceived congestion and even stress, a very large percentage of people actually enjoyed their commuting time, indicating, perhaps, that middle-class Americans are in need of privacy and "down time." Source: Chandra R. Bhat, et. al., "Austin Commuter Survey: Findings and Recommendations," Research Report SWUTC/05/167240-1, (University of Texas at Austin), p. 21-25.

[96] Surface parking lots are an anathema to most urban designers, but in fact they can be quiet, tree-covered oases in compact urban areas or near active commercial districts. Sometimes they are the only spaces from which pedestrians can escape the bustle of busy streets or see the surrounding landscape. Instead of eliminating them, designers should sprinkle them around compact areas, mandate that they provide large tree cover, and put pedestrian paths through them.

centuries—almost all non-residential uses should be slightly separated and buffered from residential use. Most people want to live near shopping but not directly above it.[97] Therefore, mixed use should be applied at the neighborhood level at minimum, not to buildings, and wherever it exists, there must be ironclad protection of residential livability. Many mixed use enthusiasts seem so enamored of Jane Jacobs' rosy "life above the store" scenario that they have forgotten why function-based zoning actually began, millennia ago—to keep obnoxious nonresidential uses away from people's homes. Even when "life above the store" is otherwise acceptable to residents who want a "vibrant" lifestyle, residential and commercial/institutional needs still directly conflict with residential livability on at least two issues: parking and noise. Placing businesses and residences in too-close proximity creates unnecessary conflict between the two, and damages both uses as well as community relations.

Business and office uses undermine healthy neighborhoods. Neighborhoods are places where people must build community. Anonymity is the opposite of community, and institutional and commercial users attract strangers to the neighborhood. People who have the safety of anonymity and no sense of connection to a space are less responsive to social norms than when they are embedded within a social context.   The result is more littering, shouting, and other rude behavior—not to mention crime—than occurs when the same users are around friends, acquaintances, or neighbors. And, because most institutional and commercial users do not know or care about the neighborhood, they are not even effective "eyes on the street." They are, however, eyes into residential windows and yards, depriving residents of the basic right to privacy. I have not included a personal space right to privacy in the UBOR (for reasons described in footnote 5, which assumes residential-to-residential contact), but for mixed use areas, such a right may either be added, or considered implicit in personal space rights #1, #2, and #3. Between neighbors, privacy is maintained as much by individuals becoming accustomed to each others' habits and adjusting behavior accordingly as by drawing curtains, but hundreds of strangers can neither adjust nor be adjusted to. Placing non-residential users adjacent to residential windows, therefore, forces residents to close windows and draw curtains, depriving them of their basic human right to interactions with the outdoors.

In addition, institutions and businesses are problematic during the evenings, nights, and weekends. If the institution or business is used during these periods, it creates noise, light, traffic, and activity when residents anticipate quiet and relaxing hours. Non-residential vehicles will also be parked on the street when neighbors most need residential parking. If the institution or business is closed during these periods, then it is a deserted, unsupervised area that could attract vagrants and crime. Both scenarios are the opposite of what is needed in neighborhoods at night and on weekends: people who are around, and familiar with and connected to the street, but generally quiet.

To make matters worse, the natural tendency under capitalism is for the commercial use of the commons to expand indefinitely at the expense of the residential use. Unless there is a push to densify or major population pressure, the residential use of the commons has little built-in tendency to expand. But the more successful a business, the more outsiders it attracts and the more it seeks to expand its operations in space and/or time. Therefore, without strict regulation of commercial expansion, successful businesses will crowd out residential access to public spaces and the commons—be it parking, quiet, sidewalks, darkness, or whatever. In addition,

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[97] Speare and White, note 3.

commercial uses tend to prevail politically because they net more tax money than residential uses. The result is an ever-declining quality of residential life and eventual change of demographic in the area.

Institutional use may not be so prone to expand as businesses, but it is also significantly damaging to residential life. Institutions in neighborhoods bring traffic, parking problems, crowding on the sidewalks and streets, and large amounts of noise—mechanical, vehicular, and human; they raise the activity level and accompanying stress level in the area; they destroy privacy, forcing residents to withdraw behind curtains and fences; they attract and provide cover for criminal activity; and they replace greenery with hardscape. But, except for truly *neighborhood*-serving schools or churches, institutions generally do nothing positive to contribute to neighborhoods.

Especially insidious are institutions that get preferential treatment over residential needs because of their altruistic public functions: schools/colleges, churches, and clinics and hospitals. Although it is with good reason that some of these uses are distributed throughout residential areas, they sometimes expand and cause problems. Previously neighborhood-serving churches may initiate social programs or activities that draw people from distant sources. If a church decides to feed the homeless, for example, it essentially becomes a part-time restaurant, but without planning for a restaurant in that location. Yet a compassionate city is likely to approve such a use. Or, when an underfunded school decides to augment its budget by renting out its auditorium or playing field, what city will object? But the worthiness of the cause does not reduce the damage.

The role of public schools in the United States is currently in flux. Prior to mandated and increasing desegregation during the 1950s, 1960s, and 1970s, local schools were enduring and constructive neighborhood institutions. They played a central role, even *the* central role, in the community: they facilitated community relations, traditions, and purpose; they expanded and cemented social connections among both children and parents; and they provided resources like open space, recreational space, and equipment for community activities. Walking to school provided children with exercise, a sense of independence, and connection to their own neighborhoods. Since schools were not usually centers of crime, vandalism, and drug-dealing, neighborhood schools contributed much more to the health and livability of local communities than they "cost" in noise, traffic, crime, and other detriments. Unfortunately, despite its achievements in human rights, educational equity, and race relations, desegregation, because it was achieved by bussing students to schools outside of their neighborhoods, was a disaster for land use and livability. Bussing had the unintended consequence of fracturing the neighborhood-school relationship and separating the school from most of its constructive community functions. Subsequently, those functions that had not disappeared for purely spatial reasons disappeared as public schools declined for socioeconomic reasons starting in the 1980s. Today, aside from performing their educational function (which is increasingly difficult to do without neighborhood support), few urban schools are net assets to their communities. How the spatial separation of the school from the neighborhood is related to other school and community problems is unclear, but what is clear is that the functions of schools, the relationships of schools to communities, and how communities, parents, and children can recover the functions no longer provided by local schools, must all be reassessed and coordinated with land use decisions. If policy makers a half century ago had understood the complex functions of schools as more than "buildings" and

"spaces" where children are educated, they might have tried harder to achieve educational equality without disrupting school's role in neighborhood health.

Finally, the functional right to use the commons and other public spaces requires some basic amenities, such as restrooms and places to sit down, especially for the elderly, those with young children, and the disabled. Improvements in this area will probably be spurred by the aging cohort of baby boomers, as well as the Americans with Disabilities Act, but people of all ages will benefit. This will be good for personal comfort, for the homeless until that problem gets resolved, and for urban aesthetics, social health, and the vitality of the public spaces themselves. Seating and restrooms are public amenities for which the space and resources are often owned by private commercial entities such as office buildings, shops, and restaurants. These private parties must partner with public agencies to meet the public need. Prohibitive policies and regulations (especially insurance policies) may need to be changed to permit this.

18. ***The right to participate in and guide, through equitable, representative, open, and democratic processes, land use and other policy decisions that affect oneself, one's neighborhood, and one's community.***

Democracy starts with people. To participate effectively in local politics, individuals and communities need a sense of place, a sense of their history and identity, and a sense of their value to the polity. Such participation also requires an effective level of consciousness, organization, knowledge, and resources of time and money. All these are facilitated by neighborhood associations and other community organizations, and informal networks, all of which are usually created and populated by long-term residents. Wherever poor quality of life has driven out long-term residents or people with resources, democracy is weakened.

Like the right to vote and other important democratic rights, this right cannot be merely procedural, but must yield real results. Therefore the words "and guide" are the most important words of this right. Politicians, planners, and developers have found a myriad of ways for citizens to "participate in" local decision making without actually having any power over the outcomes. The outcomes have already been or will be decided in back rooms, by moneyed interests, by staff who advocate for business, developers, and pet planning theories, by a higher level of government, or by the mindset of the decision makers—which, over the years, has been carefully shaped by staffers and others with access to them. Land use processes are traditionally corrupt because of the amounts of money involved and the people who have it, but bags of money don't have to change hands to have a sham, ethically corrupt process. The process is not "open" if the public is kept in the dark about upcoming development projects. It is not "representative" if decisions about the built environment of tenants in high density areas are made by homeowners from low density areas. It's not "equitable" if people have to hire lawyers to express their concerns, since poor people can't afford lawyers. And democracy can't work if processes are "streamlined" so there is no time for the public to come together, to acquire and digest information, and to proffer ideas to each other, to planners, and to decision makers.[98] When public input must struggle mightily to marginally affect policy output, public participation exists in form only.

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[98] Insidiously, some jurisdictions allow planning documents (including environmental assessments) to be stored and distributed in digital formats instead of paper copies. This makes it nearly impossible for the public to use files and documents that can run hundreds of pages, and also denies access to those without computers.

An especially disturbing threat to democratic decision making are the top-down planning instruments usually favored by smart growth planners: regional planning, and regional, state, and federal grants and mandates. These mega-threats to democracy are often overlooked by those fighting locally to keep their neighborhoods livable, but they undermine the people's ability to "participate in and guide" the creation of their own urban environments. People may vote for abstract goals, but be disagreeably surprised to see how these goals are implemented at the local level; perhaps they have even been deliberately misled or kept in the dark about what the policies will mean at the individual and neighborhood levels. Regional planning bodies are often not directly elected by the people; they may be dominated by smart growth ideologues, and citizens cannot easily follow their activities like they do their own city councils. State and federal decision makers are directly elected, but those bodies are too far away to respond sensitively or even intelligently to local conditions.

The centralization of funding also undermines democracy, local control, and livability. Local money is siphoned up to these higher bodies and then returned to cities in the form of grants with environmental and smart-growth strings attached. These strings represent macro approaches to environmentalism and urban planning and are not tailored to differing local environments. But cities are so desperate for money that they grasp at these grants whether they are appropriate for their neighborhoods or not. The process is competitive, so the applicants must exaggerate the need for the projects and their "green" credentials, and lie about the public's need and desire for them. In addition, because such money is psychologically perceived as "free" money, cities and resident watchdogs tend not to monitor the efficiency and effectiveness of its use as carefully as they do local taxpayer money whose collection and distribution are more closely connected. In the end, the money goes to those who are politically the most connected and adroit, not those who need it most, and it is often used wastefully in ways that damage neighborhoods.

PART V: SUMMARY

Urban rights are human rights expressed through urban spaces. The Urban Bill of Rights presents eleven "personal space" rights and seven "communal and access" rights as necessary conditions for an acceptable quality of life in the urban environment. The rights are intended to guarantee personal well-being, comfort in the home, and access to urban facilities, resources, and services. The personal space rights include rights to a physiologically and psychologically healthy environment, rights to daily experience of nature, rights to adequate spaces to actualize oneself as a human being, the right to cultural integrity, and the right to personal security. The communal and access rights include rights to mobility, rights of access to amenities, employment, and the commons, and the right to democratic participation.

The urban rights fall within the existing human rights tradition, encompassing personal, political, socioeconomic, and environmental rights. They are grounded in basic human physiological, psychological, and social needs. Good urban planning is, simply, planning that best meets these human needs through time. Most importantly, the urban rights are not property rights; they are personal rights that accompany people into the specific spaces that they regularly frequent. For example, the right to personal security, or to freedom from unhealthy noise or

light, are not based on privileges of land or respect for property, but on the needs of the human body and mind. Because the urban rights de-emphasize property ownership and protect the individual wherever he or she goes, focusing on urban rights will elevate and preserve the quality of the commons and public spaces, which are often distressed in American cities. The commons become much more important as urban density increases, and the degeneration of the commons is a direct result of disregarding the urban rights of people in public spaces.

All people are equally entitled to have their physiological, psychological, and social needs met, so classifying urban rights as human and personal rights will increase equity, for example, between the rich and poor, between property owners and renters, between those in high and low density neighborhoods, and so forth. The Urban Bill of Rights also increases environmental justice, by setting minimum standards of livability for those most often saddled with the consequences of society's consumption and environmental degradation—those in poor, high density, and mixed use neighborhoods.

Guarantees of urban livability are very important at this time because of the environmental need for more compact living, and the nature of the "smart growth" planning that predominates today. The cold utilitarianism of smart growth, with its emphasis on transportation efficiency and reliance on top-down planning, in addition to the crisis mindset caused by global warming, threatens to deprive people of their right to a livable urban environment and the benefits of localized planning. All bills of rights protect individuals or the powerless from the tyranny of the majority or the powerful; they are a necessary check on both democratic and autocratic policy making. But human rights are experienced by individuals at the micro level of planning, and only local residents are aware of the problems of their neighborhoods, and whether and how their rights are being respected or violated. The best protections for urban rights are flexible, bottom-up planning, and regular and respected feedback from the public, which occurs best in a decentralized, democratic environment. Local voices must be sought out, respected, and responded to by local planners and decision makers. Improved planning and development requires adequate time to learn from errors and from others, and the flexibility to change policies; hasty densification and top-down planning do not provide this.

The Urban Bill of Rights embodies a rights-based, rather than form-based, approach to urban planning and design. The prescribed forms of most zoning codes are a well-intentioned but clumsy means to ensure that human needs are met, but a more sensitive and effective approach is to address the needs directly. Many designs, forms, and sizes of buildings, spaces, and other amenities can meet human needs, and conversely, all urban forms, no matter how attractive or theoretically humane, can damage people if improperly applied or not supported over time. Successful urban planners and designers cannot divorce themselves from the continuing stewardship of the spaces they create. Planners claiming to create "sustainable" cities must address the economic and political problems that hamper planning for livability, and incorporate the realities of sociology, psychology, public works, and law enforcement into their plans. Excellent enforcement mechanisms are required to prevent the degradation and privatization of the commons, as well as the destruction of the livability of personal spaces. Even the most elegant space will collapse quickly without code enforcement.

Much attention is given to the vibrancy or decay of visible urban spaces, especially in emergent periods, when new vibrancy is often touted (by designers) as successful design, and new decay, sometimes in the very spot that was "vibrant" a generation before, is usually

attributed to bad people or a bad economy. However, both urban vitality and urban decay occur first in personal spaces and everyday institutions that do or do not facilitate human physiological, and psychological, and social health. Personal spaces are most important and most fragile in dense and mixed use areas. At this time in history, as more compact living becomes the norm, personal space rights are at great risk and need our special protection, but instead they are undervalued by both smart growth planners and new urbanist designers. Without something like the Urban Bill of Rights to give them voice, urban quality of life will decline precipitously as urban density increases. But by adding "urban rights" protections to "smart growth" densification, we can create "smarter growth" that will be welcomed and sustainable, because our new, healthier cites will meet the fundamental physical, psychological, and social needs and desires of people.

Acknowledgements:

Sharon Hudson is a neighborhood activist and frequent writer on urban land use, livability, and development politics.   Her personal experience with the problems of compact living propels her vision of how human rights must fundamentally inform urban planning.