

Proposals to Strengthen Crime Control and Prevention Mechanisms, Amsterdam, NY

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Recent developments have made it clear that crime has become a major problem in the City of Amsterdam. There is broad agreement that something must be done. This white paper attempts to set out a comprehensive plan to combat the crime plaguing the City. It does so through five broadly stated proposals that can be expected to reduce crime. Some of the proposals have been widely implemented across the country and are part of the standard toolkit of municipal policymakers. Some of the proposals are more novel, and are at the forefront of policymaking today. To some extent the proposals are designed to function in tandem, while other parts could be effectively implemented piecemeal. Each attempts not merely to control crime, but to prevent it, by making the City an inhospitable environment for crime and for the criminal element. The robustness of these proposals reflects an understanding that we have reached a point in time where half-measures are no longer appropriate. I commend these proposals to the City leaders as a detailed, broad-based plan for reducing criminal activity in the City of Amsterdam.

Proposal 1: Implement a City-Wide Juvenile Curfew

In the past twenty years, juvenile curfews have emerged as a popular and effective tool that cities employ to reduce juvenile delinquency and nighttime crime. At least five hundred cities in the United States now have some form of nighttime curfew, an increase of 50% since 2000.¹ All told, at least 80% of cities of more than 30,000 people employ some form of juvenile curfew,² and although the statistics are less forthcoming for smaller cities, at least some rural and non-metropolitan cities have enacted curfews.³ Curfews have enjoyed broad bipartisan support among respected leaders—Presidents Clinton and George W. Bush, as well as Senator Bob Dole and Vice President Al Gore have all gone on record supporting curfew legislation.⁴

There are two principle goals underlying the enactment of curfews. First, to the extent that nighttime crimes are committed by juveniles, a curfew is designed to get juveniles off the streets.⁵ Presumably, this should result in a decline in the number of nighttime

¹ Tony Favro, City Mayors Society, *Youth curfews popular with American cities*, July 21, 2009, <http://www.citymayors.com/society/usa-youth-curfews.html>.

² Patrick Kline, *The Impact of Juvenile Curfew Laws 2*, available at <http://www.econ.berkeley.edu/~pkline/papers/Youth%20curfews%20latest.pdf>.

³ Press Release, National League of Cities, *Youth Curfews Continue to Show Promise* (January 13, 2006), http://www.nlc.org/ASSETS/0858600AA3F54499B9B91E578A564EF8/IYEF_Curfew_Data_InstaPoll_Jan-06.pdf

⁴ Note, *Juvenile Curfews and the Major Confusion Over Minor Rights*, 118 HARV. L. REV. 2400, 2402 n.29 (2005).

⁵ Andrea J Bannister, et al., *Policies and Practices Related to Juvenile Curfews 2* (2000), available at <http://webs.wichita.edu/depttools/depttoolsmemberfiles/rcpi/Policy%20Papers/Curfew%20Research.pdf>.

crimes committed. Second, violent crimes committed by juveniles tend to be committed against other juveniles.⁶ Thus, a curfew must also be understood as a safety measure, designed to keep youths off the dangerous streets, at least in part for their own protection.⁷

The experience of cities that have enacted curfews during the past twenty years has demonstrated that curfews work. In San Antonio, Texas, the number of youth victims of crime dropped 84% within three years after the enactment of their curfew.⁸ A dusk-to-dawn curfew in New Orleans resulted in a 27% drop in youth crime arrests and a 33% decrease in armed robbery arrests in the year following its adoption.⁹ Leaders of cities who have adopted curfews have been pleased: a 2005 National League of Cities survey of municipalities with curfews concluded that 96% of the surveyed cities believe their curfews were somewhat or very effective at fighting juvenile crime.¹⁰

The anecdotal evidence and perceptions of public officials is confirmed by advanced statistical analysis. According to research performed by Patrick Kline, an economist at the University of California at Berkeley, curfews can be expected to reduce the number of violent and property crimes committed by juveniles by approximately 10% in the first year after enactment.¹¹ Moreover, by three years after enactment, a curfew should reduce violent crime by 20% or more.¹²

Curfews may also be expected to have a so-called “spillover” effect on crime committed by those not technically covered by the curfew. This is because a curfew has the secondary effect of giving police a good-faith reason to stop and question those who appear to be underage.¹³ These interactions can be expected to result in the arrest of those stopped on suspicion of being underage for other serious crimes, such as possession of drugs or illegal weapons, or for being subject to an outstanding warrant. Statistical evidence of spillover effects is less clear,¹⁴ but the amount of spillover will certainly

See also Kline, *supra* note 2 at 7 (noting that Dallas compiled statistics in favor of its curfew showing that murders and aggravated assaults by minors were most frequently committed at night).

⁶ According to data from the Federal Department of Justice, at least 53% of all crimes against juveniles are committed by juveniles. Office of Juvenile Justice and Delinquency Prevention, *Characteristics of Crimes Against Juveniles* 7 (2000), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/179034.pdf>. For kidnappings and sex offenses, which a curfew should not be expected to prevent, most crimes are committed by adults. *Id.* at 9. But for aggravated and simple assaults, as well as for robberies, juveniles are substantially more likely to be victimized by other juveniles. *Id.* Moreover, the Justice Department notes that this data “may exaggerate the percentage of adult offenders, because adult perpetrated crimes are more likely than juvenile-perpetrated crimes to be reported to the police” *Id.* at 7.

⁷ Bannister, *supra* note 5 at 2 (noting a curfew might reduce victimization of a “highly vulnerable population.”).

⁸ Favro, *supra* note 1.

⁹ Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Reform Initiatives in the States: 1994-1996*, 17 (1997) [Hereinafter OJJDP Report], available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/16/0f/4a.pdf.

¹⁰ Press Release, National League of Cities, *supra* note 3.

¹¹ Kline, *supra* note 2, at 22.

¹² *Id.* at 19.

¹³ *Id.* at 9.

¹⁴ Kline’s research concluded that “the investigation into spillover effects is inconclusive.” *Id.* at 21.

depend in part on how aggressively the curfew is enforced, police procedures, and other laws.

One attractive feature of a curfew is its relatively low cost. According to the National League of Cities survey, 95% of city officials reported no increase in police costs to implement a curfew.¹⁵ This is probably due to the fact that curfews can be implemented using existing police department personnel.¹⁶ To the extent that a curfew might be expected to add costs to the City budget, this *de minimis* expense is likely to be offset by increased revenue from fines extracted from curfew violators.

A curfew can and should be tailored to the specific needs and problems of the community enacting it. Curfews often contain various exceptions for youths traveling to or from religious events, school functions, and places of employment.¹⁷ Typically they will also exempt youths traveling due to emergencies.¹⁸ Despite the common misconception regarding the unconstitutionality of curfews, a well-designed curfew that includes these sorts of exceptions is likely to be found constitutional.¹⁹

¹⁵ Press Release, National League of Cities, *supra* note 3.

¹⁶ A 1994 survey of cities of 200,000 or more indicated that 71% of the cities used regular law enforcement personnel to implement their curfews. OJJDP Report, *supra* note 9, at 14.

¹⁷ *Id.* at 13-14.

¹⁸ *Id.* at 14.

¹⁹ While this white paper is not a legal analysis—nor is it intended to be—we pause briefly to note that the implementation of non-emergency juvenile curfew laws have provoked various constitutional challenges. Note, *supra* note 4, at 2400-01. Federal Courts of Appeal that have considered juvenile curfews have near universally upheld them. *See e.g.*, *Hutchins v. District of Columbia*, 188 F.3d 531 (D.C. Cir. 1999) (Silberman, J.) (upholding District of Columbia curfew against First and Fourth Amendment challenges); *Qutb v. Strauss*, 11 F.3d 488 (5th Cir. 1993) (upholding Dallas curfew against First, Fourth, Fifth, and Fourteenth Amendment challenges, and applying strict scrutiny); and *Schleifer by Schleifer v. City of Charlottesville*, 159 F.3d 843 (4th Cir. 1998) (Wilkinson, C.J.) (upholding Charlottesville curfew against First, Fifth and, Fourteenth challenge). Generally, state courts have been similarly solicitous of curfew ordinances. *E.g.*, *Commonwealth v. Weston W.*, 913 N.E.2d 832 (Mass. 2009) (upholding Lowell city curfew against state constitutional challenges). Unfortunately, because the Supreme Court has not ruled on the issue, there has been no consensus in the circuit courts about what test to apply to determine the constitutionality of curfew laws. Note, *supra* note 4, at 2400-01. Nevertheless, even those circuits that have struck down curfews have not found them to be *per se* unconstitutional. *Id.* Given this, and the fact of the wide-spread adoption of curfew ordinances, *supra* 1-2, it seems facetious to suggest that a constitutional curfew ordinance cannot be written. Granted, careful attention must be paid to the drafting of such an ordinance, but as one commentator concluded the question “is not *whether* juvenile curfews are constitutional, but rather *what* juvenile curfews are constitutional.” Note, *supra* note 4, at 2401 (emphasis added). The New York State Attorney General’s Office, in an official opinion issued to the City of Cohoes, came to the same conclusion: carefully drafted and supported curfews are permissible. 2005 Op. N.Y. Att’y Gen. No. 13. Nothing in the New York Court of Appeals’ recent opinion in *Anonymous v. City of Rochester* changes these observations. *See generally* 915 N.E.2d 593 (N.Y. 2009) (striking down Rochester ordinance under intermediate scrutiny level of review). Although the Court struck down the Rochester nighttime juvenile curfew, it appeared to assume that, if the city council had more carefully drafted its statute and supported its reasoning, the city could have “pursuant to its broad police powers . . . enact[ed] a curfew ordinance.” *Id.* at 597. Indeed, the Court distinguished the curfew at issue there with curfews that had been upheld elsewhere, and offered helpful suggestions in footnote seven of the opinion as to how a future ordinance might be written to pass muster. *Id.* at 601 n.7. Given all this, it seems likely that the Amsterdam Common Council, guided by the sound judgment and discretion of the City Counsel, will be able to draft

Finally, well-designed curfews can be expected to make parents partners in the fight against juvenile delinquency. For parents who are inclined to supervise their children anyway, a curfew with the force of law will “give parents a tool to impart discipline, respect, and rules at an awkward and difficult time in children’s lives.”²⁰ More recalcitrant parents are likely to be persuaded to cooperate by the consequences that flow from their children’s law-breaking: many curfews provide for fines to be leveled both at youths and, in certain circumstances, their parents.²¹ Some statutes provide that cars used by juveniles while breaking the curfew should be impounded, with a fine to retrieve it paid by the record owner of the vehicle—often the parent.²² The Denver, Colorado ordinance mandates that a fine be levied against a parent only if that parent or his child fail to participate in a court ordered diversionary program.²³ Whether cooperation is voluntarily or by the persuasive force of the curfew enforcement mechanisms, a well-designed curfew will enlist the help of parents in reducing delinquency, while at the same time providing parents with a powerful aid to their own parenting.

Proposal 2: Deny Juveniles the Means to Make Graffiti and Commit Assaults by Enacting Sale and Possession Bans for Certain Items

A number of communities have resorted to banning the sale of spray paint to minors in an effort to curb graffiti, and at least three states have enacted state-wide sale bans.²⁴ More recent bans tend to also ban the possession of spray paint by minors.²⁵ To increase the efficacy of their bans, cities now generally include broad-tipped indelible markers, paint sticks, and etching acids in their prohibitions.²⁶ The National Council to Prevent Delinquency calls this sort of possession ban an “essential provision[.]” for any effective anti-graffiti ordinance. Communities are turning to these measures in increasing numbers.²⁷ Unlike the anti-graffiti ordinance the City has considered in the past,²⁸ sale and possession bans attempt to prevent graffiti, rather than simply remove it after the fact. Bans are also not subject to the criticism that they punish the passive victims of graffiti vandalism, a powerful objection against the previously considered anti-graffiti ordinance.²⁹

an ordinance that respects the substantial constitution rights of minors and parents, while not sacrificing the crime control efficacy of a curfew.

²⁰ Kline, *supra* note 2, at 2 (quoting President Clinton).

²¹ OJJDP Report, *supra* note 9, at 14.

²² AURORA, ILL., GEN. ORDINANCES § 29-20.1 (2009).

²³ OJJDP Report, *supra* note 9, at 14.

²⁴ Marisa A. Gomez, Note, *The Writing On Our Walls: Finding Solutions Through Distinguishing Graffiti Art from Graffiti Vandalism*, 26 U. MICH. J.L. REFORM 633, 674 n.161 (1993).

²⁵ For example, the San Diego ban. Joe Tash, *Giving Graffiti the Brushoff; Three Local Residents Lead Volunteers to Cover Scrawls*, THE SAN DIEGO UNION-TRIB., Nov. 1, 2008, at CZ-1.

²⁶ MEGHAN REILLY, GRAFFITI ORDINANCES (2009), available at <http://www.cga.ct.gov/2009/rpt/2009-R-0325.htm>.

²⁷ Jane Rutherford, *The End of Adolescence: Juvenile Justice Caught Between The Exorcist and A Clockwork Orange*, 51 DEPAUL L. REV. 715, 719 (2002).

²⁸ Jessica Maher, *Council May Not Revisit Proposed Graffiti Ordinance*, THE RECORDER, Jan. 30, 2010, at A2.

²⁹ Compare with the proposed anti-graffiti ordinance. *Id.*

Although they are commonplace, it is difficult to assess the impact of such regulations, primarily because they tend to be enacted along with extensive, persistent graffiti clean-up efforts.³⁰ Unfortunately, there is a dearth of social science research on graffiti-making instrument bans, which might have allowed us to take account for the confounding variables. Nevertheless, some anecdotal experience suggests that sale and possession bans have some effect. In San Diego, a sale and possession ban has been partially credited for an estimated 95% drop in graffiti in five years.³¹ In Chicago, where spray paint was banned entirely, an undercover police officer said his graffiti arrests dropped by two-thirds following implementation of the ban: “Any city that looks at this ban and doesn't do it deserves what it gets,” he says.³²

Simple logic tells us that taking graffiti-making instruments out of the hands of those who are most likely to make graffiti will result in a reduction of it overall. To the extent that bans do not work, it is probably due to under-inclusiveness and poor enforcement. Bans on only sales, but not possession, may make it somewhat more difficult to procure spray paint, but we can expect an illicit secondary market for graffiti-making instruments to emerge, thwarting the ultimate goal.³³ Moreover, banning sales for a narrow geographic area will result in minors simply buying graffiti-making instruments somewhere else.³⁴ Banning mere possession, but not sale, without something more, such as a curfew, is likely to be practically unenforceable, because police will have no good reason to stop and search people for graffiti-making instruments, unless police actually observe graffiti-making in progress.³⁵ Banning both sale and possession of graffiti-making instruments, combined with aggressive enforcement, can be expected to alleviate the under-inclusiveness problem. While no ban will ever stop all graffiti,³⁶ the object is to decrease the amount of graffiti the City experiences. Sale and possession bans can be effective parts of the City's anti-graffiti efforts.

Whatever the City's response, it is clear that something must be done. In the past two years, graffiti-making has accelerated,³⁷ and the situation continues to worsen.³⁸ In addition to being a herald of worse criminal activity, graffiti has harmful effects of its own. As one Philadelphia City Councilperson observed, “[w]hen you're looking to buy a house and you see graffiti in a neighborhood, you keep going. You don't consider buying in that neighborhood. Graffiti has a debilitating effect. It gives the perception of an unsafe

³⁰ Tash, *supra* note 25.

³¹ *Id.*

³² Daniel LeDuc, *Paint Ban Draws His Approval: Chicago Police Officer Says it Cuts Graffiti*, PHILADELPHIA INQUIRER, Feb. 26, 1996, at B01.

³³ See P.N. Grabosky, *Unintended Consequences of Crime Prevention 34-35*, available at http://www.popcenter.org/library/crimeprevention/volume_05/02_Grabosky.pdf.

³⁴ Mark McDonald, *Spray Paint-Removing Bill: Measure Would Ban Sales in City*, PHILADELPHIA DAILY NEWS, Feb. 9, 1996, at 7.

³⁵ Or if, as recently occurred, the police literally catch someone with paint on his hands. Jessica Maher, *Police: Vandal had paint on hands*, THE RECORDER, May 13, 2010, at A1.

³⁶ LeDuc, *supra* note 32 (critic noting that “There's still graffiti in Chicago.”).

³⁷ Editorial, *Get Cracking on Ridding City of Graffiti*, THE RECORDER, June 1, 2009, at A08.

³⁸ Jessica Maher, *Graffiti Trend Up*, THE RECORDER, Apr. 15, 2010, at A2.

community.”³⁹ For this reason, graffiti is also destructive to the morale of the citizenry.⁴⁰ Reduction of graffiti should also reduce the prevalence of other crimes, since “disorderly behavior and the law’s response to it are cues about the community’s attitude toward more serious forms of criminal wrongdoing.”⁴¹ In other words, aggressive anti-graffiti policies signal would-be criminals that crime is taken seriously. Perhaps more important, the presence of graffiti in a neighborhood can have an adverse impact on property values. The Mission Viejo, California Planning Commission “conservatively” estimated that the presence of graffiti can reduce property values and business activity in an area by up to 10%.⁴² The National Association of Realtors estimates a 15% reduction in property values.⁴³

Bans on possession and sale of box-cutters follow a similar line of reasoning: by taking these dangerous implements out of the hands of those who are likely to use them for crime, we can reduce crime. The dangerousness of these seemingly innocuous instruments has been demonstrated time and again: the September 11th hijackers were able to take control of three planes using only box-cutters; a man who cut the throat of a Greyhound bus driver caused the bus to crash, killing six.⁴⁴

In large cities, box-cutters long ago became the weapon of choice for youths, because they are inexpensive and legal.⁴⁵ The problem reached epidemic proportions in New York City, where many otherwise law-abiding youths began carrying them to defend against those who carried them to attack.⁴⁶ Because of their dual status as both lethal weapon and legal implement, a high-ranking New York City prosecutor called box-cutters “a subterfuge for crime.”⁴⁷ Now, the box-cutter-aided crimes have found their way to our area. In November of 2009, a thirteen year old Fonda boy was arrested for threatening another minor with a box-cutter.⁴⁸ After a high-profile box-cutter slashing at the Amsterdam Fastrac in March, where one of the suspects was a 16 year old,⁴⁹ one police officer declared that the streets were no longer safe.⁵⁰ The subsequent week, officers responded to a number of outdoor fights, involving as many as twenty-five people, and confiscated several box-cutters from youths at the scene.⁵¹ Following these

³⁹ Dianna Marder, *City May Ban Sale of Spray Paint*, PHILADELPHIA INQUIRER, Feb. 9, 1996, at A01.

⁴⁰ Mark Kaufman, *M.A.B. to Pull Spray Paint From its City Stores*, PHILADELPHIA INQUIRER, Mar. 14, 1996, at B01.

⁴¹ Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349, 351 (1997).

⁴² Gomez, *supra* note 24, at 651 n.92.

⁴³ Simon Read, *Antioch Considers Reward Program to Whitewash Graffiti*, CONTRA COSTA TIMES (California), Apr. 9, 2008.

⁴⁴ Seanna Adcox, *States Grapple With Sale, Possession of Box Cutters*, LAKELAND LEDGER (Florida), Oct. 6, 2001, at A12.

⁴⁵ Raymond Hernandez, *For Many Youths, Carrying Knives Keeps Fear Away*, N.Y. TIMES, May 23, 1993, at Section 1 p.1.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Police report*, THE RECORDER, Nov. 20, 2009, at A3.

⁴⁹ Eric Jones, *Two arrested in altercation*, THE RECORDER, Mar. 14, 2010, at A1.

⁵⁰ Editorial, *Awareness is key to safety*, THE RECORDER, Mar. 28, 2010, at A10.

⁵¹ Jessica Maher, *Police Warn Public of Dangerous Trend*, THE RECORDER, Mar. 17, 2010, at A1.

incidents, the police warned the public of the “increas[ing] prevalence” of box-cutters on the streets.⁵²

In response to its box-cutter problem, New York City banned the sale of box-cutters to, as well as possession of a box-cutter in a public place by, those under the age of twenty-one.⁵³ While New York is by no means the only locality to enact⁵⁴ or consider such bans,⁵⁵ they are still relatively new, and evidence as to their effect is not forthcoming. It should be expected, however, that sale and possession bans on box-cutters would have effects similar to such bans on spray paint, and could be effective as one part of a multi-faceted approach to crime. A well-drafted ordinance would only apply to public places, ensuring that legitimate usage would not be suppressed.

To have truly effective bans on possession, the City of Amsterdam should enact its bans in conjunction with the curfew from Proposal 1. Police who then stop and question potential curfew violators could search those they have detained for prohibited items. Because much of the City’s crime has been perpetrated by youths over the age of eighteen but under the age of twenty-one, the bans might include all those under the age of twenty-one. Even assuming that few eighteen to twenty-one year olds are likely to commit acts of vandalism or slashings, the slight over-inclusiveness of the ordinances can be expected to reduce illicit spillover from the secondary market. To avoid suppressing legitimate activities, the bans should be limited to public places, and include reasonable exceptions. Unfortunately, because of the limited geographic reach of City ordinances, effective sales bans must be enacted on a county-wide basis. City officials should lobby the Montgomery County Board of Supervisors to enact County-wide sales bans.

Proposal 3: Institute a 311 Calling System

Researchers estimate that between 60% and 90% of all calls to the 911 system are non-emergency.⁵⁶ Indeed, many 911 systems are “overwhelmed” by such reports, which are typically responded to by patrol cars despite their non-emergency status. Non-emergency responses consume valuable police resources, and contribute to poor response times when a legitimate emergency occurs.

To alleviate the burden that non-emergency calls to 911 impose on police resources, the Federal Communications Commission designated 311 as a line reserved entirely for non-

⁵² *Id.*

⁵³ Press Release, NYC Office of the Mayor, Mayor Giuliani Signs Bill That Prohibits the Sale and Possession of Box Cutters to Persons Under 21, (May 18, 1998), *available at* http://www.nlc.org/ASSETS/0858600AA3F54499B9B91E578A564EF8/IYEF_Curfew_Data_InstaPoll_Jan-06.pdf.

⁵⁴ Donna Greene, *Move to Ban Laser Pointers for Minors*, N.Y. TIMES, June 14, 1998, at Section 14WC, Page 1.

⁵⁵ Bianca Carmona, *Police initiative wins trade sale ID code*, PROGRESS LEADER (Australia), Apr. 6, 2010, at 3.

⁵⁶ U.S. DEP’T OF JUSTICE, NATIONAL INSTITUTE FOR JUSTICE, CALLING 311: GUIDELINES FOR POLICYMAKERS 1 n.1 (2005), [Hereinafter NIJ GUIDELINES FOR POLICYMAKERS] *available at* <http://www.ncjrs.gov/pdffiles1/nij/206257.pdf>.

emergency calls.⁵⁷ Cities large and small have implemented 311 systems.⁵⁸ Those communities range in size from Bethel, Arkansas, population 6,356, to New York City, the largest city in the nation with a 311 system.⁵⁹ According to one estimate, approximately 15% of local governments employ some sort of 311 service,⁶⁰ and 27% more reported that they were considering implementing one.⁶¹ As of 2008, approximately 18% of the population of the United States had access to a 311 system.⁶² An official from the International City/County Management Association (ICMA), a group that has studied 311 systems, compared the adoption trend to that of the 911 system during the 1960s: communities are gradually moving toward full adoption.⁶³

These calling systems have been effective at reducing the number of non-emergency calls to 911. Prior to implementation of 311 in Baltimore, for instance, approximately 60% of calls to the 911 system were non-emergency.⁶⁴ In the two years following implementation, total calls to 911 declined by 34%.⁶⁵ More impressive, calls ranked in the lowest priority category declined by 99.7%.⁶⁶ Most of these calls migrated to 311, particularly reports of larceny, parking violations, loud noise,⁶⁷ narcotics, and gambling.⁶⁸ Moreover, reports of these sorts of quality of life issues actually increased overall.⁶⁹

The Baltimore experience is typical. In Minneapolis, Minnesota non-emergency 911 calls declined by 16%.⁷⁰ In Houston, Texas, they declined 14%, and in Austin, Texas they declined by 37%. In Austin, at least, police were able to capitalize on the time freed up for emergency calls: response time for Priority 1 calls decreased from over nine minutes to just seven minutes and thirty-two seconds.⁷¹ By preventing officers from merely “racing from one 911 call to another,” 311 frees up officer time for crime prevention.⁷² In

⁵⁷ *Id.* at 1.

⁵⁸ Robert Barkin, Organized for Service, AMERICAN CITY & COUNTY, Feb. 1, 2009.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, CUSTOMER SERVICE AND 311/CRM TECHNOLOGY IN LOCAL GOVERNMENTS: LESSONS ON CONNECTING WITH CITIZENS 11 (Cory Fleming ed., 2008) [Hereinafter ICMA], available at <http://bookstore.icma.org/freedocs/43547.pdf>.

⁶² *311 Non-Emergency Systems*, DISPATCH MAGAZINE ONLINE, http://www.911dispatch.com/info/311_page.html.

⁶³ Barkin, *supra* note 58.

⁶⁴ U.S. DEP'T OF JUSTICE, NATIONAL INSTITUTE FOR JUSTICE, MANAGING CALLS TO THE POLICE WITH 911/311 SYSTEMS 9 (2005), [Hereinafter MANAGING CALLS TO THE POLICE] available at <http://www.ncjrs.gov/pdffiles1/nij/206256.pdf>.

⁶⁵ *Id.* at 3.

⁶⁶ NIJ GUIDELINES FOR POLICYMAKERS, *supra* note 56, at 1.

⁶⁷ MANAGING CALLS TO THE POLICE, *supra* note 64, at 3.

⁶⁸ *Id.* at 2.

⁶⁹ NIJ GUIDELINES FOR POLICYMAKERS, *supra* note 56, at 2.

⁷⁰ Barkin, *supra* note 58.

⁷¹ U.S. DEP'T OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, COPS FACT SHEET 311 FOR NON-EMERGENCIES: HELPING COMMUNITIES ONE CALL AT A TIME 2 (2007) [Hereinafter COPS FACT SHEET], available at http://www.cops.usdoj.gov/html/cd_rom/tech_docs/pubs/311forNonEmergencies.pdf.

⁷² Barkin, *supra* note 58.

short, an effective 311 system, by reserving 911 for true emergency situations, can recapture the original purpose of 911.⁷³

Beyond increasing the efficiency of police response to emergencies, a 311 system can produce other important, if less tangible, benefits. A non-emergency public safety line empowers citizens, by making them partners in the policing enterprise.⁷⁴ Whereas 911 discourages citizens from calling in all but the most dire of situations, 311 invites them to report graffiti, noise violations, suspicious persons, juvenile disturbances, and other quality of life issues. The Amsterdam Police Department and City leaders have recently encouraged citizens to take a more active role in reporting crimes and suspicious activities,⁷⁵ and expressed frustration at not receiving more reports.⁷⁶ As the experience of Baltimore shows, citizens are likely to relish this opportunity to make the complaints known.⁷⁷ Moreover, an open invitation to make reports is likely to improve police relations with the citizenry. Indeed, in a survey that measured user satisfaction with the Baltimore 311 system, 70% of those surveyed said 311 helped to improve police-community relations.⁷⁸ Those same citizens reported overwhelming satisfaction with their reporting experiences, even when the problem they reported remained unresolved.⁷⁹ In this sense, 311 serves an important police-community relations function, serving as a visible symbol of official commitment to crime reduction and willingness to engage the public.

Although a citizen can currently report minor crimes by calling the police directly, a major benefit of a 311 system is that, like 911, it is easily marketed and remembered.⁸⁰ Citizens are less likely to report crimes if they must flip through pages of the telephone directory to find the number, and citizens who do report often call the 911 system anyway.⁸¹ The current Amsterdam procedure for reporting graffiti, for example, is onerous. A June 2009 *Recorder* article advises “[a]nyone with information about graffiti-related vandalism . . . to contact Detective Rob Richardson at 842-1100, Ext. 148.”⁸² Moreover, 911 calls typically employ an Automatic Number Identification/ Automatic Location Identification system (ANI/ALI), whereas 311 systems are typically fully anonymous.⁸³ It is probable that citizens will be more likely to report crimes when their anonymity is assured,⁸⁴ and researchers speculate this anonymity contributed to the increase in reporting of minor crimes in Baltimore.⁸⁵

⁷³ MANAGING CALLS TO THE POLICE, *supra* note 64, at 1.

⁷⁴ *Id.*

⁷⁵ Jessica Maher, *Ward Residents Air Concerns*, THE RECORDER, Apr. 13, 2010, at A1.

⁷⁶ Maher, *supra* note 38 (after a recent instance of day-light vandalism, one officer opined “I find it hard to believe nobody noticed, but [APD] didn’t get a call.”).

⁷⁷ NIJ GUIDELINES FOR POLICYMAKERS, *supra* note 56, at 2.

⁷⁸ *Id.* at 4.

⁷⁹ *Id.*

⁸⁰ MANAGING CALLS TO THE POLICE, *supra* note 64, at 1.

⁸¹ ICMA, *supra* note 61, at 1.

⁸² Linda Kellett, *Alleged Vandals Arrested*, THE RECORDER, June 5, 2009, at A1.

⁸³ NIJ GUIDELINES FOR POLICYMAKERS, *supra* note 56, at 2.

⁸⁴ *Id.* at 2.

⁸⁵ MANAGING CALLS TO THE POLICE, *supra* note 64, at 2.

Even when non-emergency 311 reports are not directly acted upon, they can serve the important police function of information-gathering. By recording reports of fights, graffiti, and the like, the police can become better aware of what the crime situation is in neighborhoods across the City.⁸⁶ These reports “can help police determine trends [and] locate hot spots” of crime.⁸⁷ For instance, the police would have hard data about the expansion of graffiti into previously unblemished neighborhoods. If the national crime-fighting experience over the past thirty years has taught us anything, it is that minor disorder often presages more serious crimes in neighborhoods.⁸⁸ Data collected from 311 could theoretically form a sort of early warning system to identify troubled neighborhoods, while drops in reported quality of life complaints would confirm the efficacy of the City’s crime reduction efforts.

The final benefit of a 311 calling system is that it allows flexibility for police and municipal government to craft their response to fit the call in ways that an emergency-only calling system does not.⁸⁹ Whereas the typical 911 response will be dispatch of police, a 311 call might often be resolved by another agency. The vast majority of 311 systems employed by cities integrate their public works, parks and recreation, and code enforcement departments into their response mechanisms.⁹⁰ The Minneapolis system, for example, refers complaints of graffiti on public property directly to their public works department.⁹¹ Before removing the graffiti, the crews take photographs, and forwards them to police.⁹² This integrated response system has reduced the graffiti complaint response time.⁹³ Any system in the City of Amsterdam should fully integrate the full panoply of City services, to address all citizen concerns likely to arise.

As with most worthwhile services, a 311 system comes at a cost. Without placing bids it is difficult to estimate the total cost to the City of implementing 311. Data collected by the Pew Charitable Trusts indicates widely divergent per capita costs of funding such a system.⁹⁴ The average per capita cost for the fifteen cities included in their dataset was \$2.23 for the 2009-2010 budget year.⁹⁵ Pittsburgh, Pennsylvania’s system is the most impressive: on a budget of \$199,951 their 311 system served a city of 310,000 people and fielded approximated 50,000 calls.⁹⁶ Whatever the costs for Pittsburgh, it is reasonable to anticipate the costs for Amsterdam to be substantially less. This assumption is bolstered

⁸⁶ Cf. NIJ GUIDELINES FOR POLICYMAKERS, *supra* note 56, at 3.

⁸⁷ *Id.* at 3.

⁸⁸ See generally GEORGE L. KELLING & WILLIAM H. SOUSA, JR., DO POLICE MATTER? AN ANALYSIS OF THE IMPACT OF NEW YORK CITY’S POLICE REFORMS 1-3 (2001) (discussing “broken windows” policing theory), available at http://www.manhattan-institute.org/pdf/cr_22.pdf.

⁸⁹ NIJ GUIDELINES FOR POLICYMAKERS, *supra* note 56, at 1.

⁹⁰ ICMA, *supra* note 61, at 12.

⁹¹ Barkin, *supra* note 58.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Pew Charitable Trusts, Survey of 311 Contact Centers in Select Cities/Counties, available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Philadelphia_Research_Initiative/cities_311-advance%20\(2\).xls](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Philadelphia_Research_Initiative/cities_311-advance%20(2).xls) (per capita spending ranges from \$.64 in Pittsburg, PA, to \$14.06 in San Francisco, although the next highest cost was Baltimore at \$8.94).

⁹⁵ *Id.*

⁹⁶ *Id.*

by the fact that, increasingly, companies that provide software for 311 services are releasing software tailored to the small community.⁹⁷ While no credible estimates for costs to small cities appears to exist, ICMA gives estimated startup costs for a small “pilot” program for larger cities, based on enough equipment and training for ten call center operators.⁹⁸ ICMA estimates these costs to be approximately \$125,000 in the first year, and ten percent of that cost in years thereafter.⁹⁹ Given that the needs of an Amsterdam calling system would be probably still less than this, a reasonable first year cost estimate would be less than \$200,000, the vast bulk of which will constitute one-time start up costs.

While \$200,000 is a large sum, especially for a community facing a budget deficit, there are several possibilities the City should explore to help defray the costs. First, the City should examine the possibility of sharing this service with the county,¹⁰⁰ in the same way it now shares 911. A county-wide 311 model has been implemented successfully in several localities, most notably Los Alamos County, New Mexico, with a population of 19,022¹⁰¹— far less than the Montgomery County population of about 48,000.¹⁰² Second, the City should consider possible funding sources that could defray start up costs for equipment. One possible funding source is the federal Department of Justice’s Community Oriented Policing Services (COPS) program.¹⁰³ COPS funding was awarded, for example, to Rochester, New York, to implement its 311 system.¹⁰⁴ Other sources of state and federal funding may be available through our state and federal legislative representatives. Finally, numerous private organizations offer logistical support to communities interested in starting a 311 service,¹⁰⁵ and we can tap their knowledge and expertise in determining how to implement a 311 system in a cost-effective manner.

Proposal 4: Increase the Size of the Amsterdam Police Department Force by Two Officers

Analysis indicates that crime control and prevention in the City of Amsterdam would be benefited by the addition of two sworn officers to the Amsterdam Police Department. Although the public finances are currently strained, the overall costs to the City and society of the crime that could be expected to be prevented by the additional officers outweighs costs.

At least part of the City’s crime problems can be traced back to understaffing in the Amsterdam Police Department (APD). At a recent public forum on the problems

⁹⁷ Barkin, *supra* note 58.

⁹⁸ ICMA, *supra* note 61, at 32.

⁹⁹ *Id.*

¹⁰⁰ Barkin, *supra* note 58.

¹⁰¹ ICMA, *supra* note 61, at 17 (2006 estimated population).

¹⁰² Bureau of the Census, Annual Estimates of the Resident Population for Counties of New York: April 1, 2000 to July 1, 2009, *available at* <http://www.census.gov/popest/counties/CO-EST2009-01.html> (2009 population estimate).

¹⁰³ COPS FACT SHEET, *supra* note 71, at 1.

¹⁰⁴ *Id.*

¹⁰⁵ Barkin, *supra* note 58.

plaguing the fourth ward, APD Sergeant Patrick Miller said that at times as few as three police officers will be assigned to a shift to cover the entire City.¹⁰⁶ Deputy Chief of Police Victor Hugo characterized this number as “dangerously low.”¹⁰⁷ The staffing difficulties become particularly acute when the Department is not at full strength, for various reasons, and it is forced to pay overtime to officers just to maintain adequate staffing levels.¹⁰⁸ According to Hugo, the “lion’s share” of the APD’s overtime costs is accrued by making up short shifts.¹⁰⁹ Hugo said that, at times, the Department has been unable to use up to five officers due to illness and injuries.¹¹⁰

Even when the department has its full complement of officers available for duty, it is still short staffed as compared to communities of similar size. According to FBI data, the average city with a population between 10,000 and 24,999 employs 2.4 officers per 1000 residents.¹¹¹ Current Census Bureau estimates place the population of the City of Amsterdam at approximately 17,533 residents,¹¹² and FBI data indicates that the APD employs 37 officers,¹¹³ or approximately 2.1 officers per 1000 residents. To increase staffing at the APD to merely average levels would require the addition of five officers. While this proposal does not go so far, it begins to remedy the staffing needs of the overburdened APD, and should help them to maintain at least minimal staffing levels even when the pool of available officers is depleted by illness.

An increase of two officers should be expected to reduce crime in several categories. A report issued this year by the RAND Corporation, a well-respected think tank, summarizes and synthesizes existing high-quality social science research on the subject, to generate measurements of the expected impact that adding additional police officers will have on crime rates.¹¹⁴ Combining the results from several studies through a meta-analysis, the report concludes that increasing the average police force by 1% should be expected to reduce homicide rates in the department’s jurisdiction by .927%, robberies by .592%, serious assaults by .292%, burglaries by .404%, and vehicle thefts by .440%.¹¹⁵ The data suggests that the addition of two officers, a 5.4% increase in the force, can be expected to result in an across the board decrease in City crime rates.¹¹⁶ Statistical

¹⁰⁶ Maher, *supra* note 75.

¹⁰⁷ Jessica Maher, *Committee: Budget Process Is Not Working*, THE RECORDER, Apr. 6, 2010, at A1.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ U.S. Dep’t of Justice, Table 70: Full-time Law Enforcement Employees, available at http://www.fbi.gov/ucr/cius2008/data/table_70.html.

¹¹² 2008 estimates. Amsterdam City, New York Fact Sheet, available at <http://www.census.gov>.

¹¹³ U.S. Dep’t of Justice, Table 78: New York Full-time Law Enforcement Employees, available at http://www.fbi.gov/ucr/cius2008/data/table_78_ny.html.

¹¹⁴ See PAUL HEATON, RAND CORP., HIDDEN IN PLAIN SIGHT: WHAT COST-OF-CRIME RESEARCH CAN TELL US ABOUT INVESTING IN POLICE 1-2 (2010), available at http://www.rand.org/pubs/occasional_papers/2010/RAND_OP279.pdf.

¹¹⁵ *Id.* at 10-11. The report additionally found expected reductions in both rape and larceny rates, but these reductions were not statistically significant. *Id.*

¹¹⁶ While the report notes that its elasticity metrics are designed to assess modest changes in the size of the a police force, and may be less useful in predicting the effects of large changes in force size, *Id.* at 10, intuitive sense indicates that the same general pattern should hold, although at some point increases in the force will be subject to the principles of diminishing marginal utility, *Id.* at 11 n.14. Whatever the point

evidence aside, intuitive sense predicts the same result: more police on the streets means less crime.

Common wisdom correctly notes that we cannot put a price on our safety and on our lives. However, this widely-shared belief has not deterred economists and other social scientists from attempting to monetize the costs of crime.¹¹⁷ One widely utilized estimation method attempts to calculate the costs of particular crimes by identifying all the social costs associated with a that crime and adding them.¹¹⁸ Costs include property loss to victims, costs of medical treatments, lost productivity costs and the loss of wages, costs to society of investigating the crimes, and the like.¹¹⁹ Some of these studies also attempt to monetize intangible costs, using estimates for pain and suffering to estimate intangible costs.¹²⁰ A 2009 study using an advanced form of this accounting method found that the average cost to society of a robbery was \$23,000, of a serious assault was \$55,000, of a burglary was \$5,000, and of a larceny was \$2,800.¹²¹ A 2004 study found similar, but generally higher, costs.¹²² With respect to property crimes, like burglaries and larcenies, most of the estimated costs are tangible losses, whereas with respect to violent crimes, like assault, most of the costs are intangible.¹²³ For this reason, we should have high confidence that accounting method metrics adequately capture most of the costs associated with property crimes.

Still, accounting method metrics, even with respect to property crimes, can undervalue intangible costs associated with crime, and particularly violent crimes.¹²⁴ Accounting models entirely leave out the cost to society of a loss of peace of mind after violent crimes or a string of burglaries, or else seek to measure them in crude ways.¹²⁵ Still, we can expect that the social costs to peace of mind after the vicious assault of an eighty-five year old man¹²⁶ will be substantial, even if they are difficult to quantify. The City's recent experience with crime confirms that the populace is disquieted; the recent fourth ward public forum was attended by over two dozen residents, and Mayor Thane characterized it as "one of the highest attended ward meetings she'd seen."¹²⁷ Residents expressed their fear and frustration regarding recent incidents, as well as with car and home burglaries, graffiti, fights, loud music, and other nuisances occurring in their ward.¹²⁸

Some cost of crime valuation methods attempt to capture intangible costs to peace of mind by surveying citizens to determine how much they would be willing to pay for

where diminishing utility occurs, the fact that APD staffing levels are well below the national average for peer cities strongly indicates that we have not yet reached it.

¹¹⁷ *Id.* at 2.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 3.

¹²¹ All figures are presented in constant 2007 dollars. *Id.* at 5.

¹²² *Id.*

¹²³ *Id.* at 7.

¹²⁴ *Id.*

¹²⁵ *Id.* at 3.

¹²⁶ Jessica Maher, *Elderly Bar Owner Beaten in Robbery*, THE RECORDER, Apr. 4, 2010, at A2.

¹²⁷ Maher, *supra* note 75.

¹²⁸ *Id.*

reductions in crime.¹²⁹ On this basis, one study valued the social benefit of each averted serious assault at \$83,771, each burglary at \$29,918, and each armed robbery at \$127,715.¹³⁰ Such valuations suffer from seemingly intractable methodological problems.¹³¹ Beyond that, they may fail to fully capture associated tangible costs: for instance, if crime in the area of a park is so great that the park becomes unusable by children, the cost of construction of the park is another cost of the crime.¹³² Moreover, if we assume that high crime rates will lead to a reduction in home values, a reasonable assumption, we should include the loss to neighborhood home values as an economic cost of crimes, something which neither of the methods explained above do.¹³³ Recent research estimates the cost to neighborhood home values of a single sexual assault at between \$600,000 and \$2.5 million.¹³⁴ Crime can also have difficult-to-measure long term costs as well. One study concluded that for each crime reported in a city, a one-person decline in city population is likely to occur.¹³⁵ Even if the relationship is not as rigid as the study suggests, “[i]t is reasonable to assume that the fear of crime exerts at least as robust an influence on residents’ decisions about whether to move . . . with safer neighborhoods enjoying greater residential stability”¹³⁶ Urban flight can be expected to result in a decreased tax base, costing the City untold sums in tax revenue.

While the research regarding the costs of crime is certainly interesting, it is difficult to say with certainty what the costs of a particular crime will be.¹³⁷ It is enough to note that the lesson the academic social science literature teaches us is that the costs of crime are considerable, and that they go far beyond the tangible costs of stolen property and medical care for violent crimes. The RAND report concludes that, whatever the efforts to monetize crime costs reveal, it is clear that “the actual social costs of crime are substantial.”¹³⁸

While “considerable uncertainty” will surround any cost of crime measure,¹³⁹ we can estimate the costs of two additional police officers with far greater precision. Given the current entry level salary of an APD officer,¹⁴⁰ and the estimated cost of training and equipping that officer,¹⁴¹ a rough estimate of the total cost of putting two new officers on

¹²⁹ HEATON, *supra* note 114, at 3.

¹³⁰ *Id.* at 5.

¹³¹ *Id.* at 3.

¹³² *But see Id.*

¹³³ *Id.* at 4.

¹³⁴ *Id.*

¹³⁵ Nicole Stelle Garnett, *Order-Maintenance Agenda as Land Use Policy* 14 (Notre Dame Law School Legal Studies Research Paper No. 10-07, 2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1565494##.

¹³⁶ *Id.*

¹³⁷ HEATON, *supra* note 114, at 5.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ The current base starting salary for new hires APD for the night shift: \$32,890. Agreement By and Between City of Amsterdam, New York and Amsterdam Police Benevolent Association, Inc. (2005) (on file with City of Amsterdam).

¹⁴¹ A recent article placed the cost of training and equipping a police officer in Tulsa, Oklahoma at \$22,000. Brian Barber, *Police chief: New officers could start training in January*, TULSA WORLD (Oklahoma), Aug. 19, 2009, at A7. It is reasonable to assume that costs here will be similar.

the street to be approximately \$110,000, of which \$44,000 constitutes one-time training and equipment costs. To the extent that the extra officers can be used to lower APD's considerable overtime pay, which now consumes nearly \$250,000 of the department's budget allotment,¹⁴² the costs of the officers will be offset by the cost-savings realized through the reduction in overtime pay. While the decrease in overtime pay is unlikely to cover the full costs of hiring the new officers,¹⁴³ the cost-savings will at least ensure that the actual cost to the City is less than \$110,000.

Proposal 5: Use Zoning Laws Creatively to Require High-Risk Businesses to Maintain Extra Security

In the past thirty years, crime prevention literature has focused on policing techniques and the prohibitions that can be enacted into the criminal law to reduce crime. Unfortunately, the attention paid to these areas has meant that “the order-maintenance revolution” has largely passed without sustained academic interest in other potentially fruitful crime-control mechanisms.¹⁴⁴ Nevertheless, “[i]t is now well understood that some areas are the location for a disproportionate number of crimes.”¹⁴⁵ This realization has spawned efforts at place-based crime prevention techniques, such as Situational Crime Prevention¹⁴⁶ and Crime Prevention Through Environmental Design theory.¹⁴⁷ For our purposes, both methods attempt to prevent crime through the use of “opportunity blocking” techniques, which are designed to make “crime more difficult, risky, less rewarding, or less excusable.”¹⁴⁸ Inspired by these theories, in recent years both academics and municipalities have begun to explore the “complex and important” role that zoning and other land use regulations can play in preventing crime.¹⁴⁹ Drawing on this growing literature, it is reasonable to conclude that a requirement that certain high crime businesses maintain a private security guard will reduce the strain on Amsterdam Police Department resources, increase the safety of law-abiding citizens who wish to use those businesses, and reduce crime overall.

Place-based theories of crime prevention begin with the premise that most “places,” defined as a small, discrete space, such as a park or a store, “have no crimes and most crime is highly concentrated in and around a relatively small number of places.”¹⁵⁰ The numbers seem to bear out this assertion: one study, combining the data from previous studies, estimated that sixty-percent of crimes take place in ten-percent of the places.¹⁵¹

¹⁴² Maher, *supra* note 107.

¹⁴³ *Id.*

¹⁴⁴ Garnett, *supra* note 135 at 4.

¹⁴⁵ Edward H. Zeigler, *American Cities, Urban Planning, and Place Based Crime Prevention* (Legal Research Paper Series Working Paper No. 07-28, 2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=987357.

¹⁴⁶ John E. Eck, *Preventing Crime at Places*, in LAWRENCE W. SHERMAN ET AL., NAT'L INST. OF JUSTICE, PREVENTING CRIME: WHAT WORKS, WHAT DOESN'T, WHAT'S PROMISING: A REPORT TO THE UNITED STATES CONGRESS (1998), available at <http://www.ncjrs.gov/works/chapter7.htm>.

¹⁴⁷ Ziegler, *supra* note 145 at 3-4.

¹⁴⁸ Eck, *supra* note 146.

¹⁴⁹ Garnett, *supra* note 135 at 4.

¹⁵⁰ Eck, *supra* note 146.

¹⁵¹ *Id.*

Next, place-based theories recognize that the environment of a place can have an effect on crime, taking to heart the common sense understanding that a dark, secluded alleyway is more dangerous than a busy, well-lighted street—an understanding that also happens to be supported by research.¹⁵² Proceeding from these grounds, place-based efforts at crime prevention try to improve high crime places by eliminating opportunities for crime; a dark alley is given more streetlamps, or sealed off all together with fencing. To the extent that crime hot spots are public spaces, like city parks, a city can easily implement place-based prevention mechanism. But some crime hot spots are likely to be private businesses. For those hot spots, the place-based literature suggests that cities can use their zoning laws to require that businesses maintain adequate exterior lighting around their buildings and in their parking lots, use security cameras, and implement “target hardening” techniques, such as single, controlled access to buildings, secure doors and windows,¹⁵³ and use of spray paint resistant building materials, in new construction.¹⁵⁴

One obvious place-based prevention measure is the use of private security officers to police privately owned high crime places. In recent years, a number of municipalities have considered¹⁵⁵ or enacted¹⁵⁶ local ordinances that experiment with private security guard requirements for troubled places. Some ordinances have issued blanket requirements that certain types of businesses¹⁵⁷ or businesses operating at certain hours must maintain private security. Other municipalities have required certain types of businesses to receive special use permits to operate, and then attached security guard

¹⁵² Peter Olasky, *Crime Impact Statements*, 37 COLUM. J.L. & SOC. PROBS. 329, 332 (2004).

¹⁵³ Ziegler, *supra* note 145 at 9-11.

¹⁵⁴ Olasky, *supra* note 152 at 333-34.

¹⁵⁵ 2009 Op. Fla. Att’y Gen. No. AGO 2009-08 (City of Sunny Isles, Florida considering requirement for condominiums); Nate Schweber, *Towns Use Zoning to Limit Sex Businesses*, N.Y. TIMES, Jan. 27, 2008, at NJ 6 (State of New Jersey considering requirement for strip clubs); Editorial, *County Wise to Tweak Its ‘Big-Box’ Ordinance*, HERNANDO TIMES (Florida), June 11, 2008, at 2 (Hernando County, Florida considering security requirements as amendments to its ‘big box’ ordinance); Stephanie Simon, *City to Consider Nightclub Crackdown*, L.A. TIMES, May 22, 1993, at B1 (Thousand Oaks, California City Council considering a number of options to quell problems at late night establishments); *Local Meetings*, STAR-LEDGER (New Jersey), Aug. 13, 1998, at 35 (Mansfield town council considering requirement for malls of a certain size); Karen Farkas, *Beef Up Security, Chagrin Falls Officials Tell Windsor Hospital*, PLAIN DEALER (Ohio), June 13, 2000, at 3B (Chagrin Falls village council considers legislation requiring a hospital for mentally ill and alcoholic patients to carry extra security).

¹⁵⁶ Christine Schiavo, *Mayor Makes it Tough for Late-Night Allentown, Pa., Dancers to Stay Footloose*, PHILADELPHIA INQUIRER, Sept. 27, 2003 (Orange County, Florida, ordinance requiring clubs that throw “rave” parties to hire extra security); Jesse Hyde, *Protest Erupts Before Provo Passes ‘Party Pooper’ Plan*, DESERET NEWS (Utah), Feb. 7, 2001, at B01 (Provo, Utah, ordinance requiring hiring of state certified security guards for publicly advertised dance parties); Janet Zink, *City Council Studies Rules for Ybor’s Balconies*, ST. PETERSBURG TIMES (Florida), May 6, 2005 (Tampa, Florida ordinance requiring private security for large clubs in the city’s entertainment district).

¹⁵⁷ 515 Associates v. Newark, 623 A.2d 1366 (1993) (City of Newark ordinance requiring armed guards at Newark housing complexes with other one-hundred housing units, for eight hours a day, and an unarmed guard at all other times); Bonito v. Mayor and Council of Bloomfield Tp., 484 A.2d 1319 (Law Div. 1984) (Bloomfield, New Jersey ordinance requiring video arcades to maintain private security); Vo v. City of Garden Grove, 115 Cal. App. 4th 425 (4th District 2004) (ordinance requiring “cybercafes” to hire private security).

requirements on an individual basis, as conditions for approval of their applications.¹⁵⁸ In perhaps the most far-reaching ordinance so far, the Los Angeles city council passed a ordinance in January that requires an estimated one-thousand medical marijuana dispensaries across the city to maintain private security on premises, and force them to patrol a two block radius around the store.¹⁵⁹ Although private security requirements are at the cutting edge of modern land use policy, the special attention to disordered places has deep roots in both nineteenth century and pre-revolutionary war common-law regulations of inn, taverns, bawdy houses, gambling houses, and the like.¹⁶⁰ It is safe to say that, although the context and methods of regulation have changed, private security requirements are predictable outgrowths of municipalities' historic concern for social disorder at business establishments.

In the abstract, we should expect that the provision of private security will result in a reduction in crime because it decreases the opportunities for crime.¹⁶¹ Many types of crimes are opportunistic, so removing opportunities should be expected to have the desired effect.¹⁶² Moreover, the unlikelihood of apprehension is an "opportunity" in this sense; it is for this reason that most convenience store robberies occur at night, when the criminal is more likely able to conceal himself through dark and to escape into the night.¹⁶³ Most criminal law based crime deterrence strategies attempt to dissuade conduct of criminals that may take place at some indeterminate time in the future.¹⁶⁴ Increased punishments for crimes work on the assumption that the possibility of stiffer penalties will deter would-be criminals. There is reason to believe that the provision of private security for place-based opportunity blocking will be even more effective—assuming that criminals will pay exceptionally close attention to the environment around them immediately before committing a crime, private security transforms a speculative, uncertain possibility of apprehension into a near certainty.¹⁶⁵ Indeed, we can expect place-based private security will be even more effective than increased police patrols to a high crime area, since patrols will increase the risk of apprehension, but will not guarantee it.¹⁶⁶ Moreover, to the extent that increased private security will prevent the

¹⁵⁸ Michael Buettner, *Commission Recommends Revoking Comedy Club's Zoning Permit*, PROGRESS-INDEX (Virginia), Feb. 28, 2010 (Prince George County, Virginia zoning permit containing nine condition, including provision of private security, for a dance club); John Schwada, *L.A. Zoning Panel Cracks Down on Van Nuys Market*, L.A. TIMES, May 13, 1992, at B3 (Los Angeles Zoning Board of Appeals imposing security requirements on two high crime 7-Eleven stores).

¹⁵⁹ Christina Villacorte, *L.A. Council Approves Medical Marijuana Ordinance*, CITY NEWS SERVICE, Jan. 26, 2010.

¹⁶⁰ For helpful background on these so-called "police power" regulations, see Vincent Stark, *Public Morality as a Police Power after Lawrence v. Texas and Gonzales v. Carhart*, 10 GEO. J. GENDER & L. 165, 179-186, 171 n.39 (2009).

¹⁶¹ Michael Scott, *Shifting and Sharing Police Responsibility to Address Public Safety Problems*, in HANDBOOK OF CRIME PREVENTION AND COMMUNITY SAFETY (Ed., N. Tilley, Forthcoming 2010) (manuscript at 368), available at http://www.popcenter.org/Responses/responsibility/PDFs/Scott_2005.pdf.

¹⁶² Ziegler, *supra* note 145 at 20.

¹⁶³ ALICIA ALTIZIO & DIANA YORK, U.S. DEP'T OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, ROBBERY OF CONVENIENCE STORES 13 (2007), available at http://www.cops.usdoj.gov/html/cd_rom/tech_docs/pubs/311forNonEmergencies.pdf.

¹⁶⁴ Eck, *supra* note 146.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

amassing of crowds of loiterers, it will decrease the opportunity that such accumulations present for violence and other disorderly activity. Private security might have prevented the recent box-cutter slashing at the Amsterdam Fastrac,¹⁶⁷ as well as the beating of a local tavern owner.¹⁶⁸

Due to the cutting-edge nature of land use crime control provisions, there is a decided lack of rigorous research exploring the effectiveness of them.¹⁶⁹ Nevertheless, the research we can draw on suggests that a private security guard requirement would deter crime. Some evidence in support of this conclusion can be drawn for the experience of so-called Business Improvement Districts (BIDs). BIDs are self-organized, private or locally chartered organizations that assess fees on member businesses in a localized area¹⁷⁰ for purposes such collective marketing efforts, beautification projects, and the provision of joint private security.¹⁷¹ Although not every BID spends money on private security, a recent RAND corporation study of the experiences of BIDs in Los Angeles concluded that twenty-three percent of all BID expenditures was for security.¹⁷² If private security can reduce crime in particular areas, we should expect that BIDs would experience a drop in crime rates. The RAND study concluded that “BID areas experienced greater, on average, yearly reductions in the number of robbery, violent, and total crimes than non-BID areas” did during the study period.¹⁷³ Although the various BIDs “environmental settings” varied greatly,¹⁷⁴ as did their spending on security,¹⁷⁵ the study concludes that they can be effective in reducing crime.¹⁷⁶ Still, the experience of the BIDs may have limited probative value, given that the provision of other services that BIDs provide might be expected to reduce crime even without the addition of private security. Moreover, BIDs focus on a larger area than one bar or convenience store.

Other data suggests that private security can result in crime reductions in a place, however. A Department of Justice report on convenience store robberies found that after the passage of Florida’s Convenience Business Security Act of 1992, which required businesses open between eleven PM and five AM to keep at least two employees during those hours, hire a security guard, or enclose employees in bullet proof glass, convenience store robbery rates in Florida dropped significantly.¹⁷⁷ The 7-Eleven convenience store chain, which has implemented numerous place-based crime prevention suggestions at their convenience stores, sometimes including a security officer, reported that their efforts resulted in seventy percent reduction in robberies of

¹⁶⁷ Editorial, *Awareness is key to safety*, THE RECORDER, Mar. 28, 2010, at A10.

¹⁶⁸ Jessica Maher, *Elderly Bar Owner Beaten in Robbery*, THE RECORDER, Apr. 4, 2010, at A2.

¹⁶⁹ Eck, *supra* note 146 (“[L]ack of attention has limited our knowledge about this approach to prevention.”).

¹⁷⁰ JOHN MACDONALD ET AL., RAND CORP., NEIGHBORHOOD EFFECTS ON CRIME AND YOUTH VIOLENCE: THE ROLE OF BUSINESS IMPROVEMENT DISTRICTS IN LOS ANGELES at xxiii (2009), available at http://www.rand.org/pubs/technical_reports/2009/RAND_TR622.pdf.

¹⁷¹ *Id.* 49.

¹⁷² *Id.* 20.

¹⁷³ *Id.* 80.

¹⁷⁴ *Id.* 91.

¹⁷⁵ *Id.* 20.

¹⁷⁶ *Id.* 92-93.

¹⁷⁷ Altizio & York, *supra* note 163 at 25.

their stores over a twenty year period.¹⁷⁸ At the level of anecdotal evidence, when the seventeen 7-Eleven stores in Alexandria, Virginia dealt with problems of rowdy behavior, drinking, and noisy loitering in their parking lots in the early 1980s, they voluntarily hired off-duty police officers as nighttime security guards.¹⁷⁹ According to the police, the provision of private security “solved” their crime problem.¹⁸⁰

Perhaps most on point is the experience of the city of Fresno, California with implementation of special zoning rules, as detailed in a Fresno Police report on the subject. When the Fresno Police concluded that calls for service to certain locations in the City were “out of control,” they requested to become involved in the zoning application and approval process.¹⁸¹ A procedure was put into place whereby the Police were allowed to review application for new development and for rezoning, and were permitted to place crime reduction provisions on the applications.¹⁸² Moreover, all previously issued permits were revoked, allowing the Police to review the application and place conditions on them.¹⁸³ The Police developed basic conditions for various types of businesses.¹⁸⁴ For restaurants with dance permits, the conditions included development and maintenance of a written security plan, which was required to include provisions for security guards during special events.¹⁸⁵ That plan was subject to the approval of the Fresno Police Department.¹⁸⁶ Following implementation of these land use regulations, calls for service dropped by eighty-seven percent at all problem locations.¹⁸⁷ Results were even more stark for the most troubled hot spots: a restaurant and dance club that had generated over five hundred calls for service in a five year period,¹⁸⁸ and one hundred and twenty-seven calls in the first quarter of 1995 had only thirty-two calls 1996.¹⁸⁹ By the first quarter of 1997, calls for service to the restaurant had declined to a mere three.¹⁹⁰ The reduction in service calls benefited both the businesses, which were safer, and the police, who had more time to spend on other crimes.

Despite the benefits that private security can have to both to the community and to businesses, we can expect that businesses will be reluctant to support a private security ordinance for two somewhat interrelated reasons. First, those with private insurance against a risk are more likely than others to engage in risky behavior.¹⁹¹ Economists calls

¹⁷⁸ *Id.* 24.

¹⁷⁹ Rick Allen, *Alexandria Considering Convenience Store Rules*, WASHINGTON POST, Jan. 16, 1986.

¹⁸⁰ Allen, *Alexandria Considering*

¹⁸¹ Bruce Hartman & Ken Dodd, *Local Ordinances and Conditional Use Permits: the Empowerment of Law Enforcement 1-2* (1997), available at <http://www.popcenter.org/library/awards/goldstein/1997/97-20.PDF>.

¹⁸² *Id.* at 1.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 5-13.

¹⁸⁵ *Id.* at 8.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 1.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 13.

¹⁹⁰ *Id.*

¹⁹¹ See P.N. Grabosky, *Unintended Consequences of Crime Prevention 35*, available at http://www.popcenter.org/library/crimeprevention/volume_05/02_Grabosky.pdf.

this inclination “moral hazard.”¹⁹² For example, businesses that are insured against loss from theft (likely most businesses) are less likely to invest in additional security measures.¹⁹³ (A corollary is the inverse: those who must bear the full brunt of loss are more likely to take security precautions). To some extent, public police function as a sort of insurance policy against disorder: when the situation at a business gets out of hand, the police are called upon to restore order. Given the choice between procuring private security and calling on police increasingly, businesses will have a perverse incentive not to invest in additional security measures.

Increasing calls to the police to respond to problems at a business presents a sort of special case of the free rider problem. In the normal case, a free rider is said to derive the benefit from some service without paying for it.¹⁹⁴ In the case of excessive calls for service to the police, the problem is not that a business does not contribute to the cost of the police, but that it does not contribute its fair share, given its overuse of the system. Unfortunately, even increased taxation of businesses who overuse the police is unlikely to reduce crime. Because of the limited resources, capacity, and authority of the police, businesses are usually in a better position to control the conditions on their land that give rise to crime and disorder.¹⁹⁵ Police are in a poor position to prevent crime at particular places where they do not exercise total control, meaning that they are confined to “a reactive posture, their role defined largely by the default of others in adequately addressing problems.”¹⁹⁶ Moreover, once a crime is committed, it is unlikely that it will ever be solved.¹⁹⁷ Indeed, police seldom learn of crimes unless they are reported—and research suggests that less than half of all crimes are.¹⁹⁸ Thus, prevention of crime accomplishes what police reaction cannot.¹⁹⁹

Thus, we can expect that police will simply be called, more and more, to problem businesses where (due to moral hazard) business owners will be unlikely to address the underlying conditions that contribute to criminal behavior. Each call to respond to businesses that do not take seriously their primary responsibility to assure that they are orderly, crime-free places in the community takes away valuable police resources from other areas of the city.²⁰⁰ The result is that the streets will be less safe because police are tied up by preventable calls for service, even though the businesses they respond to will be no safer.

Zoning ordinances that require additional security solve the problems of both moral hazard and free riding, by forcing recalcitrant businesses to internalize the costs of

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Max More, *Private Police and the Free Rider Problem 2* (1983), *available at* <http://www.libertarian.co.uk/lapubs/polin/polin017.pdf>.

¹⁹⁵ Scott, *supra* note 161, manuscript at 386-387.

¹⁹⁶ *Id.* at 385.

¹⁹⁷ Olasky, *supra* note 152 at 322.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ Scott, *supra* note 161, manuscript at 392.

running disorderly businesses.²⁰¹ They “reflect a legislative judgment that certain businesses. . . by virtue of the activities in which they are engaged, have certain responsibilities to assure that those activities are carried out in ways that are safe and orderly.”²⁰² Such activities might include operation at night²⁰³ or serving or selling alcohol.²⁰⁴ It also rejects the “perhaps hubristic” view “that police can control crime rates almost unilaterally”²⁰⁵ while embracing the view that private entities have a duty to mitigate their damages and take reasonable precautions against loss—a theme underlying much of private law.²⁰⁶

Of course, policy makers should be cognizant that their policies may have unintended consequences.²⁰⁷ One salient concern with place-based prevention mechanisms is that they could result in a “displacement” effect: rather than preventing crime, it would merely shift to other areas.²⁰⁸ While the criticism is cogent, displacement is unlikely to occur due to this proposal. First, at least in this context, “there is little empirical evidence that displacement occurs.”²⁰⁹ Indeed, the literature is almost universal in its rejection of the displacement theory, leading one researcher to opine that “[c]oncern about displacement is usually based more on pessimism than empirical fact.”²¹⁰ Moreover, the type of crime that a security guard can be expected to prevent is “largely opportunistic”²¹¹ and therefore closely bound by the facts of the environment and situation producing it. At least with respect to those crimes, we should expect no displacement. If so, then some form of place-based private security ordinance can effectively reduce crime, eliminate substantial burdens on the police, and increase the safety of businesses for the general public.

²⁰¹ Scott, *supra* note 161, manuscript at 386.

²⁰² *Id.* at 402.

²⁰³ Altizio & York, *supra* note 163 at 13.

²⁰⁴ Scott, *supra* note 161, manuscript at 402

²⁰⁵ *Id.* 405.

²⁰⁶ Howard C. Eglit, *Damages Mitigation Doctrine in the Statutory Anti-Discrimination Context: Mitigating its Negative Impact*, 69 U. Cin. L. Rev. 7, 59 (2000).

²⁰⁷ Grabosky, *supra* note 191 at 45.

²⁰⁸ *Id.* at 31.

²⁰⁹ Ziegler, *supra* note 145 at 20-21.

²¹⁰ Eck, *supra* note 146.

²¹¹ Ziegler, *supra* note 145 at 20.