Playing the Numbers: Local Government Authority to Apply Use Quotas in Neighborhood Commercial Districts*

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INTRODUCTION

Use quotas, the zoning technique presented and analyzed in this Comment, restrict the number of establishments of a particular type that may locate in a neighborhood's commercial district. Traditionally, communities have employed local commercial zoning to designate general districts, such as “retail,” “office-commercial,” “neighborhood commercial,” or “central business” districts, while letting the free market determine the mix of specific uses within these broad classifications.1 This categorical approach of traditional zoning either excludes potentially troublesome uses altogether or allows them the opportunity to dominate a neighborhood's commercial district. The traditional zoning approach has sometimes resulted in “commercial overconcentration”: the displacement, due to market forces, of establishments that provide the smaller, neighborhood market with “convenience goods” (such as the local produce market or shoe repair store) by establishments that provide the city-wide or regional market with “shopping goods” or “luxury goods” (such as a record store or an antique shop).2

Local governments can combat the problem of overconcentration by determining the optimal mix of uses within each neighborhood's commercial district and establishing quotas for the maximum number of establishments within a district that may engage in each particular use.

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2. See infra text accompanying notes 23-26. In addition to driving out shops that provide easy access to convenience goods, establishments that serve a city-wide or regional market also increase outside traffic and parking demands in the neighborhood, further diminishing the quality of life in the neighborhood. See infra text accompanying notes 28-30 & 46-47.
The quota may be a fixed number (such as ten restaurants or eight bookstores), a percentage of the total number of establishments within the district (such as no more than twenty percent clothing stores), or a percentage of street frontage. Quotas attempt to maintain the mix of establishments that best serves the varied needs of neighborhood residents and to control the negative impact that establishments serving a larger market have on traffic, parking, and other aspects of neighborhood life.

Use quotas are a novel approach to zoning and are used in only a few cities, most notably Berkeley and San Francisco, California. Berkeley has established numerical quotas in its Elmwood Commercial District. San Francisco has used numerical and percentage quotas in many of its neighborhood commercial districts.

The implementation of use quotas is likely to open a local government to legal challenges to its authority to adopt such zoning measures. Local governments derive their authority to zone from two basic sources: home rule powers and state enabling legislation. The limits of local government power under home rule or enabling legislation are constantly at issue when innovative zoning practices are adopted and challenged. The local government’s zoning practices must fall both within the proper purposes for which the state delegates zoning power to local governments and within the means available to local governments to regulate development. Because local governments can only exercise those powers delegated to them by the states, any action that either exceeds the purposes of state delegation or uses improper means to carry out those purposes is invalid.

This Comment analyzes whether the application of use quotas in neighborhood commercial districts is within the authority of local governments, as delegated by the states under home rule or zoning enabling legislation. Before reaching this legal question, Part I briefly discusses the role of small-scale businesses in defining the sense of “neighborhood” important to urban life. It then briefly describes how an overconcentration of region-serving businesses may result from traditional zoning practices and diminish the quality of neighborhood life. Part II describes the basic features of the use quota approach, particularly as adopted by Berkeley and San Francisco. Part III presents and analyzes the legal principles pertaining to local government home rule powers and the limitations this body of law may or may not impose on the adoption of use quotas. Part IV presents and analyzes the law regarding the extent of local powers under zoning enabling legislation and the limitations such legislation may or may not impose on the adoption of use quotas. Based
on this discussion of the sources and extent of local government zoning authority, this Comment concludes that local governments have authority under both home rule powers and standard zoning enabling legislation to adopt use quotas that are the result of an honest and well-reasoned effort to maintain the integrity and vitality of urban neighborhoods.7

I

THE PROBLEM

A. The Role of Neighborhood Businesses in Urban Life

The neighborhood plays a vital role in modern urban life. It breaks up the "big, impersonal mass of metropolis" by establishing a place of limited scale where the average person may establish a home and "face the enormity of the metropolis." The neighborhood also provides an environment for the development and maintenance of primary social relations. Through schools, convenient commercial establishments, and "neighboring," neighborhoods provide a focus for high-frequency contacts between a neighborhood resident and the outside world, thereby satisfying a person's basic social needs.

Neighborhoods differ greatly in their character depending on the needs of their residents. There are, however, four major elements that all neighborhoods have in common: (1) forces that build a sense of community (such as media, politics, and pride); (2) links to the rest of the metropolis; (3) some mix and integration of different types of people; and (4) adequate services and facilities to meet basic human needs, including "supermarkets, laundromats, bars, parks, and playgrounds designed and run to serve the particular needs of local people, and set up in such a way as to provide communications among people." The shared and concentrated use of shops and public facilities links neighborhood residents to one another and to the neighborhood as a whole.

The commercial street is the greatest source of vitality and character in the urban neighborhood. Small-scale commercial development provides convenient shopping for neighborhood residents as well as a nexus

7. This Comment does not analyze the constitutional issues of due process, equal protection, or regulatory "taking," or any liability under federal antitrust legislation that use quotas may present.
10. J. CUNNINGHAM, supra note 8, at 40-41.
11. S. KELLER, THE URBAN NEIGHBORHOOD: A SOCIOLOGICAL PERSPECTIVE 103 (1968). "This is surely the crux of most planners' justification for designing spatial subdivisions in a large urban area whose convenience and accessibility would help promote local utilization of services and indirectly encourage other local attachments and loyalties." Id.
for social interaction. Most people think that convenient shopping facilities are an important quality in defining a "good" neighborhood.

A neighborhood commercial district has a definite and important function within the larger economic fabric of the city. Structural and functional differences exist between commercial areas within a city. A functional hierarchy of commercial areas takes shape as a city develops, each level differing in location, structure, form, function, and type of trade. The "central business district" is the commercial core that initially served all commercial needs in the city's embryonic stages. It serves the needs of customers from all parts of the city and the surrounding region. As a city grows and expands, other commercial areas develop to serve the needs of new districts in the city. "Secondary commercial districts" or "regional shopping centers" serve a smaller community or regional trade area and usually locate on the outer edges of the city. "Local business districts" or "neighborhood shopping centers" depend largely upon people living within walking distance. They predominantly provide "convenience goods" and some specialty services tailored to the neighborhood population, rather than "shopping goods," which residents need less frequently and can find in regional or central commercial districts. Isolated commercial establishments will also exist, scattered throughout the city. The neighborhood commercial district, therefore, performs its function within the city's economy by primarily providing convenience goods and services to neighborhood residents.

A neighborhood suffers when it loses the commercial establishments that provide necessary goods and services for its residents. First, people are inconvenienced when they are forced to travel outside their neighborhood for basic goods such as groceries and pharmaceuticals. Second, the neighborhood economy and neighborhood vitality suffer when people

13. S. Keller, supra note 11, at 87. Keller's definition of a neighborhood includes an area containing such facilities as shops, clubs, schools, houses, and transportation that may be used by those living in the area or by outsiders. Investigators do not always distinguish between these two types of usages—by residents and by outsiders. Some consider usage of neighborhood facilities as an index of the existence of a neighborhood only if this usage is exclusively confined to residents. Yet, if outsiders use a particular neighborhood for recreational, business, or cultural purposes, this itself may be a significant determinant of neighborhood identity.

14. Id. at 91-92.

15. See R. Northam, Urban Geography 365-71 (2nd ed. 1979); American Society of Planning Officials, supra note 1, at 1-2.


18. Id.; American Society of Planning Officials, supra note 1, at 2.


20. Id.
must shop outside the neighborhood. The loss of neighborhood commercial activities and consumer services is part of the cycle of neighborhood decline.

**B. The Commercial Overconcentration Problem**

Some urban neighborhoods throughout the country are suffering from an overabundance of business vitality, stemming from the shopping demands of persons outside the neighborhood. The influx of outsiders, while initially a boon to neighborhood businesses, may disrupt the equilibrium of a healthy neighborhood. Automobile-borne shoppers increase traffic levels and exacerbate parking shortages. As outsiders become a larger economic presence, merchants begin to cater to regional market demands rather than neighborhood market demands, thereby decreasing the range of convenience goods and services normally consumed by neighborhood residents. As neighborhood residents go farther afield for these goods and services, the sense of neighborhood and the quality of neighborhood life diminish.

Because traditional zoning either excludes potentially troublesome uses altogether or allows them the opportunity to take over the commercial district, it cannot effectively deal with commercial overconcentration. It is too difficult to select "a list of permitted uses which is small enough to include only those retail sales and service establishments which depend primarily upon neighborhood trade and yet a list large enough to cover the demands of local residents for convenience goods." By altogether excluding certain types of establishments targeted to a city-wide or regional market, the traditional approach fails to allow for a compromise that would provide an optimal mix of regional and local uses.

Many of the uses that serve the regional market also serve the neighborhood market. Neighborhood residents benefit from having such regional establishments as bars and restaurants within walking distance, and these establishments provide an important nexus for social life in the neighborhood. When a local government excludes these establishments altogether, it fails to recognize the positive role of such uses in neighborhood life. These establishments only become a problem for the neighborhood when there is an overconcentration of them. Use quotas can

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23. See, e.g., infra notes 27-32 & 43-47 and accompanying text.
24. Id.
25. See supra notes 21-22 and accompanying text.
achieve a compromise in which potentially troublesome uses are allowed, but only up to an acceptable concentration.

II
THE USE QUOTA APPROACH

The use quota approach recognizes that a mix of establishments enriches neighborhood life and that some uses serving the regional market also serve the neighborhood market. Use quotas accommodate uses serving the regional market, but directly control the problem of overconcentration by regulating the number of establishments of a particular type that may exist in a commercial district. Such an approach was unprecedented until the late 1970’s and early 1980’s, when Berkeley and San Francisco established quantitative percentage limitations on different commercial uses as a method of preserving the neighborhood-serving character of particular commercial districts.

A. Berkeley

Berkeley’s Elmwood neighborhood commercial district lies at the center of a large, medium-density residential area. The Elmwood neighborhood became increasingly popular during the 1970’s as a place to live and shop. Business activity in Elmwood flourished during this period, largely due to growth in the neighborhood population. Although Elmwood continued to serve primarily as a neighborhood retail district, more people began coming from outside the neighborhood to shop.27

The rising popularity of the Elmwood neighborhood generated a number of problems for its residents, including heavy traffic and parking shortages. In addition, the number of businesses oriented primarily toward a regional market increased, while the number of businesses providing essential goods and services to neighborhood residents declined.28

Beginning in 1975, the city responded to Elmwood’s problems in a number of ways, including restricting the total number of business establishments in the district.29 The pressures of increased commercial activity in the Elmwood district nonetheless grew, and residents became increasingly concerned with actual and potential changes in the neigh-

27. A 1982 survey commissioned by the City of Berkeley revealed that 63% of the shoppers patronizing the Elmwood commercial district lived within one-half mile and that 69% of all shopping visits were to "neighborhood-serving" establishments. Keating, The Elmwood Experiment: The Use of Commercial Rent Stabilization to Preserve a Diverse Neighborhood Shopping District, 28 WASH. U.J. URB. & CONTEMP. L. 107, 114 (1985) (quoting BLAYNEY-DYETT, ZONING ORDINANCE AMENDMENT STUDIES: NORTH SHATTUCK AND ELMWOOD COMMERCIAL AREAS—WORKING PAPER #2: EXISTING CONDITIONS: EVALUATIONS OF CANDIDATE SOLUTIONS 3 (1982)).


borhood's character. Among their concerns were the potential loss of basic neighborhood shops and services (e.g., hardware stores and pharmacies), a trend toward specialty shops and services (e.g., boutiques and gourmet restaurants), the potential for high-volume, high-impact uses (e.g., discount records stores and large restaurants) that would generate heavy traffic and increased demand for parking, and the potential loss of the present variety of small shops and services.\(^\text{30}\)

In 1981, a series of events created a sense that something needed to be done quickly to preserve Elmwood's neighborhood-serving character. The conversion of the Berkeley Repertory Theatre building into a multi-unit commercial building, the sale of several other commercial properties,\(^\text{31}\) and the doubling of the rent of the city's last remaining soda fountain by the building's new owner illustrated that, without legislation, Elmwood would lose many of its long-standing neighborhood-serving establishments.\(^\text{32}\)

The City Council enacted an "urgency ordinance" on September 15, 1981,\(^\text{33}\) which imposed a moratorium on commercial development in the Elmwood Commercial District and adopted interim zoning controls to supplement the existing zoning regulations. The ordinance also directed the Planning Commission to develop zoning ordinance amendment proposals that would address the decline in businesses that provided "neighborhood oriented essential household goods and services" and the increase in businesses "oriented primarily towards a regional market."\(^\text{34}\)

In May 1984, the City Council adopted an innovative rezoning scheme for the Elmwood Commercial District that was based on the Planning Commission's study and recommendations.\(^\text{35}\) The rezoning ordinance attempted to "maintain a scale and balance of retail goods and services in the district to compatibly serve the everyday needs of surrounding neighborhoods."\(^\text{36}\) It sought to promote a balance of uses in the district "by controlling the number and size of uses which have increased in number at the expense of district commercial diversity," "to limit the expansion of uses which rely heavily on regional patronage," and "to prevent the district from economic dependence on that regional trade."\(^\text{37}\)

The ordinance's key innovation was the adoption of numerical limits for several types of commercial uses within the zoning district. It de-

\(^{30}\) Id. at 115.


\(^{32}\) Keating, supra note 27, at 117.


\(^{34}\) Id. § 2. The Berkeley voters adopted commercial rent control for the Elmwood district in 1982. See Keating, supra note 27, at 111.

\(^{35}\) Berkeley, Cal., Ordinance 5603-N.S. (May 1984).

\(^{36}\) Id. § 9D.1.

\(^{37}\) Planning Commission Memo, supra note 28, at 3.
clared that the following uses would be allowed in the district only up to a specified number: 2 banks and savings and loan institutions, 7 full service restaurants, 10 other food service establishments, 6 women’s clothing stores, and 11 gift, jewelry, arts, or crafts stores.\(^{38}\)

The use quota approach prompted controversy and commentary as to its wisdom and legality. The president of the Berkeley Chamber of Commerce said: “That area has changed constantly over the years and people have always liked it. They liked it twenty years ago, they like it now, but it always changes.”\(^{39}\) While one City Council member stated that the ordinance would help preserve a “symbiotic and viable mix of services,” another City Council member said: “When you’re making this kind of decision, you’re acting like a Soviet economic commissar. . . . These kind of decisions are best left to the marketplace.”\(^{40}\) One neighborhood resident, a Soviet historian, responded that: “No Soviet planner is interested in so humane an idea as the saving of a soda fountain, and neighborhood planning.”\(^{41}\)

B. San Francisco

San Francisco has many neighborhoods that are popular with visitors from other parts of the city as well as from outside San Francisco. Most of San Francisco's neighborhood commercial districts originally developed along street car lines and catered primarily to the everyday needs of local residents.\(^{42}\) The potential trade area of these districts has broadened considerably in recent years, due primarily to the increased use of automobiles and improvements in regional public transit.\(^{43}\) As a result, eating and drinking establishments, boutiques, and other shops catering to a city-wide and regional clientele have increased dramatically.\(^{44}\) The growth in many cases has been rapid and disorganized, causing both merchants and nearby residents to complain of increased noise and congestion, parking shortages, and a loss of neighborhood-oriented goods and services.\(^{45}\)

These problems were especially apparent along Union Street, the commercial core of San Francisco's Cow Hollow neighborhood. Be-

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38. Ordinance 5603-N.S., § 9D.4. The ordinance also imposed limits on floor area and a limit on the number of establishments on a single parcel of land. Due to the novelty of the use quotas, “the regulations contain a procedure whereby exceptions can be made and further calls for expiration of the numerical limits after three years unless reenacted by the City Council.” Planning Commission Memo, supra note 28, at 3.


40. San Francisco Chron., May 5, 1984, § 1, at 1, col. 3.


42. SAN FRANCISCO DEP'T OF CITY PLANNING, NEIGHBORHOOD COMMERCIAL CONSERVATION AND DEVELOPMENT 2 (1979) [hereinafter OCTOBER 1979 REPORT].

43. Id.

44. Id.

45. Id.
tween 1960 and 1978, there was tremendous growth in the number of bars and restaurants, offices, clothing stores, art galleries, gift shops, and other establishments catering to a trade area larger than the surrounding neighborhood.\textsuperscript{46} Cow Hollow residents became concerned about the expansion of commercial establishments into residential areas, increased traffic from outside the neighborhood, and the potential for displacement of neighborhood-serving establishments.\textsuperscript{47} These concerns prompted the San Francisco Board of Supervisors to adopt a one-year moratorium on the approval of permits for new bars, restaurants, places of entertainment, dance halls, and discotheques in the Union Street commercial district.\textsuperscript{48} During the moratorium, the Department of City Planning conducted a study to determine whether to establish a special use district for Union Street. In April 1979, after completing this study, the City Planning Commission adopted the Union Street Special Use District,\textsuperscript{49} which imposed a quota system limiting the number of bars, restaurants, fast food establishments, and financial institutions permitted by right on Union Street.\textsuperscript{50}

The city later enacted a Neighborhood Commercial Special Use District Ordinance,\textsuperscript{51} which extended this concept to nine other neighborhoods while the Department of City Planning worked to develop a feasible and effective approach to remodeling the zoning controls for all neighborhood commercial districts in the city. The Special Use District Ordinance intended to retain a balance between goods and services catering to neighborhood residents and those catering to customers from elsewhere in the city and the region, as well as to reduce excess noise, traffic and parking congestion, and other conditions that can disrupt a neighborhood.\textsuperscript{52}

As in the Union Street Special Use District, the ordinance established density thresholds for bars, restaurants, financial offices, fast food establishments, and businesses that sell alcoholic beverages for off-prem-

\textsuperscript{46} San Francisco Dept of City Planning, Union Street 8 (1979).

\textsuperscript{47} It is interesting to note, however, that the number of grocery stores, pharmacies, beauty parlors, and repair shops remained relatively constant, with a significant decrease only in the number of dry cleaners and laundries. Id. Thus, in this instance, the growth in establishments primarily serving the regional market occurred not at the expense of establishments primarily serving the neighborhood market, but as the result of new construction and the conversion to commercial uses of residential and light industrial uses in the surrounding neighborhood. Id. Nonetheless, the residents decided that limits were necessary to preserve the character of the neighborhood.


\textsuperscript{50} An application to establish a business once the quota was exceeded required approval from the City Planning Commission. Certain "potentially troublesome" uses, such as places of entertainment, parking lots, hotels, and parking garages, were permissible only on conditional approval by the City Planning Commission. October 1979 Report, supra note 42, at 10.


\textsuperscript{52} San Francisco, Cal., Planning Code § 242(a) (1980).
ises consumption. Up to a certain number of each use was permitted as of right; if a proposed new business wanted to exceed one of these thresholds, special approval from the Zoning Administrator or the City Planning Commission was required.\(^{53}\)

While these two ordinances were in effect for Union Street and nine other neighborhood commercial districts, the Department of City Planning undertook a comprehensive Neighborhood Commercial Rezoning Study to address the full range of issues and problems facing all of the city's neighborhood commercial areas and to explore ways of implementing the city's Master Plan policies regarding neighborhood commercial districts.\(^{54}\) The Rezoning Study culminated in a series of proposals for reclassifying all of the city's neighborhood commercial districts, amending the Planning Code to carry out the policies of the Master Plan, amending the policies of the Master Plan, and making permanent the interim "threshold controls" applied to particular commercial districts under the Union Street Special Use District Ordinance and the Neighborhood Commercial Special Use District Ordinance.\(^{55}\) These proposals moved away from the use of absolute numerical quotas for the special neighborhood commercial districts and instead advocated quotas based on the percentage of linear street frontage in the district already occupied by establishments of a particular use.\(^{56}\)

Except for the Union Street controls, which have permanent status, the interim controls for the Neighborhood Commercial Special Use Districts ended in January 1985. On March 28, 1985, the Board of Supervisors adopted interim neighborhood controls effective for one year. These controls were subsequently extended for an additional year. The final

53. Id. §§ 242(b)(3), 242.2 to .10.
54. See San Francisco Dep't of City Planning, Neighborhood Commercial Rezoning Study: Proposed Zoning Framework (Mar. 1982). The Rezoning Study pursued the following Master Plan objectives and policies:
   Maintain and strengthen viable neighborhood commercial districts by keeping them readily accessible to city residents.
   —Promote the multiple use of neighborhood commercial districts, giving priority to neighborhood-serving retail and service activities; . . .
   —Regulate the location, distribution and proliferation of certain uses which compete with neighborhood-serving uses and threaten the balance of uses . . .
   Maintain a complementary mix of residential and commercial uses traditional to neighborhood commercial districts.
   —Ensure the compatibility of neighborhood commercial uses with the surrounding residential community . . .
   Protect environmental quality in neighborhood commercial districts . . . .
   —Prohibit an over concentration of any commercial use which would restrict space available for necessary goods and services;
   —Control the nuisances associated with the proliferation of certain uses (e.g. noise, traffic congestion, and parking congestion) and protect the surrounding areas from such nuisances.

55. Id. at 6-7.
56. Id. at 11-17.
proposals will be implemented on a temporary basis from March 1987 until October 1987, when the public hearing and Environmental Impact Report process on the final controls will be completed.57

Neither the Berkeley nor the San Francisco use quotas have faced significant legal challenge to date. This does not mean, however, that local governments throughout the country should expect there to be no legal challenges if they choose to apply use quotas to neighborhood commercial districts. The law of each state varies regarding the extent of local government authority to regulate land development. It therefore is necessary to look at the sources of local government regulatory power to determine whether the application of use quotas falls within the authority of local governments.

III

HOME RULE AS A SOURCE OF LOCAL ZONING AUTHORITY

State responsibility for and power over land use planning and regulation stems from the “reserved powers” clause of the tenth amendment of the United States Constitution.58 A local government has no inherent police power; therefore, as a subdivision of the state, it only possesses powers delegated to it by the state.59 States delegate police power, including the power to zone, in two ways: (1) by granting home rule power, which provides broad authority to local governments, and (2) by enacting enabling statutes and specific constitutional provisions, which grant power to regulate for specified purposes.60 Absent an express or implied grant of zoning power by the state via one of these channels, a local government has no authority to regulate any given activity.61

A. Home Rule as a Source of Local Government Power

Local governments often derive their authority to zone from basic home rule powers, either expressed or implied in local government charters or in constitutional provisions.62 A majority of the states grant

57. Id. at 1-6.
58. U.S. CONST. amend. X.
59. Some states at one time recognized an inherent police power or “inherent home rule”; this doctrine is no longer applied. See O. REYNOLDS, LOCAL GOVERNMENT LAW §§ 25-26, at 66-74 (1982).
60. See O. REYNOLDS, supra note 59, § 49, at 136.
61. See 1 A. RATHKOPF & D. RATHKOPF, THE LAW OF ZONING AND PLANNING § 2.01[3], at 2-7 to 2-8.
62. See, e.g., Miller v. Board of Pub. Works, 195 Cal. 477, 234 P. 381 (1925) (city’s establishment of strictly private residential districts as part of comprehensive zoning plan is a legitimate exercise of police power); City of Colorado Springs v. Smartt, 620 P.2d 1060 (Colo. 1980) (under the Colorado Constitution, the zoning policies of a home rule city are governed by the city’s own charters and ordinances); Cain v. American Nat’l Bank and Trust Co., 26 Ill. App. 3d 574, 325 N.E.2d 799 (1975) (Chicago’s power to zone for public health, safety, morals, and welfare derived from state constitution’s grant of power to home rule units); see
home rule powers to local governments through constitutional provisions or statutes. The constitutional and statutory home rule provisions usually define the procedures by which a local government obtains home rule power.

Under home rule, the local government receives all the powers necessary to govern "municipal affairs" or matters of local concern; in most states, home rule either eliminates or curtails the state legislature's au-

also Crawford, Home Rule and Land Use Control, 13 W. RES. L. REV. 702 (1962). But see City of Miami Beach v. Fleetwood Hotel, 261 So. 2d 801 (Fla. 1972) (rent control does not fall within local home rule powers).

The courts of some states that recognize local government home rule have determined that the power to zone and regulate land uses does not flow from a local government's usual home rule powers. See, e.g., Mayor of Baltimore v. Mano Swartz, Inc., 268 Md. 79, 299 A.2d 828 (1973) (Baltimore derives zoning power from Zoning Enabling Act); Stevens v. City of Salisbury, 240 Md. 556, 563 n.1, 214 A.2d 775, 779 n.1 (1965) ("zoning is purely statutory in character and cannot be effectuated under a general grant of police power"); Clements v. McCabe, 210 Mich. 207, 177 N.W. 722 (1920) (Detroit does not have authority under either the Home Rule Act or constitutional police powers to impose general zoning restrictions excluding trades and businesses from particular areas). In these states, the authority to zone must be specifically delegated to the local government by the local government charter, the state constitution, or state enabling legislation. Despite theoretical support for home rule as an independent source of the zoning power, cities with home rule charters facing early judicial suspicion of zoning "gradually learned that the best way to place zoning ordinances on a safe and enduring basis was to obtain in advance a state enabling act for zoning." E. Bassett, ZONING 16 (1936).

63. O. Reynolds, supra note 59, § 35, at 95.

64. Local governments typically acquire home rule power by means of a charter. Different states have different procedures for the adoption of charters. "Municipal charters are either granted by the legislative authority of the state or framed and adopted by the people of the particular community." 2 E. McQuillin, THE LAW OF MUNICIPAL CORPORATIONS § 9.07 (3d ed. 1979).

The courts of a minority of states give free rein to chartered municipalities by viewing the charter as a limitation on powers and not a grant. O. Reynolds, supra note 59, § 49, at 136. This means that a city does not depend, as to local matters, on any express or implied power in its charter to regulate or engage in a particular activity. Id.

The courts of most states view a municipal charter as a grant of power to the local government, where the local government has only those powers expressed or implied in the charter. See id. § 49, at 135; 2 E. McQuillin, supra, § 9.22. Under this view, "Dillon's Rule" comes into play and the courts will look at the express and implied powers in the charter. According to "Dillon's Rule," local governments possess "(1) those powers expressly conferred by state constitution, state statutes, and (where applicable) home-rule charter, (2) those powers necessarily or fairly implied in, or incident to, the powers expressly granted, and (3) those powers essential to the declared objects and purposes of the municipality." O. Reynolds, supra note 59, § 49, at 137 (emphasis in original).

The current trend, though, is away from strict construction. Courts are recognizing "that powers should not be so strictly construed as to defeat legislative intent or to hinder reasonable exercise of the city's general powers," and "that where a power is fairly inferable, it should be inferred rather than rejected." Id. § 52, at 150. Such a trend is manifested in the increasing willingness of courts to employ "general welfare" clauses in local government charters to give local governments a broad scope of authority in their exercises of the police power. See id. § 51, at 147-48 and cases therein. The "majority" view is thus coming to resemble the "minority" view, with charter provisions creating no real obstacle to local action unless the charter contains a specific prohibition.
authority to control local problems. Thus, charter provisions and local ordinances addressing matters of local concern may prevail over conflicting state legislation on the same subject. State legislation, however, still controls matters of statewide concern.

Home rule performs two principal functions: (1) it expands or recognizes those affirmative local government powers that are independent of enabling legislation, and (2) it limits the state's legislative control over local affairs. By allowing local governments to act without specific enabling legislation, home rule substantially increases local government powers. The resultant broad and flexible grant of "municipal initiative" allows local officials, who are more familiar with local problems than state officials, to develop solutions to new problems and better ways to cope with old problems. Home rule also allows the local government to address local problems promptly, without waiting for the state government to act or to directly authorize the local government to act via specific enabling legislation.

To determine whether an action, such as the implementation of use quotas, falls within a local government's home rule powers, it is necessary to decide (1) whether the action primarily addresses "municipal" or "local" affairs and (2) whether the state has preempted the local action. Because state preemption often turns on the characterization of the regulated problem, courts divide subjects into "matters of state concern" and "matters of local concern" to answer both of these questions. Unfortu-

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65. See Vanlandingham, Municipal Home Rule in the United States, 10 WM. & MARY L. REV. 269, 291-92 (1968); R. MOTT, HOME RULE FOR AMERICA'S CITIES (1949); C. ANTIEAU, MUNICIPAL CORPORATION LAW §§ 3.16-17 (1986). For example, the California Constitution declares that "[a]ny county or city may make and enforce within its limits all local, police, sanitary and other regulations not in conflict with general laws." CAL. CONST. art. XI, § 7. In Colorado, municipal home rule power extends to "all ... local and municipal matters" and the "charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith." 2 E. MCQUILLIN, supra note 64, § 4.83, at 143.

66. 2 E. MCQUILLIN, supra note 64, § 4.83, at 143.

67. Id. § 4.84, at 150.

68. 1 C. ANTIEAU, supra note 65, § 3.13, at 3-51. The degree and amount of expansion of municipal power varies greatly within the home rule states, depending on the phraseology of the constitutional amendment, the breadth of legislative home rule laws, and judicial understanding of the purpose of the constitutional amendment and appreciation of the objectives. Id. at 3-53.


70. R. MOTT, supra note 65, at 7.

71. Vanlandingham, supra note 65, at 270.

72. 2 E. MCQUILLIN, supra note 64, §§ 4.78-4.81, at 133-35.

73. The courts of different states, and even courts within the same state, use a variety of labels for these two categories, such as "state affairs," "general concerns," and "governmental matters," for matters of state concern; and "municipal concerns," "municipal affairs," "powers of local self-government," and "local municipal functions," for matters of local concern. See 2 E. MCQUILLIN, supra note 64, § 4.79, at 134.
nately, courts have not formulated clear or reliable criteria for making this distinction. This lack of guidelines creates considerable uncertainty in identifying subjects suitable for home rule regulation.

Clear separation of state and local affairs is not always possible; state and local concern for a subject will frequently merge or overlap in zoning issues. Many cases hold that zoning is a "municipal affair" and that local legislation therefore precludes or preempts contrary state legislation. Other cases, however, have invalidated local zoning measures as inconsistent with state law. If courts treat all zoning as a "local affair," governable by local home rule, then land use problems extending beyond municipal boundaries may not be subject to state control. Under this approach, local home rule zoning measures could impinge on matters of regional and, thus, statewide concern in the absence of state legislation on the regional impacts of local land use decisions. Even if zoning is regarded partly as a matter of state concern, under the general principles of home rule, local legislation will control in the absence of state

74. See Sato, "Municipal Affairs" in California, 60 CALIF. L. REV. 1055, 1058 (1972). Courts often "deliberately refuse to define these terms, in order that each case as it arises may be considered upon its own facts and circumstances without the complication of prior pronouncements upon the attributes of the one or the other category of 'affairs.'" 2 E. McQuillin, supra note 64, § 4.85, at 155. As one court stated: "A perusal of cases from other jurisdictions indicates that there is a twilight zone wherein it is difficult to discern with positive assurance that legislation is of general concern, or is merely of local or municipal concern." City of Tucson v. Arizona Alpha of Sigma Alpha Epsilon, 67 Ariz. 330, 336, 195 P.2d 562, 566 (1948).

75. As a result, cases and commentators seem to point toward balancing the competing concerns of state and local governments to determine whether state or local law prevails. What is called for is an open discussion of whether the concern of the people of the entire state is greater, in a particular instance, than the concern of the local residents. This will certainly mean that even though certain large areas [of regulation] are ordinarily labelled one or the other, subareas therein may call for a different decision.

76. See, e.g., Johnny Bruce Co. v. Champaign, 24 Ill. App. 3d 900, 321 N.E.2d 469 (1974) (city, declared to be home rule unit under language of state constitution, had plenary power to adopt and implement a general zoning ordinance irrespective of state enabling legislation); Bartle v. Zoning Bd. of Adjustment, 391 Pa. 207, 137 A.2d 239, 242 (1958) (city ordinance that prescribed procedure to be followed in enacting local zoning legislation held to supersede conflicting state act).


78. Comment, Land-Use Control, Externalities, and the Municipal Affairs Doctrine: A Border Conflict, 8 LOY. L.A.L. REV. 432, 433-34 (1975). Regional effects as well as other aspects of zoning support treating the regulation of certain development activities as a matter of statewide concern and therefore subject to the control of the state legislature. For the past 20 years, there has been "an increasing awareness that municipal land use policies, particularly in metropolitan areas, do have a substantial impact upon surrounding communities. With rare exception, however, judges have not explicitly considered that impact in determining the validity of a particular exercise of [home rule] power." Sandalow, supra note 69, at 705.
If some particular aspect or impact of zoning is both a statewide and a local concern, and state legislation specifically addresses that subject, then state law overrides local law. Thus, state legislation preempts local home rule actions when there is a conflict over matters of statewide concern, even if that legislation also affects local affairs.

Constitutional provisions in many home rule states expressly reserve or authorize state control over particular areas despite concurrent constitutional provisions granting home rule power to local governments. Furthermore, a state constitution may expressly subject home rule municipalities to “general laws” or “laws of general application” enacted by the legislature, which apply uniformly to all local governments. Thus, the legislature may control or override conflicting local government actions by adopting such “general laws.”

In conclusion, despite the broad powers over local affairs granted to local governments, there are a number of ways that the state legislature can preempt or retain control over local actions and thereby limit local exercises of power. Courts have examined and identified a number of factors that determine whether state legislation or policy supersedes local legislation.

79. “A home rule city, so far as authorized by its charter, may legislate as to matters of state-wide concern within its territorial limits where the state legislature has not legislated in regard thereto.” 2 E. MCQUILLIN, supra note 64, § 4.84, at 150.

80. See 3 E. MCQUILLIN, supra note 64, § 4.84, at 150; 1 C. ANTIEAU, supra note 65, § 3.20, at 3-64; 2 A. RATHKOPF & D. RATHKOPF, supra note 61, § 31.01, at 31-1.

81. See, e.g., Baron v. Los Angeles, 2 Cal. 3d 535, 539, 86 Cal. Rptr. 673, 675, 469 P.2d 353, 355 (1970) (charter cities remain subject to general state laws if such laws intend to occupy the field to the exclusion of municipal regulation); Hall v. Cox Cable, 212 Neb. 887, 327 N.W.2d 595 (1982) (state statute regulating cable television took precedence over contrary local home rule charter provisions); Columbus v. Teater, 53 Ohio St. 2d 253, 374 N.E.2d 154 (1978) (state police power takes precedence over local police power even where issue is one that might be the proper subject of municipal legislation); City of Canton v. Whitman, 44 Ohio St. 2d 62, 66, 337 N.E.2d 766, 770 (1975) (“Matters involving local self-government and those involving the police power often overlap. Even if a matter is of local concern, the local regulation may have significant extraterritorial effects, in which case it becomes a matter of statewide concern for the General Assembly.”).

82. 1 C. ANTIEAU, supra note 65, § 3.18, at 3-61; see, e.g., OHIO CONST. art. XVIII (allowing the general assembly to pass laws limiting municipal power “to levy taxes ... for local purposes”); R.I. CONST. art. XXVIII (reserving to the general assembly the power “to levy, assess and collect taxes or to borrow money”).

83. See, e.g., CAL. CONST. art. XI, § 7.

84. See 1 C. ANTIEAU, supra note 65, § 3.18, at 3-61.

85. Generalities in judicial definition of local affairs and state affairs have emerged and been charted. “First, if it appears that uniform regulation throughout the state, either between urban and rural areas or between all cities, is necessary or even desirable, the matter is apt to be one of state concern [e.g., traffic regulations, telephone rates, annexation].” 1 C. ANTIEAU, supra note 65, § 3.40, at 3-113-114. “Secondly, historical considerations play some part in the determination that a subject-matter is either local or state.” Id. § 3.40, at 3-115. Into this category fall such factors as “what affairs municipal corporations have been accustomed to administer, in view of the policy of the particular state extending over a series of years in
B. Home Rule and Use Quotas

Because the law regarding home rule varies so much from state to state, this Comment will analyze the adoption of use quotas by local governments from the perspective of only one state: California. California is a good representative state for several reasons. First, it relies heavily on local home rule, and its courts have long faced the task of delineating the bounds of local government authority under home rule. More importantly, the two most prominent municipal advocates of use quotas, Berkeley and San Francisco, are California home rule cities. Finally, California uses factors similar to those used by other states to determine whether a local government is acting within the bounds of its home rule authority.

Every California city possesses the general power to “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” In addition, charter cities have exclusive power to legislate over “municipal affairs.” This means that, at least for charter cities, there are two independent but related analyses for determining whether a local legislative action falls within the bounds of home rule authority. To be a valid exercise of home rule power, a local ordinance must not directly conflict with “general law,” and it must not fall outside the realm of “municipal affairs.”

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87. CAL. CONST. art. XI, § 7.
89. CAL. CONST. art. XI, § 7.
90. See supra note 64.
91. CAL. CONST. art. XI, § 5(a).
92. See, e.g., Fisher v. City of Berkeley, 37 Cal. 3d 644, 704-09, 209 Cal. Rptr. 682, 729-33, 693 P.2d 261, 308-12 (1984), aff’d 106 S. Ct. 1806 (1986) (municipal rent control ordinance not preempted either by direct conflict with state law or by state legislation indicating matter is one of statewide concern); Galvan v. Superior Court, 70 Cal. 2d 851, 76 Cal. Rptr. 642, 452 P.2d 930 (1969) (municipal firearm registration ordinance not preempted either by direct conflict with state law or by legislative scheme evidencing statewide concern).
California courts have been quite generous to local governments in deciding whether local government actions conflict with "general law." The courts typically define conflict in narrow terms. For example, the mere existence of numerous state statutes pertaining to the same subject as the local action in question is insufficient to support a claim of pre-emption. Also, the conflict must be direct: state and local authority must cover the same general subject matter and regulate similar features of that subject matter. Even though California has ample state legislation in the fields of zoning, land development, and business licensing, nothing in that legislation either explicitly precludes a local government from adopting use quotas or establishes quotas for commercial establishments. Thus, use quotas almost certainly fall within the limit on home rule authority established by this first line of analysis.

To determine whether local actions are "municipal affairs" or matters of "statewide concern," California courts have formulated three standards. A court may infer the state's intent to preempt local legislation only if:

1. The subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; or
2. The subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or
3. The subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.

The first standard identifies a mode of state preemption that occurs when the state legislature enacts a scheme for regulating a subject, thereby indicating an intent to occupy and appropriate an entire field of regulation. The legislature's intent to preempt the field may be de-

93. See, e.g., Fisher, 37 Cal. 3d at 708-09, 209 Cal. Rptr. at 731-33, 693 P.2d at 310-12 (rent control ordinance not preempted by general law of state because state law does not exclusively occupy the field as a matter of state concern); Galvan, 70 Cal. 2d at 866, 76 Cal. Rptr. at 652, 452 P.2d at 940 (local statute requiring registration of firearms allowed in absence of state statutes evidencing general scheme by legislature to make subject of gun registration immune from local regulations).


96. Fisher, 37 Cal. 3d at 708, 209 Cal. Rptr. at 732, 693 P.2d at 311 (quoting Galvan, 70 Cal. 2d at 859-60, 76 Cal. Rptr. at 647-48, 452 P.2d at 935-36). These cases indicate a close relationship between the first two standards and the analysis for determining whether local legislation conflicts with general law.

97. See, e.g., Galvan, 70 Cal. 2d at 859-60, 76 Cal. Rptr. at 647-48, 452 P.2d at 935-36 (municipal firearm registration ordinance upheld because state statutes did not constitute a
duced from express exclusivity language in the state legislation or from the nature of the subject matter being regulated and the purpose and scope of the state legislative scheme.\textsuperscript{98} Mere occupation of the field by the state, however, will not necessarily preempt local government action. A home rule local government may adopt stricter regulations covering the subject as long as there is no conflict with state legislation and no state prohibition on local enactment of stricter regulations.\textsuperscript{99} As indicated above, use quotas present no direct conflict with existing state legislation in California.\textsuperscript{100} In addition, the state's zoning statutes specifically authorize local governments to enact stricter zoning regulations than the state zoning statutes.\textsuperscript{101}

The second standard requires an express legislative declaration that a partially regulated subject is an exclusive state concern, or at least a reasonable implication in the statutory language that the legislature intended to preclude regulation by local agencies.\textsuperscript{102} As indicated above, there exists no such declaration in the California zoning statutes.\textsuperscript{103}

The third preemption standard involves a balancing test, where the

\textsuperscript{98} See, e.g., Baron v. Los Angeles, 2 Cal. 3d 535, 469 P.2d 353, 77 Cal. Rptr. 135 (1970) (charter cities remain subject to general state laws if such laws intend to occupy the field to the exclusion of municipal regulation); 2 E. McQuillen, supra note 64, § 4.87, at 9-10 (Supp. 1985) (citing Ames v. Smoot, 98 A.D.2d 216, 471 N.Y.S.2d 128 (1983) (state pesticide regulations constitute a comprehensive scheme and therefore reflect legislative intent to preclude local pesticide regulations).


\textsuperscript{100} See supra text accompanying note 95.

\textsuperscript{101} In enacting the zoning legislation for California, the legislature specifically declared "its intention to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters." CAL. GOV'T CODE § 65800 (Deerings Supp. 1987). In addition, the legislature specifically exempted chartered cities from the provisions and requirements of the zoning statute. CAL. GOV'T CODE § 65803 (Deerings Supp. 1987).

\textsuperscript{102} See Galvan v. Superior Court, 70 Cal. 2d 851, 452 P.2d 930, 76 Cal. Rptr. 642 (1969). In addition to express legislative declarations preemption a field of regulation or prohibiting stricter local government regulation, general state laws may also indicate state policy that conflicts with local regulations. Courts have at times divined policy from general state statutes to preempt contrary local regulations. See, e.g., In re Porterfield, 28 Cal. 2d 91, 168 P.2d 706 (1946) (local licensing requirement for union organizers could be enforced only if it did not conflict with policy declared by labor statutes to promote full freedom of organization for workers); Hall v. Cox Cable, 212 Neb. 887, 327 N.W.2d 595 (1982) (state statute reflecting policy that regulation of cable television industry is properly a matter of statewide concern preempted contrary local legislation); Region 10 Client Management v. Town of Hampstead, 120 N.H. 885, 424 A.2d 207 (1980) (local zoning restrictions on group homes for the mentally retarded not allowed to interfere with state policy, as articulated by statute, of placing developmentally impaired persons in various locations throughout the state).

\textsuperscript{103} See supra note 101 and accompanying text.
court looks at whether the regulation unduly interferes with either transients or persons who reside in the state but not in the regulating community. The extraterritorial effects of local regulations may lead a court to treat the regulated activity as a matter of statewide concern. Efforts to exclude outsiders (either residents or businesses) from the community or to place them at a comparative disadvantage if they locate in the community infringe upon extraterritorial interests. For example, courts have not allowed local governments to exercise home rule to provide economic protectionism for local businesses or, in the words of one commentator, "to become the vehicle for 'balkanizing' the economy of the state."

Use quotas in neighborhood commercial districts can have a number of extraterritorial effects. They may restrain outsiders from entering the neighborhood to shop and to entertain themselves. They may also restrict the entry of outside merchants desiring to establish new businesses in the neighborhood.

These extraterritorial effects, however, are relatively insignificant. Use quotas do not entirely exclude outsiders. Given the hierarchy of commercial districts that typically exist in a city, there will be other places for persons from outside the neighborhood to shop and entertain themselves and other places where outside merchants can locate a particular type of establishment. Use quotas do place outside merchants at a comparative disadvantage when those merchants wish to establish a use for which the quota has been filled, although the outside merchant may be allowed to locate elsewhere in the municipality.

Despite the impact on extraterritorial interests, a local government's interest in the regulated subject also carries weight. In fact, the concerns of outsiders may be outweighed by the problems facing the neighborhood in the absence of use quotas—inconvenience for neighborhood residents, a diminished sense of neighborhood identity, increased traffic,

104. In Ferran v. City of Palo Alto, 50 Cal. App. 2d 374, 122 P.2d 965 (1942), the California Court of Appeals invalidated a local licensing ordinance that in essence imposed a tax on business outside the city and placed the licensee at a competitive disadvantage to competitors whose business came primarily from within the city, under the premise that a local government could not enact a protective tariff for the benefit of local business. See also In re Smith, 33 Cal. App. 161, 164 P. 618 (1917) (invalidating ordinance requiring operator of vehicle travelling between two points outside of city limits to obtain license before using city roads).

105. Sandalow, supra note 69, at 704.

106. See, e.g., Associated Homebuilders of Greater Eastbay v. City of Livermore, 18 Cal. 3d 582, 557 P.2d 473, 135 Cal. Rptr. 41 (1976) (the validity of a local ordinance prohibiting the issuance of residential building permits until municipal standards were met for educational, wastewater treatment, and water supply facilities depended on whether it was reasonably related to the welfare of the municipality as well as to the regional welfare); Construction Indus. Ass'n of Sonoma County v. City of Petaluma, 522 F.2d 897 (9th Cir. 1975), cert. denied, 424 U.S. 934 (1976) (municipal zoning ordinance declared valid even though its express purpose and actual effect was to exclude substantial numbers of people living in the region who would otherwise choose to move to that community because it bore a rational relation to a legitimate government interest).
Local governments have a strong interest in regulating particular land uses so that development occurs in a manner appropriate to the character of the community and its constituent neighborhoods. Good planning will take extraterritorial effects into account and provide appropriate places in the community for outsiders to locate businesses and to shop for goods and services. In both San Francisco and Berkeley, businesses can locate elsewhere in the city if the applicable neighborhood use quota has been filled.

The common thread in the California decisions upholding local action under home rule against state preemption challenges "is that if there is a significant local interest to be served which may differ from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption." The problems of one community in preserving a balance of neighborhood-serving commercial establishments may not be the same as another community's problems. Indeed, the experiences of Berkeley and San Francisco show that the need for government action to preserve this balance appears only in those few neighborhoods that have become popular or fashionable as regional shopping or entertainment areas.

None of the limits on home rule authority under California law create an obstacle to local adoption of use quotas absent state legislation expressly prohibiting such quotas. Zoning is not, in most states, a state function; it is a matter of local concern. In general, state zoning legislation merely enables local governments lacking home rule zoning powers to regulate the use of land; it does not substitute a system of state regulation for local zoning. Even when the state plays a strong role in land use regulation, local governments may adopt stricter regulations that comport with state zoning statutes. In the words of one commentator on municipal home rule powers: "Ultimately, a judgment must be made as to relative weights of the municipality's interest and other affected interests." While use quotas may effect extraterritorial interests, those interests are relatively insignificant and are outweighed by neighborhood problems and the need for local government action.

IV

ENABLING LEGISLATION AS A SOURCE OF LOCAL ZONING AUTHORITY

Local governments that do not derive the power to zone from home rule powers depend entirely on state enabling legislation as the source of

107. See supra notes 23-26 and accompanying text.
zoning power. Interpretation of the state's enabling legislation, therefore, is critical in determining whether a local government has authority to implement use quotas in neighborhood commercial districts.\(^{110}\)

Enabling legislation empowers local governments that otherwise lack zoning power to regulate the use of land. These statutes authorize local governments to classify land into different districts and to establish restrictions on use, area, and height within those districts; to specify required procedures for the adoption and administration of the local zoning scheme; and to identify the purposes of zoning.\(^{111}\) Local governments are authorized to use only those powers enumerated in the enabling legislation; "any act or restriction not contained—directly or by implication—therein would be an attempt to exercise a power not granted and hence would be invalid."\(^{112}\)

Many states have modeled their zoning enabling legislation after the Standard State Zoning Enabling Act, developed and published by the United States Department of Commerce in 1926.\(^{113}\) The initial sections of the Standard Act define the scope and purposes of zoning.\(^{114}\) To promote the health, safety, morals, or general welfare of the community, the Standard Act empowers local governments to regulate and restrict the

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110. Some states have constitutional provisions that authorize zoning by local governments. See 8 E. McQuillen, supra note 64, § 25.47, at 129.


112. 1 A. Rathkopf & D. Rathkopf, supra note 61, § 3.02.

113. U.S. DEP'T OF COMMERCE, STANDARD STATE ZONING ENABLING ACT (1926) [hereinafter STANDARD ACT].

114. Sec. 1 Grant of Power. For the purpose of promoting health, safety, morals, or the general welfare of the community, the legislative body of cities and incorporated villages is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of a lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

Sec. 2 Districts. For any or all of said purposes the local legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

Sec. 3 Purposes in View. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

Id. §§ 1-3.
location and use of buildings, structures, and land for trade, industry, residence, or other purposes.\textsuperscript{115} The act further authorizes local governments to divide their jurisdictions into districts of such shape, number, and area as they deem best suited to carry out the purposes of the act and to prescribe for each district the uses permitted therein.\textsuperscript{116} The Standard Act also defines the "purposes in view" that the delegation of power to local governments is designed to serve and identifies and authorizes means to reach these ends.\textsuperscript{117} Regardless of whether a state follows the pattern of the Standard Act, a local government zoning measure is valid only if its goals fall within the purposes of the state's enabling legislation and its means are deemed appropriate for carrying out the purposes of the act.\textsuperscript{118}

As with any statute, the terms of enabling statutes are open to interpretation. Local governments relying on such legislation for their authority do not have "carte blanche" to regulate the use of land in any way they see fit.\textsuperscript{119} Courts, however, traditionally have interpreted enabling legislation broadly so as to allow forms of land use regulation that are not specifically mentioned.\textsuperscript{120} Thus, a local government has the authority to adopt use quotas if the technique generally falls within the purposes and means of the state enabling legislation.

\textsuperscript{115} STANDARD ACT, supra note 113, § 1.

\textsuperscript{116} Id. § 2. The regulations may vary from district to district; but, within each district, the regulations or restrictions must be uniform.

\textsuperscript{117} Id. § 3. The local government may regulate and restrict "the height, bulk, and area of buildings, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes." Id. Courts may interpret the "Purposes in View" section, in its specific enumeration of purposes, as narrowing the purposes and methods of zoning to that finite list. A leading commentator identifies the "Purposes in View" section as the "specific objectives of zoning . . . a list of particular purposes intended to be achieved by the regulation of land use." 1 R. ANDERSON, AMERICAN LAW OF ZONING § 7.01, at 475 (1968). "These detailed statements of purpose served to firm up, as well as to define and limit, delegations of zoning power." Id. The list of purposes, however, is both specific and broad. While it refers to specific problems, such as street congestion and fire safety, it also refers to the general welfare.

\textsuperscript{118} "It is . . . necessary that the object to be achieved and the method of achieving it come within the purview of the enabling act." 1 A. RATHKOPF & D. RATHKOPF, supra note 61, at 3-7.

\textsuperscript{119} "[A]n ordinance may be invalid if the type of zoning utilized is too novel. Certain traditional patterns of what may be accomplished under zoning have developed and departing from tradition can be risky." D. HAGMAN & J. JUERGENSEMYER, URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW § 3.14, at 62 (2d ed. 1986).

\textsuperscript{120} The "Grant of Power" and "Purposes in View" sections "have not proved especially troublesome for courts asked to consider the statutory basis for a zoning regulation, although some modern forms of land use regulation are not [specifically] included." MANDELKER, LAND USE LAW § 4.17, at 79 (1982).
USE QUOTAS

A. How Use Quotas Fulfill Statutory Purposes

1. Lessening Street Congestion

"To lessen congestion in the streets" is a stated objective of the Standard Act and has been accepted as a legitimate purpose of zoning. Reducing traffic congestion and its attendant safety hazards has justified a range of land use restrictions. Courts, however, have not always held amelioration of traffic congestion to be a legitimate zoning purpose.

Commercial use quotas may decrease traffic congestion, although this is not their primary purpose. By restricting the number of establishments that cater to a market outside the immediate neighborhood, fewer outsiders will be drawn to the neighborhood to shop. Assuming that neighborhood residents do not use automobiles to travel between their homes and the neighborhood commercial district, and that shoppers from outside the neighborhood do, restrictions on the number of establishments with regional markets will reduce traffic and the demand for parking within the neighborhood.

This may not be a sound assumption in a city that has good public transportation serving commercial districts, such as San Francisco. In addition, other means are available to local governments to control traffic congestion and parking shortages, such as the neighborhood parking permit system in Berkeley's Elmwood District. Therefore, reliance on the

121. Standard Act, supra note 113, § 3; see 1 R. Anderson, supra note 117, § 7.09, at 548.

122. The desire to avoid increased traffic hazards has justified the exclusion of service stations from residential and commercial districts, see, e.g., Albright v. Johnson, 135 N.J.L. 70, 50 A.2d 399 (1946), and the requirement that service stations locate a certain distance from public parks, see, e.g., Richmark Realty Co. v. Whittlif, 226 Md. 273, 173 A.2d 196 (1961). It has partly justified the adoption of large-lot zoning, see, e.g., Flora Realty v. LaDue, 362 Mo. 1025, 246 S.W.2d 771, appeal dismissed, 344 U.S. 802 (1952) (the court upheld a three-acre lot requirement), and the prohibition against landowners parking campers in driveways in residential districts, see, e.g., Johnson v. Village of Morton, 40 Ill. App. 3d 566, 352 N.E.2d 456 (1976). The potential aggravation of traffic problems is a sufficient basis for a local government's refusal to rezone land, see, e.g., Hubert Realty v. Cobb County Bd. of Comm., 245 Ga. 236, 264 S.E.2d 179 (1980), as well as for judicial disapproval of a zoning change, see, e.g., Gordon v. Zoning Bd. of Stamford, 145 Conn. 597, 145 A.2d 746 (1958) (reclassification of property as commercial illegally disregarded zoning regulations and would greatly increase traffic); Price v. Cohen, 213 Md. 457, 132 A.2d 125 (1957) (reclassification of proposed shopping center site without giving material consideration to traffic is an abuse of discretion).

123. See, e.g., State ex rel. Killeen v. East Cleveland, 169 Ohio St. 375, 160 N.E.2d 1 (1959) (proposed commercial development could not be prevented by zoning board solely on the ground of increased traffic congestion); Cole v. Zoning Bd. of Review, 94 R.I. 265, 179 A.2d 846 (1962) (zoning board approval of new parking lot in residential area overturned where purpose of lot was to alleviate traffic problems associated with proposed shopping center). Because zoning necessarily looks to the future, Robinson v. Los Angeles, 146 Cal. App. 2d 810, 304 P.2d 814 (1956), it should not be used as a means to deny the development of traffic facilities to meet future needs, National Land & Inv. Co. v. Kohn, 415 Pa. 504, 527-28, 215 A.2d 597, 609-10 (1966).
alleviation of traffic congestion as the sole or primary purpose to justify use quotas may be risky, especially given the hesitancy of some courts to recognize the control of traffic problems as an independently valid zoning purpose. However, lessening street congestion can supplement the other accepted purposes of zoning that use quotas serve.

2. Preserving Neighborhood Character

The “Purposes in View” section of the Standard Act calls for local governments to consider “the character of the district” when enacting zoning regulations.124 While some state enabling acts expressly provide for zoning to serve neighborhood character,125 “[t]he enabling acts of most states do not specifically empower municipalities to zone to preserve the character of their neighborhoods [as opposed to larger zoning districts].”126 Courts, however, have recognized the preservation of neighborhood character as a proper and primary purpose of zoning and have upheld the exclusion of uses detrimental to a neighborhood’s character.127 Furthermore, a community’s interest in preserving the character of neighborhoods comports with a range of purposes stated in the Standard Act. Under the act, communities may adopt regulations to “conserv[e] the value of buildings,”128 to “encourag[e] the most appropriate use of land,”129 and “to promote . . . the general welfare.”130 They

124. STANDARD ACT, supra note 113, § 3.
125. See, e.g., GA. CODE. ANN. § 69-802 (Harrison 1976).
126. 1 R. ANDERSON, supra note 117, § 7.26, at 596.
127. See, e.g., Houston v. Board of City Comm’rs, 218 Kan. 323, 543 P.2d 1010 (1975) (re zoning from light commercial to multiple family classification to preserve residential character of neighborhood held proper); Kaplan v. Boston, 330 Mass. 381, 113 N.E.2d 856 (1955) (zoning ordinance that sought to preserve character of neighborhood by restricting all buildings to residential uses held valid); Carbonneau v. Exeter, 119 N.H. 259, 401 A.2d 675 (1979) (application for variance to construct beauty parlor in residential area properly rejected to protect established character of neighborhood); Southern Ry. v. Richmond, 205 Va. 699, 139 S.E.2d 82 (1964) (railroad prevented from building storage yard in residential area because existence of yard would harm character of neighborhood).
128. STANDARD ACT, supra note 113, § 3; see also Dunlap v. Woodstock, 405 Ill. 410, 91 N.E.2d 434 (1950) (writ of mandamus to compel the building commissioner to allow construction of a grocery store on land zoned for single family residences denied); Plaza Recreational Center v. Sioux City, 253 Iowa 246, 111 N.W.2d 758 (1961) (zoning restriction that allowed only bowling alleys that did not serve alcohol was reasonable to protect the character of a residential area); Hendels Investors of Rhode Island v. Zoning Bd., 100 R.I. 264, 265, 214 A.2d 200, 202 (1965) (if service station is incompatible with neighboring property, an exemption to the zoning laws is improper).
129. STANDARD ACT, supra note 113, § 3; see supra notes 115-17 and accompanying text.
130. STANDARD ACT, supra note 113, § 3; see Gualclides v. Englewood Cliffs, 11 N.J. Super. 405, 78 A.2d 435 (1951) (zoning plan that calls for single family dwellings to promote the general welfare is valid); Dunlap v. Woodstock, 405 Ill. 410, 91 N.E.2d 434 (1950) (residential zoning scheme upheld on ground that commercial development in neighborhood would harm general welfare of community by decreasing property values and lowering tax revenues); Tidewater Oil Co. v. Carteret, 84 N.J. Super. 525, 202 A.2d 865 (1964), aff’d, 44 N.J. 338, 209 A.2d 105 (1965) (zoning restriction against petroleum storage units upheld where purpose of restriction was to further general welfare of community).
may also consider a district's "peculiar suitability for particular uses."\textsuperscript{131}

The decisions involving zoning to preserve neighborhood character have tended to concentrate on the exclusion of commercial, industrial, and other "deleterious" uses from residential areas.\textsuperscript{132} Indeed, such segregation of residential and commercial uses is one of the founding principles of zoning, especially when it is used to maintain the character of single-family residential neighborhoods.\textsuperscript{133} Unfortunately, this traditional line of reasoning to support preservation of neighborhood character does little or nothing to justify a local government's imposition of commercial use quotas that restrict the concentration of commercial uses in commercial districts.

Some cases do uphold the exclusion of certain commercial uses from commercial districts on the grounds of maintaining the character of the district.\textsuperscript{134} "[A]s zoning has become more complex and refined, and municipalities and planners have considered more factors and provided for more amenities . . . 'community character' has come to be understood in another, broader, sense as a city's or neighborhood's overall ambience."\textsuperscript{135} As a result, some courts endorse the use of zoning to create or maintain a neighborhood's particular ambience.\textsuperscript{136} Other courts read "general welfare" so broadly that a community has extensive power to mold its character.\textsuperscript{137}

As a "catch-all" purpose within the framework of enabling legislation, preservation of neighborhood character lends powerful justification to the adoption of commercial use quotas. Use quotas are designed to help maintain the ambience of the entire neighborhood by preserving the diversity of the commercial district, by preserving a mix of commercial establishments that primarily serves the neighborhood's needs, and by

\textsuperscript{131} \textbf{STANDARD ACT}, supra note 113, § 3.
\textsuperscript{132} See cases cited supra notes 128 & 130.
\textsuperscript{134} See, e.g., Maher v. New Orleans, 516 F.2d 1051 (5th Cir. 1975) (zoning ordinance that disallowed construction of apartment building in French Quarter of New Orleans upheld as valid measure to preserve historic character of district); Plaza Recreational Center v. Sioux City, 253 Iowa 246, 111 N.W.2d 758 (1961) (prohibition of bowling alleys that sell alcohol upheld as a valid attempt to maintain character of a residential area); Tidewater Oil Co. v. Carteret, 84 N.J.Super. 525, 202 A.2d 865 (1964), aff'd, 44 N.J. 338, 209 A.2d 105 (1965) (ordinance prohibiting oil storage tanks to maintain character of an industrial area upheld).
\textsuperscript{135} Comment, supra note 133, at 1451.
\textsuperscript{136} See \textit{id.} (and cases cited therein).
\textsuperscript{137} See \textit{id.} at 1451-52 (and cases cited therein). However, courts interpreting state enabling statutes and federal and state constitutions have placed important limits on local government exercises of zoning power to preserve "community character" where that purpose serves as a pretext for racial discrimination, excludes the community's "fair share" of the region's low and moderate-income residents, or fails to be "in accordance with a comprehensive plan." See \textit{id.} at 1452-53 (and cases cited therein).
preserving the social links between neighborhood residents that a healthy neighborhood commercial district provides. These links are lost as establishments with primarily external markets displace establishments primarily serving the neighborhood. The character of the neighborhood changes as it loses businesses where neighbors interact on a regular basis.\textsuperscript{138}

3. \textit{Comprehensively Controlling Development}

Courts have held that the comprehensive control of development is an intended purpose of the delegation of zoning power to local governments, although this is not an explicit objective of the Standard Act.\textsuperscript{139} The decisions typically rest on provisions in the enabling act that require zoning to be “in accordance with a comprehensive plan” and “with a view to . . . encouraging the most appropriate use of land throughout the municipality.”\textsuperscript{140}

Comprehensive control over community development calls for relating the character of one zoning district, and the uses allowed therein, to the character of adjacent districts and the overall community. The task of zoning is not to promote the most appropriate or profitable use of each individual parcel of land within the community, but to determine on a community-wide scale the most appropriate mix of land uses for the entire community.\textsuperscript{141}

In the context of comprehensive planning, the use quota approach recognizes the symbiotic relationship between the neighborhood commercial district and adjacent residential uses. It ensures that commercial establishments will continue to satisfy the needs of neighborhood resi-

\begin{footnotes}
\item[138] See supra notes 21-22 and accompanying text.
\item[139] See, e.g., Johnson v. City of Huntsville, 249 Ala. 36, 29 So. 2d 342 (1947) (zoning ordinance for residential zone void as not part of comprehensive plan); Bishop v. Board of Zoning Appeals, 133 Conn. 614, 53 A.2d 659 (1947) (zoning board allowed to grant variance for commercial development in residential area where the commercial development was part of a comprehensive plan); Golden v. Planning Bd., 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972) (ordinance that created a comprehensive plan for phased community growth upheld as part of the delegated zoning authority of local government).
\item[140] Johnson v. City of Huntsville, 249 Ala. 36, 40, 29 So. 2d 342, 345 (1947); see also \textit{STANDARD ACT}, supra note 113, § 3.
\item[141] See Cobble Close Farm v. Board of Adjustment, 10 N.J. 442, 92 A.2d 4 (1952) (ordinance that prevented construction of more than one residence on a single lot upheld as encouraging most appropriate use of land on a community-wide scale); Shapiro v. Town of Oyster Bay, 27 Misc. 2d 844, 848, 211 N.Y.S.2d 414, 419 (1961) (ordinance denying landowner the right to use property for commercial purposes upheld where ordinance appeared to be part of a plan to encourage most appropriate use of land throughout the community). “It is implicit in this principle that it is appropriate for [the municipality], in zoning [a particular property or district], to consider its character, value, and utility in conjunction with those features of the [adjacent area] and the effect that the use-zoning of each related segment may exert upon the other.” Bow & Arrow Manor, Inc. v. Town of West Orange, 63 N.J. 335, 346, 307 A.2d 563, 568 (1973).
\end{footnotes}
dents, thereby maintaining the vitality of the neighborhood as a social and economic unit.

The use quota approach also recognizes the relationship between the neighborhood commercial district and other commercial districts located both within and outside the community. It recognizes that a hierarchy of commercial areas exists, based on the varying scope of commercial markets.\(^{142}\) Neighborhood commercial establishments, offering convenience goods and services, best serve neighborhood needs. Commercial establishments with the entire community as their market can serve community needs most efficiently when they locate in central areas, with adequate transportation access, parking, and other infrastructure to handle city-wide and regional demand. Use quotas thus promote ordered, efficient development of the community.

4. Promoting the General Welfare

An expanded notion of "promoting the general welfare" as a valid independent purpose of zoning underlies many court decisions, especially those where the court is recognizing or defining specific acceptable purposes not expressed in the enabling legislation. It may not be necessary, therefore, to categorize use quotas into a specific "purpose in view."\(^{143}\) Section One of the Standard Act empowers local governments to regulate land uses for "the purposes of promoting health, safety, morals, or the general welfare."\(^{144}\) The Section Three "purposes in view" include "to promote health and the general welfare."\(^{145}\) This broad language appears to grant zoning power to local governments for broad and flexible purposes.

"General welfare" is subject to a variety of definitions. Some commentators suggest that the "general welfare" language of the Standard Act was intended to allow local governments to exercise the police power up to constitutional limits when regulating land uses.\(^{146}\) As "constitutional strictures" relax, the confines that statutory purposes establish for local government exercises of police power are pushed back.\(^{147}\) Limita-

\(^{142}\) See supra notes 15-20 and accompanying text.

\(^{143}\) See Comment, supra note 133, at 1444 n.20 (indicating that the Standard Act's list of "Purposes in View" is only illustrative, and that the act intends to grant full power to regulate land to promote the general welfare, subject only to constitutional limitations).

\(^{144}\) STANDARD ACT, supra note 113, § 1 (emphasis added). "The disjunctive 'or' which precedes the term 'general welfare' suggests that the use of land may be regulated not only in the interest of health, safety, and morals, but also to serve the general welfare of the community," therefore indicating that promotion of the general welfare is a distinct and independent purpose that zoning regulations may properly serve. 1 R. ANDERSON, supra note 117, § 7.12, at 495.

\(^{145}\) STANDARD ACT, supra note 113, § 3.

\(^{146}\) See R. ELICKSON & D. TARLOCK, LAND-USE CONTROLS: CASES AND MATERIALS 81-82 (1981); 8 E. MCQUILLIN, supra note 64, § 25.20, at 58.

\(^{147}\) 8 E. MCQUILLIN, supra note 64, § 25.20, at 58.
tions on the meaning of the "general welfare" have tended to disappear as social conditions change and as knowledge about the relationships between government regulations and human well-being grow.\textsuperscript{148}

Some state courts, in early cases, seemed to read the "general welfare" purpose out of the enabling acts entirely, interpreting it as equivalent in meaning to the public health and safety purpose.\textsuperscript{149} Commentators have observed that courts tended to deny the separate validity of "promoting the general welfare" because the challenged land use restrictions promoted societal interests that either were not clearly articulated when zoning began or were not recognized in the common law of nuisance.\textsuperscript{150} As a consequence, courts were unreceptive to innovative zoning methods.

Today, "promoting the general welfare" has been recognized as an independent purpose of zoning.\textsuperscript{151} In some situations, it is recognized as a justification for local regulatory practices regardless of any promotion of the public health, safety, or morals. The most notable situation indicating this evolution is the growing judicial acceptance of zoning based on aesthetic considerations.

In the days before comprehensive planning and zoning, courts refused to uphold land use regulations designed for aesthetic purposes. They continued to be wary of local efforts to regulate the aesthetics of development as zoning grew in popularity. Some courts held that aesthetic considerations bore no relation to health, safety, morals, or general welfare, and therefore could not be justified as an exercise of the police power.\textsuperscript{152} Other courts held that aesthetics were not among the purposes for which the state enabling acts granted zoning power to local governments.\textsuperscript{153}

As public interest in regulating the aesthetic aspects of development grew, however, courts began to accept aesthetics as a valid purpose of zoning. This acceptance stemmed in part from changing public attitudes

\textsuperscript{148} See id.

\textsuperscript{149} See Comment, supra note 133, at 1445 (and cases cited therein).

\textsuperscript{150} See, e.g., 1 R. Anderson, supra note 117, § 7.12, at 495.


\textsuperscript{152} See, e.g., Willson v. Cooke, 54 Colo. 320, 130 P. 828 (1913) (aesthetic harm caused by erection of commercial storefront in residential neighborhood held to bear no relation to the safety and general welfare of the public, and thus was an insufficient basis for denial of building permit); People ex rel. Friend v. Chicago, 261 Ill. 16, 103 N.E. 609 (1913) (city could not prevent construction of retail store in residential neighborhood solely on basis of aesthetic considerations because such considerations bore no relationship to the health, safety, or general welfare of the community); State v. Whitlock, 149 N.C. 542, 63 S.E. 123 (1908) (billboard statute could not be upheld solely on aesthetic grounds).

\textsuperscript{153} See, e.g., Melita v. Nolan, 126 Misc. 345, 213 N.Y.S. 674 (1926).
regarding the role of aesthetic concerns in community well-being,\textsuperscript{154} which was transformed into "a growing judicial perception of the public need to arrest ugliness."\textsuperscript{155}

Some courts view aesthetic considerations as worthy, but will not allow aesthetics to be the \textit{sole} justification for an exercise of the police power.\textsuperscript{156} These courts require aesthetic zoning measures to serve some health or safety purpose as well. As long as the regulation bears a reasonable relation to public health or safety, the aesthetic relationship has been accepted by the courts.\textsuperscript{157} Some courts have gone so far as to search out and find a health or safety purpose relating to an ordinance enacted for an aesthetic purpose.\textsuperscript{158} In whatever guise, aesthetics have become a proper purpose of zoning, although often in conjunction with other, traditionally acceptable purposes.\textsuperscript{159}

The courts of many states, perhaps the majority, have progressed even further and now recognize aesthetic control as a valid independent purpose of zoning,\textsuperscript{160} indicating the breadth of "promoting the general

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\item[154.] See 1 R. ANDERSON, supra note 117, § 7.22, at 529; see also Preferred Tires v. Village of Hempstead, 173 Misc. 1017, 19 N.Y.S.2d 374 (1940):
\begin{quote}
Among the changes which have come in the viewpoint of the public is the idea that our cities and villages should be beautiful and that the creation of such beauty tends to the happiness, contentment, comfort, prosperity and general welfare of our citizens. The zoning regulations ... indicate the changes in the attitude of the public and the courts with respect to the right of a man to use his own property. He must now consider to some extent the interest of his neighbors and the interest of the community in general. The courts should not be so bound down with ancient precedent that they should close their eyes to every change.
\end{quote}
\textit{Id.} at 1019.
\item[155.] 1 R. ANDERSON, supra note 117, § 7.23, at 581.
\item[156.] 8 E. MCQUILLIN, supra note 64, § 25.30, at 70 (and cases cited therein). For an early example of this view, see, e.g., State ex \textit{rel.} Lachtman v. Houghton, 134 Minn. 226, 233, 158 N.W. 1017, 1020 (1916).
\item[157.] The rule invalidating aesthetics as an independent or self-sufficient purpose was justified "on the basis that the exercise of the police power is grounded in public necessity, and hence 'public health, morals or safety, and not merely aesthetic interest, must be in danger in order to justify its use.'" 8 E. MCQUILLIN, supra note 64, § 25.30, at 71 (citation omitted). Lack of objective criteria for government decisionmaking was also a factor in the early rejection of zoning for aesthetic purposes. Rowlett, supra note 151, at 606.
\item[158.] See, e.g., State ex rel. Giangrosso v. City of New Orleans, 159 La. 1016, 1018, 106 So. 549, 550 (1925) ("if consideration of public health, safety, comfort, or general welfare could have justified the ordinance, the court must assume they did justify it"); Turner v. City of New Bern, 187 N.C. 541, 546, 122 S.E. 469, 472 (1924) ("reasons ... need not necessarily appear from reading the ordinance itself"); see also Rowlett, supra note 151, at 607.
\item[159.] See, e.g., Pepper Pike v. Landskroner, 53 Ohio App. 2d 63, 73, 371 N.E.2d 579, 585 (1977) ("aesthetic considerations alone will not sustain ... zoning regulations but ... may properly be an incidental or secondary reason").
\end{enumerate}
\end{footnotesize}
welfare" as one of the basic purposes of zoning. Courts have tied aesthetics to the various purposes of zoning identified in the "Purposes in View" section of the Standard Act, such as conserving the value of buildings, promoting the most appropriate use of land, and maintaining the character of the district. Courts have also upheld aesthetic controls to preserve characteristics of the community attractive to tourists, conventions, and other business.

The trend toward recognizing aesthetic regulations as a valid promotion of the "general welfare" indicates diminishing judicial reliance on health and safety justifications to delineate the scope of the zoning power delegated to local governments under zoning enabling acts. Even courts that do not explicitly recognize aesthetic considerations as an independent purpose of zoning often uphold aesthetic regulations because they advance some other aspect of the general welfare (such as the protection of property values, the promotion of economic growth, or the preservation of an area's character) that may or may not appear explicitly as a purpose in the state's zoning enabling legislation. While some courts continue to tie innovative zoning techniques to more specific purposes expressed in the zoning enabling legislation, many courts now recognize promotion of the "general welfare" as an independent purpose of zoning.

This development creates a need for courts to define the scope of the "general welfare," which, if liberally interpreted, could be identical to the scope of the police power. If promoting the general welfare is equivalent to any valid exercise of the police power, then the only restrictions on the
statutory delegation of zoning power are the constitutional limitations that control the state itself. Even under a less expansive view of "general welfare," where courts limit "general welfare" to specific "purposes in view," local governments have wide latitude to regulate the use of land to preserve neighborhood character and to encourage the appropriate use of land throughout the community.\textsuperscript{164}

Under the most liberal view of how local zoning can promote the "general welfare," local governments clearly have authority, as delegated by the state, to apply use quotas in neighborhood commercial districts. Even under a restrictive interpretation of the "general welfare" language in enabling legislation, the application of use quotas in neighborhood commercial districts is within the realm of local authority because it fulfills several commonly recognized "specific" purposes of the delegation of zoning power to local governments: lessening street congestion, preserving neighborhood character, and comprehensively controlling development. Use quotas, therefore, fulfill proper purposes of the statutory delegation of zoning power to local governments.

\section*{B. Restraining Competition as an Improper Purpose of Zoning}

The question remains, however, whether a local government's application of use quotas in commercial districts serves primarily to restrain competition—an improper, and therefore invalid, purpose for the exercise of local government zoning power.\textsuperscript{165} Courts are wary of zoning methods and decisions that have anticompetitive purposes or effects. The restraint of competition issue arises when established uses of a particular type already exist within a community, and local zoning bars additional establishments of that type from entering the market.\textsuperscript{166} Because use quotas only allow a certain number of establishments of a particular type into neighborhood commercial districts, they have anticompetitive effects.

Early cases rejected restraint of competition as a valid zoning purpose. This view became widespread, with many courts holding that the use of zoning to restrict competition exceeded the zoning power dele-
gated by the state to local governments.\textsuperscript{167} Part of the rationale for these decisions lay in the basic philosophy that competition is a fundamentally beneficial force in a market economy.\textsuperscript{168} Another part of the rationale lay in the early view that the primary function of zoning was to regulate the physical aspects of development—focusing on the separation of incompatible uses into different districts—rather than the economic aspects of development.\textsuperscript{169} These attitudes toward competition and the early narrow role of zoning led the judiciary in many cases to conclude that the use of zoning power to restrict competition or to regulate a community’s economic needs bore an insufficient relationship to the purposes of local zoning power.\textsuperscript{170}

One should not, however, read the cases regarding competition and zoning too broadly. Many of these cases only involved the question of

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\textsuperscript{167} See, e.g., Exchange Nat’l Bank of Chicago v. Skokie, 86 Ill. App. 2d 12, 20, 229 N.E.2d 552, 556 (1967) (adverse effect of proposed development on other businesses in area irrelevant because, absent state delegation of economic power to protect existing businesses, village lacked power to do so); 179 Duncan Ave. Corp. v. Board of Adjustment, 122 N.J.L. 292, 293, 5 A.2d 68, 68 (1939) (limiting use of business property to prevent competition void because not based on general welfare).

\textsuperscript{168} ‘[R]estriciton of fair competition is a doctrine alien to the ‘American way.’’” Bartelt, Shopping Centers and Land Controls, 35 NOTRE DAME L. REV. 184, 204 (1960). “Suppressing competition impairs economic efficiency, at least according to the prevailing economic wisdom reflected in antitrust statutes.” R. ELLICKSON & D. TARLOCK, supra note 146, at 82.

\textsuperscript{169} In the words of Edward Bassett, one of the “founders” of modern zoning and the leading land use law scholar in the early days of zoning:

Neither can distribution of business be forced by zoning. If a locality is filled with theatres, and congestion is great on sidewalks and streets, the municipality cannot lawfully amend its zoning ordinance to exclude new theatres. The police department can control the traffic, or some licensing law may be devised to prevent new theatres, but it is not a proper field for zoning. . . . Zoning as we now understand it is not the proper instrumentality.

\textbf{E. BASSETT, supra} note 62, at 53-54. Several courts have similarly concluded that economic regulation is not the province of local zoning authorities. “A city council should not concern itself with the rule of supply and demand as applied to particular businesses in exercising its [zoning] authority.” Sun Oil Co. v. Board of Zoning Appeals, 9 Ohio Misc. 101, 103, 223 N.E.2d 384, 386 (1966) (purpose of curtailing gas stations within the city was not a constitutionally acceptable basis for zoning enactment). “Zoning ordinances cannot be concerned with the question of the economic rules of supply and demand. . . . [T]hey are not the media through which restrictions may be placed on who may engage in legitimate enterprise.” Henle v. Euclid, 97 Ohio App. 258, 263, 125 N.E.2d 355, 358 (1954); see also Pearce v. Village of Edina, 263 Minn. 555, 568, 118 N.W.2d 659, 669 (1962) (reference to “misguided social and economic planners who wish to tell property owners in exactly what kind of business they may engage”).

\textsuperscript{170} See, e.g., Pearce v. Village of Edina, 263 Minn. 555, 118 N.W.2d 659 (1962) (zoning ordinance classifying property for office buildings had no valid relationship to zoning’s legitimate purpose of protecting public welfare, health, or safety, when all property surrounding the parcel was zoned commercial); Blumenreich Properties, Inc. v. Waters, 14 Misc. 2d 947, 178 N.Y.S.2d 905 (1957) (application to install public garage and filling station could not be denied by town board on grounds that there were enough gasoline stations to serve the needs of residents); Board of County Supervisors v. Davis, 200 Va. 316, 106 S.E.2d 152 (1958) (denial of application for rezoning a tract to general business was invalid when denial was to protect a proposed nearby shopping center from competition).
whether to grant standing to the owner of an existing business, as a competitor, to challenge a zoning decision that favored the addition of a new business establishment.171 The rule that emerges from these cases is that "increased business competition alone provides no standing to challenge a zoning change."172 These cases do not rule on the question of whether a local government's zoning decisions can have an anticompetitive purpose or effect.

Many cases declaring that restraint of competition is an improper purpose of zoning deal with the arbitrariness of "spot" zoning, where the challenger's property is surrounded by uses or zoning compatible with the use the challenger seeks to establish.173 Other cases confront situations where the local government has zoned only a very small, occupied area of the entire community for commercial uses, locking existing businesses into a "monopoly" position.174 Even in cases not involving the above situations, however, courts have drawn limits on the authority of local governments to use zoning to restrain or regulate competition. Courts consistently hold that where the local government's actual and

171. See, e.g., Whitney Theater Co. v. Zoning Bd. of Appeals, 150 Conn. 285, 189 A.2d 396 (1963) (the fact that a variance would permit competition was not sufficient to prove that property owner's property rights were "affected" for standing purposes); Kreatchmen v. Ramsburg, 224 Md. 209, 167 A.2d 345 (1961) (party whose concern over property use was to prevent competition with his liquor store did not have sufficient interest to maintain appeal); Circle Lounge & Grille v. Board of Appeal, 324 Mass. 427, 86 N.E.2d 920 (1949) (increased competition resulting from a zoning variance does not meet requirement that appellant be "aggrieved"); Schmitt v. Hazelwood, 487 S.W.2d 882 (Mo. Ct. App. 1972) (allegations that a "special land use permit" would allow a car wash in close proximity to appellant's similar place of business did not establish standing to seek declaratory judgment); see also Zuckerman v. Board of Zoning Appeals, 144 Conn. 160, 128 A.2d 325 (1956) (plaintiff standing had been acting as a taxpayer but not as competitor). Other cases indicate that the objections of an existing competitor at a zoning hearing are to no avail. See, e.g., Lehrer v. Board of Adjustment, 137 N.J.L. 100, 58 A.2d 265 (1948) (application for appeal of a zoning change permitting a competing gas station was set aside when objection was brought by a competitor for competition reasons); Board of Supervisors v. Davis, 200 Va. 316, 106 S.E.2d 152 (1958) (refusal to rezone tract of land as general business was invalid when denial was based on forestalling competition from a proposed shopping center).


173. See, e.g., Charnofree Corp. v. Miami Beach, 76 So. 2d 665 (Fla. 1954) (zoning ordinance restricting type of business establishments inside hotels of 100 rooms or more was arbitrary, discretionary, and invalid); Herman Glick Realty Co. v. St. Louis County, 545 S.W.2d 320 (Mo. Ct. App. 1976) (denial of rezoning application was invalid when "non-urban" zoned tract of land was in a highly commercially developed area); In re Northeast Corner of E. Center St. & Chicago Ave., 89 Ohio L. Abs. 430, 186 N.E.2d 515 (1962) (refusal to rezone property from residential to commercial where the street serving the property had many commercial establishments was an abuse of discretion and invalid); State ex rel. Rosenthal v. Bedford, 74 Ohio L. Abs. 425, 134 N.E.2d 727 (1956) (denial of building permit for a service station was invalid where probability of use for residential purposes had been virtually destroyed by prior acquisitions for highway and utility purposes).

174. See, e.g., In re White, 195 Cal. 516, 234 P. 396 (1925) (1.1 acres zoned "unrestricted" and all the rest zoned "residential"); Wickham v. Becker, 96 Cal. App. 443, 274 P. 397 (1929) (less than one acre zoned for business, of which only one lot remained vacant).
primary purpose is to lock existing establishments into a monopoly or oligopoly position, the decision or regulation in question is invalid.\textsuperscript{175}

At the same time, nearly every planning and zoning decision operates to some extent as a restraint on competition;\textsuperscript{176} courts have recognized the inevitable anticompetitive impacts of zoning and allowed local action when a government is motivated primarily by legitimate objectives.\textsuperscript{177} Thus, where there is evidence that valid zoning purposes are served, courts will uphold zoning regulations with anticompetitive effects.\textsuperscript{178} For example, courts have upheld local government decisions ex-

\textsuperscript{175} See, e.g., Blumenreich Properties, Inc. v. Waters, 14 Misc. 2d 947, 178 N.Y.S.2d 905 (1957) (the sufficiency of existing facilities in serving the needs of the area is not a proper ground for the denial of an application to reconstruct and operate a service station); Caudill v. Milford, 10 Ohio Misc. 1, 225 N.E.2d 302 (1967) (zoning ordinance prohibiting the location of any service station within 150 yards of an existing service station was primarily intended to limit the number of service stations in the area and is, therefore, invalid); Board of County Supervisors v. Davis, 200 Va. 316, 106 S.E.2d 152 (1958) (board's denial of an application for rezoning was invalid because the decision was primarily intended to limit competition and bore no substantial relation to the public health, safety, morals, or welfare of the community). In such cases, there is seldom evidence of a legitimate purpose behind the restrictive intent. See Weaver & Duerksen, supra note 172, at 66-67 (in cases involving the location of gas stations, as well as in cases where the plaintiff is held not to have standing, there is rarely any evidence of a legitimate purpose underlying the ordinance).

\textsuperscript{176} The problem of isolating those regulations which are intended solely or primarily to regulate business competition is complicated by the fact that all zoning has some impact on competition. The simple division of the community into districts has an inherent and profound effect on the real-estate market, because some land is withdrawn from the commercial market and placed in the residential market. When a commercial use is excluded from a district, while existing commercial uses are permitted to remain, the existing uses enjoy a monopoly which, in the case of a retail store or a gasoline station, may be quite valuable.

\textsuperscript{177} See, e.g., Stone v. City of Maitland, 446 F.2d 83 (5th Cir. 1971) (requirements that service station lots have 150 feet of frontage and not be built within 350 yards of each other are reasonably related to the objectives of reducing traffic congestion and protecting the aesthetic appeal of the area and are, therefore, valid); Etzel v. Zoning Bd. of Appeals, 155 Conn. 531, 235 A.2d 647 (1967) (board's denial of a petition to build and operate a service station in the
cluding businesses and denying rezoning for commercial uses when the decisions were intended to preserve the vitality of central business districts\textsuperscript{179} or to channel commercial development to specific areas already designated for commercial uses.\textsuperscript{180} Many courts have even come to recognize the lack of need in the community or neighborhood for more establishments of a particular type, especially gas stations, as a valid basis for restricting the number and location of those establishments.\textsuperscript{181}

Whether courts will invalidate use quotas as primarily a restraint of competition in favor of existing business owners will depend largely on the circumstances surrounding each community’s decision to adopt use quotas. In Berkeley and San Francisco, use quotas seemed to grow more out of comprehensive planning efforts aimed at satisfying the needs of entire neighborhoods than out of movements on the part of neighborhood business owners to keep competitors out of the neighborhoods. There may be other communities, however, where the adoption of use quotas is driven primarily by the desire to lock existing business owners into monopoly or oligopoly positions. Such communities will be prime candidates for judicial rejection of use quotas. Undoubtedly, each community’s decision to adopt use quotas will be based on a variety of inten-

\textsuperscript{179} See, e.g., Forte v. Borough of Tenafly, 106 N.J. Super. 346, 255 A.2d 804 (App. Div. 1969) (zoning ordinances enacted to protect the vitality of the central business area by restricting retail business to that area held to be valid even though the ordinances would grant the area a virtual monopoly); see also Weaver & Duerksen, supra note 172, at 65.

\textsuperscript{180} See, e.g., Ensign Bickford Realty v. City Council of Livermore, 68 Cal. App. 3d 467, 137 Cal. Rptr. 304 (1977) (denial of application seeking rezoning of land to commercial use held valid as based on council’s determination that the community could not support two shopping centers and that location in another area already zoned for such use would be in the best interest of the city).

\textsuperscript{181} See, e.g., Van Sicklen v. Browne, 15 Cal. App. 3d 122, 92 Cal. Rptr. 786 (1971) (city’s refusal to allow construction of service station upheld where existing stations were shown to adequately fulfill neighborhood needs); Lucky Stores v. Board of Appeals, 270 Md. 513, 312 A.2d 758 (1973) (lack of need was one of several guidelines for denying special use permit); Turner v. Cook, 9 Misc. 2d 850, 168 N.Y.2d 556 (1957) (on application to town board for permit to construct a filling station, the board may properly consider the existence of other filling stations in the neighborhood and whether additional filling stations are required to satisfy the public need); Laudati v. Zoning Bd. of Review, 91 R.I. 116, 161 A.2d 198 (1960) (lack of need in conjunction with increased traffic and change in neighborhood character). Contra Metro 500, Inc. v. Brooklyn Park, 297 Minn. 294, 211 N.W.2d 358 (1973) (court seemed most bothered by lack of standards and lack of comprehensive plan); Lawfred Realty v. Waters, 15 Misc. 2d 113, 178 N.Y.S.2d 907 (1958) (propriety of using lack of need is debatable); Cunningham v. Planning Bd., 157 N.Y.S.2d 698, 702 (1956), rev’d and vacated (in part), 164 N.Y.S.2d 601 (1957) (“The basic economic law of supply and demand should determine the number of gasoline filling stations in this district, rather than the opinion of the members of the planning board as to the economic needs of the community, provided that none of the objectionable factors which are considered on all special applications is found to exist.” (emphasis added)).
tions, some less acceptable to courts than others. However, where use quotas arise out of comprehensive efforts to plan the development of a community and the community's primary intent is to address valid zoning purposes, such as the preservation of neighborhood character, then courts should not invalidate use quotas as primarily serving an improper purpose even if they have anticompetitive effects.

C. Use Quotas as an Acceptable Means of Achieving the Purposes of Zoning

Not only must the purpose of a local zoning regulation come within the purview of state enabling legislation, but the means of achieving that purpose must also accord with the state's delegation of zoning power. Given that use quotas for neighborhood commercial districts satisfy several purposes of zoning enabling legislation, it is necessary to explore the issue of whether a quota system is a valid means of achieving those purposes.

Courts in some cases have invalidated the use of quotas in zoning, such as to control a community's rate of growth, either because the enabling legislation did not contemplate the use of quotas or because the quotas lacked a rational relationship to a permissible purpose, and thus, were unconstitutional. This does not mean, however, that any zoning regulation using quantitative limits is per se invalid. There are situations in which courts have upheld the authority of local governments to establish de facto, if not de jure, restrictions on the number of commercial establishments of a particular type that may locate within a given area of a community.

It is not uncommon for local governments to fulfill the purposes of zoning by establishing spacing requirements for uses that, if clustered too heavily in one area, would have an adverse impact on the surrounding neighborhood. Courts have upheld ordinances prohibiting the establishment of gasoline service stations within a given distance of existing stations to promote the public health and safety, even where the effect was to bar new stations beyond the few that already existed in the com-

182. 1 A. RATHKOPF & D. RATHKOPF, supra note 61, § 3.04, at 3-7.
183. See, e.g., United States Home & Dev. Corp. v. La Mura, 89 N.J. Super. 259, 214 A.2d 538 (1965) (developers cannot be restricted to receiving ten building permits at a time); Albrecht Realty Co. v. Town of New Castle, 8 Misc. 2d 255, 167 N.Y.S.2d 843 (1957) (cap of 112 residential building permits per year invalidated).
184. See, e.g., City of Boca Raton v. Boca Villas Corp., 371 So. 2d 154 (Fla. Dist. Ct. App. 1979), cert. denied, 449 U.S. 824 (1980) (invalidating statute that limited total number of permissible dwelling units to accommodate total population of no more than 40,000).
Courts have also upheld ordinances prohibiting bars and other businesses serving alcoholic beverages from locating within a prescribed distance of one another to preserve the community’s character and quality of life.\textsuperscript{186} Most notable has been judicial approval of minimum distance requirements for adult entertainment businesses,\textsuperscript{187} which, despite the obvious first amendment implications, have been approved by the United States Supreme Court on two occasions. In \textit{Young v. American Mini Theatres},\textsuperscript{189} the Court held that such a regulation was valid when it addressed legitimate land use concerns and left a reasonable number of sites throughout the community to accommodate adult uses. In \textit{City of Renton v. Playtime Theatres, Inc.},\textsuperscript{190} the Court held that such a regulation was valid even though it effectively confined such uses to a 520-acre area of the city.

It is well established, however, that spacing requirements effectively banning adult entertainment businesses from the community or confining them to a very few available sites are invalid.\textsuperscript{191} The community may not rely on the argument that such establishments nonetheless would be

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\textsuperscript{186} See, e.g., BP Oil, Inc. v. Zoning Hearing Bd., 37 Pa. Commw. 258, 389 A.2d 1220 (1978) (zoning ordinance permitting gas stations on only three-tenths of one percent of land in borough did not set aside an unreasonably small amount of land for that use in relation to the needs of the community and was not exclusionary).

\textsuperscript{187} See, e.g., City of Norfolk v. Tiny House, Inc., 222 Va. 414, 281 S.E.2d 836 (1981) (ordinance requiring a use permit to sell alcoholic beverages for on-premises consumption was a proper exercise of the city’s police power and was not arbitrary or unreasonable).

\textsuperscript{188} See, e.g., Genusa v. City of Peoria, 619 F.2d 1203 (7th Cir. 1980) (upholding zoning requirement that adult uses be separated from one another by at least 500 feet); Hart Book Stores, Inc. v. Edmisten, 612 F.2d 821 (4th Cir. 1979) (holding constitutional a statute providing that single buildings containing one adult establishment cannot contain a second such adult establishment); Shangri-La Enters. v. Brennan, 483 F. Supp. 281 (E.D. Wis. 1980) (municipal ordinance prohibiting location of adult bookstores and movie theaters within 1000 feet of each other did not violate first amendment).

\textsuperscript{189} 427 U.S. 50 (1976). The Detroit ordinance at issue in \textit{Young} also maintained spacing requirements between bars, hotels, rooming houses, pool halls, shoeshine parlors, and taxi dance halls.

\textsuperscript{190} 106 S. Ct. 925 (1986).

\textsuperscript{191} See, e.g., Avalon Cinema Corp. v. Thompson, 667 F.2d 659 (8th Cir. 1981), \textit{modified}, 689 F.2d 137 (1982) (zoning ordinance that prohibited the exhibition or sale of any sexually oriented film within 100 yards of certain structures and areas, including residential areas, in effect prevented the opening of the only sexually oriented theater in the city and was constitutionally invalid); Keego Harbor Co. v. City of Keego Harbor, 657 F.2d 94 (6th Cir. 1981) (city zoning ordinance that effectively banned adult movie theaters, not merely disbursed them, held invalid under first amendment); CLR Corp. v. Henline, 520 F. Supp. 760 (W.D. Mich. 1981), \textit{aff’d}, 702 F.2d 637 (6th Cir. 1983) (adult businesses restricted to four sites); Purple Onion, Inc. v. Jackson, 511 F. Supp. 1207 (N.D. Ga. 1981) (adult businesses restricted to ten sites); Bayside Enter. v. Carson, 450 F. Supp. 696 (M.D. Fla. 1978) (where effect of zoning scheme regulating adult entertainment establishments was to create a total ban on the establishment of new adult bookstores or moviehouses, zoning scheme was unconstitutional).
available in nearby communities. Thus, it is the exclusionary effect of these spacing requirements that the courts find objectionable. The invalidity of local zoning techniques that work a de facto prohibition on adult entertainment businesses could affect the validity of use quotas that prohibit the entry of particular uses into neighborhood commercial districts where other establishments of that type already exist.

Use quotas, however, are not designed to effect a total prohibition from the community of any particular type of establishment; rather, they are designed to control the total number of establishments within a particular neighborhood commercial district. Depending on the economic structure of the community adopting them, use quotas may not have a significant exclusionary effect. For example, while a new establishment may be excluded from one neighborhood commercial district, there may be other commercial districts in the community where the business may locate. The ability to locate in another district may be due to the fact that the quota has not been filled in that district or because quotas do not apply to that district. Although this situation would deny potential competitors access to a particular neighborhood, the rest of the community would still be available as a business location. The community therefore allows the new establishment to enter, although not in the specific location the establishment desires.

The ability of a local government to demonstrate that use quotas are a valid means, rationally related to the legitimate purposes of zoning, may depend on the local government's adoption of comprehensive plans and policies that regulate development in a coherent and integrated fashion to promote the public welfare. Courts increasingly are recognizing the importance of, and even the requirement for, comprehensive land use planning as a predicate for the valid exercise of zoning powers. At times, comprehensive planning, such as that of Berkeley and San Francisco, will call for control over the entry of new establishments to serve legitimate public purposes, such as the maintenance of neighborhood character, protection of the vitality of the central business district, and comprehensive control over development throughout the community. To the extent that use quotas further such comprehensive planning objec-


193. See, e.g., Udell v. Haas, 21 N.Y.2d 463, 235 N.E.2d 897, 288 N.Y.S.2d 888 (1968) (amendment to zoning ordinance held invalid as falling outside of the comprehensive plan that had been developed for the community); Fasano v. Board of County Comm'rs, 264 Or. 574, 507 P.2d 23 (1973) (in part overruled by Neuberger v. Portland, 288 Or. 155, 603 P.2d 771 (1979)) (where there was no adequate showing that a zoning change was in accord with the comprehensive county land use plan, the zoning change was invalid)).
tives, they should be approved as a means of achieving rational development.

This is not to say that local governments should have unrestricted ability to restrain competition or to exclude otherwise legitimate commercial establishments. Some sort of coherent planning and policymaking sequence should be required as evidence of a rational relationship between a restrictive zoning measure and the purposes it serves. Without some coherent analysis and formulation of acceptable policies governing development in the community, local government authority to restrain competition could fall into the hands of established business owners who seek not to promote the general well-being of the neighborhood but only to protect themselves from competition. Measures such as those in *Ex Parte White*194 and *CLR Corp. v. Henline*195 remain inherently suspect.

If use quotas are reasonably related to legitimate purposes, however, and such purposes are the dominant purposes for the quotas, courts should hold that they are valid exercises of local government zoning power. Where use quotas restrict the entry of new businesses as a result of well-intentioned planning and policymaking designed to preserve some valued characteristic of the community, or to promote the general welfare, they should be held to be within the zoning power that the state has delegated to local governments.

**CONCLUSION**

Use quotas serve an important function in preserving the role of neighborhood commercial districts in urban life. Many neighborhood commercial districts throughout the country are facing increasing pressure to satisfy the regional demand for restaurants, bars, boutiques, and other establishments. While locations for establishments primarily serving the regional market may exist in other commercial areas within the city, conventional zoning practices do little or nothing to prevent the overconcentration of these establishments within neighborhood commercial districts. Use quotas directly address the problem of overconcentration.

As a novel approach to regulating the use of land, use quotas are viewed as inherently suspect by owners of commercial property, lawyers, and the courts. Local governments adopting use quotas should expect challenges regarding their authority to infringe on the free market's determination of the mix of uses within a commercial district.

194. 195 Cal. 516, 234 P. 396 (1925) (where existing uses were locked into monopoly positions).
195. 520 F. Supp. 760 (W.D. Mich. 1981), aff'd, 702 F.2d 637 (6th Cir. 1983) (where otherwise legitimate uses were restricted to an inordinately small number of sites).
Local governments have adequate authority to adopt use quotas under both home rule and zoning enabling legislation. For local governments that have zoning power by virtue of home rule, there is no reason for a court to hold that use quotas are outside the realm of local authority. While use quotas may have some impact on extraterritorial interests, those interests are insignificant and are outweighed by the problems facing neighborhoods and the need for local governments to address those problems. There is also no reason for a court to hold that use quotas are outside the authority of local governments that derive their authority to zone from state enabling legislation. Use quotas serve a variety of statutory purposes, such as preserving neighborhood character, encouraging the most appropriate use of land, and promoting the general welfare.

Use quotas may have some exclusionary and anticompetitive effects. As long as exclusion and restraint of competition are not the sole or primary purposes for adopting use quotas, however, these effects will not invalidate local efforts to stem the problems that attend an overconcentration of particular uses in a neighborhood commercial district.

Courts increasingly are giving due weight to local zoning measures undertaken in accordance with a comprehensive plan for community development. Many cities place a high value on their neighborhoods and recognize the importance of neighborhoods in maintaining the quality of urban life. These cities plan and regulate development with these values in mind. Use quotas provide a means for maintaining neighborhood integrity. The law should recognize that the proper application of use quotas is a valid and valuable exercise of local zoning powers.