

# COMMUNITY GROWTH MANAGEMENT

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## Introduction To: Growth Management

THERE IS A NEW MOOD IN AMERICA. Increasingly, citizens are asking hard questions about urban growth as it relates to the quality of their lives. Will it cause drastic changes to the character of their community? Can they afford increased property taxes to pay for expanded sewer, water, fire protection, and other services? Will open space and recreation facilities be crowded? Will traffic congestion and strip development make daily life unpleasant?

Although people are questioning the impacts of further growth, we will continue to grow. In spite of the continuing decline of the U.S. birthrate, the U.S. population will continue to grow by about two million annually from now until the end of this century and beyond. The number of households will grow even more rapidly than the total population as the large number of children born during the 1950's and 1960's reach maturity. Even without the need to replace obsolete housing, the next 15 to 20 years will see record housing demands. In other words, we will need to accommodate continuing rapid growth in the future.

Oregon's population is likely to increase at an even faster rate than the national population. Between 1970 and 1977 Oregon's population increased by 300,000, more than two and one-half times faster than the total United States population. In the past the problems associated with rapid growth affected primarily the larger cities and their suburban satellites. Today, however, rapid growth is affecting communities throughout Oregon. Although the metropolitan areas of Portland,

Eugene-Springfield, and Salem continued to grow (159,709 people from 1970 to 1977, or a growth rate of 1.7 percent per year), non-metropolitan areas not only grew at the fastest annual rate (2.4 percent per year) but also received about half of the total population increase. Communities with populations of less than 10,000 grew at a rate of 4.5 percent per year as compared to a rate of 1.8 percent for cities greater than 10,000.<sup>1</sup> The powerful social, economic, and demographic forces stimulating growth in Oregon will continue. From a social responsibility standpoint, as well as a legal one, communities and counties will need to absorb their "fair share" of this growth.

The problem of population growth management, then, becomes one of organizing a set of reasonable procedures for gaining some public control over the adverse impacts of growth on local communities.

*Growth management can be defined as a strategy to control the rate, timing, amount, geographic pattern, or public cost of growth.*

This circular introduces growth management strategies—the rationale for their development, specific techniques being tried by communities across the nation, legal considerations, and possible side effects. It is the first of a series on growth management.

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This circular was prepared by Rebecca Roberts, research assistant unclassified, and James R. Pease, Extension land resource management specialist, Department of Geography, Oregon State University. Partial support was provided under Title V of the Rural Development Act of 1972.

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## Objectives of Growth Management Strategies

Interest in growth management arises from a number of concerns. A survey of local planning agencies tabulated the major concerns of communities enacting growth management controls (Table 1). The most commonly given concern, cited by 84 percent of the communities, is the problem of providing adequate public services such as sewers, water lines, and streets to rapidly growing areas. Almost as many communities, 78 percent, cite the desire to reduce urban sprawl. Approximately three-quarters of the communities surveyed are concerned with environmental protection and preservation of open space. Other important objectives cited by more than half of the communities include preservation of community character and local amenities and reduction of traffic congestion.

These community objectives sometimes conflict with social and legal principles of fairness. In the case of Mt. Laurel, N. J., (1975) for example, the New Jersey Supreme Court found that the city's land use regulations were invalid because they excluded low and moderate income persons and did not provide for Mt. Laurel to absorb its fair share of regional housing needs.<sup>2</sup> In a similar case (1973) the Pennsylvania Supreme Court declared that "Zoning is a means by which a governmental body may plan for the future—it may not be used as a means to deny the future."<sup>3</sup> While

these state court decisions are based on constitutional and statutory provisions of other states and are not binding on Oregon, the principle of "fair share" may well be reflected in Oregon's statewide housing goal. Its precise meaning remains to be articulated by the Land Conservation and Development Commission or the courts.

Table 1. Objectives of Growth Management Strategies.

Objective	Percent responding to the varied objectives
Provision of adequate services .....	84
Reduction of urban sprawl .....	78
Environmental protection .....	78
Preservation of open space .....	66
Preservation of community character .....	60
Preservation of local amenities .....	55
Reduction of traffic congestion .....	53
Improvement of financial stability ..	44
Prevention of school overcrowding ..	38
Control of population growth rate ..	30
Reduction of private speculation ...	26
Protection of property values .....	19
Control of housing costs .....	17
Limitation of population .....	14
Lowering of tax rates .....	10
Other .....	12

Source: David Brower et al., *Urban Growth Management Through Development Timing*, (New York: Praeger Publishers, 1976), p. 109.

## Growth Management Techniques

There are three basic types of growth management techniques: controls on land availability, controls on the location and adequacy of urban services, and direct controls on the amount of growth. The first two types of techniques limit growth indirectly by limiting the amount of land available for urban housing. The third type directly limits the amount of new housing construction.

### Controls on Land Availability

#### Land banking

Development may be excluded from specific areas and directed to other areas through public purchase of land in a land-banking program. Such a program can be used to maintain open spaces and prevent urban sprawl. At a large scale it can be a tool for controlling the timing, location, type, and scale of development through purchase and

resale at a time and for purposes controlled by the public.

There are two basic types of purchase: fee simple purchase, and less than fee simple purchase. Fee simple purchase, or acquisition of full title, gives the public the greatest control over the land. It is possible through less than fee simple purchase to acquire rights of partial use or easements in privately held land for less than the full value of the land. Examples include purchase of development rights, scenic easements, rights of public access, and conservation easements. If purchased well in advance of development, such rights can be obtained at low prices, but, if development is imminent, purchase of development rights can cost almost as much as fee simple purchase.

Land acquisition has the advantages of conferring the greatest control over land use while compensating the land holders for losses they might incur. It also creates relatively few legal difficulties. The major disadvantage is the high cost of

land purchase. A land acquisition program needs substantial initial capital, even if the program is designed to become self-financed ultimately through resale of land or development rights when new development is needed.

### Zoning techniques

Zoning has been used since 1919 in Oregon to regulate land use. By separating the city or county into zones, with each zone providing for various uses and minimum lot sizes, some public control is gained over the pattern and intensity of development.

Large lot zoning, as in rural agricultural areas, is designed to discourage growth by making a building lot expensive. Growth, therefore, is encouraged to occur in other zones designated for higher density housing. Later, if more land is needed for higher density housing, a change in the comprehensive plan and zoning ordinance can rezone some of this rural land for urban use.

The zoning ordinance may include incentives to encourage a desired pattern of growth. For example, clustering and planned unit development are techniques to concentrate development on a portion of the site while maintaining open space over the larger part of the site. These techniques can use land more efficiently, reduce development costs, or preserve the natural environment. The incentive to the developer is often reduced development cost or a higher allowed density for the site.

As a tool in a growth-management strategy, zoning can be used in combination with devices to control the *timing* of development. Type, density, and location of development still would be controlled by the zoning, but the *rate* of development in a certain area would be controlled by a new technique. The rate could be adjusted for various areas of the city or county to reflect conditions in each area. For example, annual limitations can be made on the number of building permits to be granted each year. A special permit can be required for residential construction, which is granted only if urban services are available. Certain non-residential or low-density zones can be designated for rezoning at scheduled times in the future. Although these timing devices will control the rate of development, they will not prevent sprawl, unless the underlying zoning encourages concentration of development by clustering and other techniques.

### Annexation policies

Because cities often can refuse to extend city water and sewer services beyond city limits, control of annexations sometimes can limit the amount of

high density new housing built on the city's edge. Annexation of an area can be rejected by popular vote or by actions of city government on the basis of adverse impacts of the proposed annexation. At the same time, a city gains the greatest control over future uses of surrounding land only if it is within corporate limits.

### Urban growth boundary

An urban-growth boundary is a line drawn around a city to channel growth within the boundary and to discourage growth outside of it. It includes those areas to which city services are to be extended in the near future. Designating an urban growth boundary may prevent urban sprawl and leapfrog development, and insure efficient provision of public facilities and services. The statewide goals and guidelines administered by the Oregon Land Conservation and Development Commission (LCDC) require that an urban growth boundary be drawn by a joint agreement between city and county and be included in a community's comprehensive plan.



### Controls on Urban Services

#### Extension of services

The placement of sewers, water lines, streets, schools, and other facilities can influence both the rate and location of development. The scheduling of public investments in such service facilities in order to control the rate and location of growth is called capital programming. Capital programming may be combined with other controls that, in effect, prohibit development if services are not available.

Control over extension of services has a number of advantages over other growth management

techniques. It can be a low cost and relatively direct method of control. Some of the undesirable effects of rapid growth can be minimized if growth can be phased in time and location to coincide with the provisions of services.



A number of serious problems also exist, however. Such controls will not be successful if on-site facilities, such as wells and septic systems, are acceptable and inexpensive. Also, the right of a community to refuse to extend services is not absolute. A community may obligate itself to extend services to new development if the community has previously provided services to the area without limiting its service obligation through limited contracts.

### Exactions

Exactions are a collection of related techniques designed to decrease growth or the impact of growth by making new development pay part of the costs the development imposes on the community. They may include:

- Mandatory construction by the developer of facilities required by the development, such as drainage and flood control facilities, streets, curbs, sidewalks, sewer lines, and water lines.
- Mandatory dedication of land to the community for service facilities such as parks or school sites.
- Payment of money in lieu of the above construction of facilities or dedication of land.
- Mandatory provision of low or moderate income housing.

- Fees or charges required for permits to build or to connect services or for reviews of plans and construction inspections.

The legal source of the power to impose exactions lies in the wide powers delegated to localities by the state and incorporated into local subdivisions and other ordinances. These broad powers do have limits, however. There must be a reasonable relationship between the financial burden and the benefits received by those who pay. Not all increases in service costs are caused by growth. Increases can be caused by obsolescence and repair of old facilities, inflation, rising standards, and changes in lifestyle.

### Direct Controls on the Amount of Growth

#### Interim development controls

Interim development controls are temporary restrictions, such as a limited or total suspension (moratorium) on issuing building permits, service hookups, rezoning, or subdivision, pending a solution to the problem or more permanent controls. A moratorium can provide a pause in rapid growth, which allows the community the chance to plan while preventing new development that might be at odds with possible permanent controls.

The courts will allow communities to impose more severe restrictions as interim development controls than they will as permanent controls. Therefore, to be legal, the duration and severity of the restrictions must be reasonable and planning must be occurring during the moratorium. The courts generally will not allow such controls to be a guise for permanent growth controls.

#### Annual permits limitations

A number of communities have adopted growth management systems incorporating a limit on the maximum number of building permits that can be granted in a year. In some cases, those developments that receive permits are selected by a competition, so that only the best developments are built. Usually points are awarded according to stated criteria in a number of categories, and those developments with the highest point totals are awarded permits. Although such ordinances are new, the federal courts have upheld one (in Petaluma, California) as not violating any federal constitutional rights.

Although annual permit limitations can be used to exclude, they can also be used to encourage balance in the community. Greater weight in the selection process can be given to projects that include multifamily and low and moderate income housing. Ample subquotas can be created for areas



within the community where development is to be encouraged, and small quotas for areas where it is to be discouraged.

### Population ceilings

Population ceilings, or cap rates, are upper limits on the number of people that are permitted to reside in a community. In 1972, Boca Raton, Florida, put a ceiling of about 100,000 people or 40,000 dwelling units on the city's population. The ordinance has since been declared invalid by a lower state court on the grounds, among others, that the

40,000-unit figure was not based on a demonstrated legitimate public need or empirical evidence, and that it was exclusionary and imposed unfair burdens on neighboring communities.<sup>4</sup> The case is under appeal to a higher court.

The chance that any similar ordinance will be held valid can be increased if it is based on rigorous empirical evidence on future regional population trends and on the public need for such action. Ordinances based on subjective community perceptions about future growth are unlikely to be upheld.

## Legal Considerations in Growth Management

A growth management plan must be a reasonable exercise of a valid police power delegated to the city or county by state enabling legislation or acquired by vote of the people through a home rule charter. Further, it must not infringe any constitutionally guaranteed rights. The meaning of each of these phrases, as applied to what can and cannot be done in growth management, has been and will continue to be determined principally by state courts. Federal courts have shown a reluctance to enter this arena. Because of the number and variety of state courts in the U.S., the record is often conflicting and hard to interpret.

### Source of Powers to Regulate Land Use

The power of localities to manage growth in Oregon is delegated by state enabling legislation or home rule charter. These documents give a community some of the powers to regulate for the public health, safety, and general welfare—powers reserved to the states by the federal Constitution. In Oregon, state law requires that zoning, subdivision, and other growth management ordinances be designed to implement a comprehensive plan. The comprehensive plan must be in conformity with the statewide planning goals administered by the Land Conservation and Development Commission.

### Limits on Improper Use of the Police Power

The exercise of delegated police powers over development must be reasonable and non-discriminatory.

### Reasonableness

To be reasonable, the objectives of a regulation must promote the public health, safety, and general welfare. The means employed must be *reasonably necessary* to accomplish the objectives. The impact on the individual must not be unduly oppressive.

In determining the validity of a regulation, a court first tests whether the objectives of the regulation fall within the confines of the power delegated. This power, however, has been interpreted broadly by the courts, as needs and conditions change. The Supreme Court ruled in *Berman v. Parker*<sup>5</sup> that: "The concept of the public welfare is broad and inclusive, the values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled." In



another case, the courts held that the purpose of a Ramapo, N.Y., regulation, to economize on the costs and to maintain the quality of municipal services, is a valid objective. Likewise, in Petaluma, California, the court ruled that the desire to maintain open space and small town character is a valid goal. In other cases the courts have indicated that the desire to control chaotic and haphazard growth is within the confines of community police power. Oregon courts, likewise, have held that the state zoning enabling act gives local government power to regulate growth and separate incompatible uses for aesthetic purposes.<sup>6</sup>



Some state and federal courts are developing a limitation to the usual broad interpretation of the general welfare by concluding that the general welfare referred to is really the regional general welfare rather than just the local welfare. Seen in this light, a regulation that limits growth and thereby protects a locality from the impacts of growth may pose additional hardships on neighboring communities. These courts have held that a community must accept a fair share of all types of regional growth. For example, the Pennsylvania Supreme Court held in 1965<sup>7</sup> that: "The question posed is whether the township can stand in the way of the several forces which send our growing population into hitherto undeveloped areas in search of a comfortable place to live. We have concluded not . . . Zoning is a tool in the hands of governmental bodies which . . . must not and cannot be used by those officials as an instrument by which they may shirk their responsibilities. Zoning is a means by which a governmental body can plan for the future—it may not be used as a means to deny the future." In 1970<sup>8</sup> the same court ruled that: "If Concord Township is successful in unnaturally limiting its population growth through the use of exclusive zoning regulations, the people who would normally live there will inevitably have to live in another community, and the requirement that they do so is not a decision that Concord Township alone should be able to make."

Oregon courts have not spoken directly about growth control and regional impacts. However, statewide planning Goal #10 (Housing) incorporates the same restrictions on a community's power to limit residential growth, densities, and types of housing that courts have recognized in other states.

Goal 10 requires each community in Oregon to "encourage the availability of adequate numbers of housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households . . ." In *Seaman v. City of Durham* (Washington County), the Land Conservation and Development Commission held that the city's 50 percent reduction in the number of potential units in multiple-family and single-family zones without first determining the impact of the decision on housing price or the city's ability to satisfy regional housing needs violated Goal #10.

If a court determines that the objectives are valid, it then examines the reasonableness of the means by determining if they can be reasonably expected to aid in the accomplishment of the objectives. If this question is debatable, a court is usually unwilling to substitute its judgment for that of a legislative body, so a community has a broad leeway to choose means appropriate to its objectives. Thus the courts have held that delaying the date when some land can be developed for up to 18 years to allow the community to provide services efficiently is reasonably related to the goals of Ramapo and likewise that annual permit limitations are valid for Petaluma. A further test for reasonableness of the means requires that the impact on the individual must not be confiscatory; the private burden individuals must bear as a result of the regulation must be outweighed by a public gain and must leave some reasonable use of the land. Oregon courts have said that private property is not "taken" by land use restrictions so long as the owner retains a reasonable use.<sup>9</sup>

A community can increase the probability that its regulation will be considered reasonable by the courts if the regulation is supported by facts and community planning demonstrating the importance of the public purpose served and the appropriateness of the remedy. The ordinance of some other community cannot be transferred wholesale.

#### Non-discriminatory

The fourteenth amendment of the U.S. Constitution requires that police power regulations not unfairly discriminate against parcels of land that are similarly situated. To meet this requirement, any classification established by a regulation must be reasonably related to the purposes of the legislation, and must not discriminate on the basis of race, even if the intent is non-discriminatory, unless a compelling state interest requires it. A court will tend to support a legislative determination that a distinction created by a regulation between similarly situated parcels is rationally related to its objectives.

### Burden of Proof

A community has the advantage in most police power court cases because legislative acts are presumed to be valid by the courts; the burden of proof lies with the plaintiff to show the regulation to be unreasonable, arbitrary, confiscatory, or discriminatory. The burden shifts to the community, however, if the regulation creates a classification based on race or some other "suspect" classification, or if the regulation infringes a fundamental personal right or liberty protected by the Constitution. In these cases, not only does the community bear the burden of proof but it must also prove that the regulation is *necessary* to further a compelling *state* interest and that less onerous means are not available.

The record is clear that a classification based directly on race is "suspect;" the record is not so clear for classifications that may discriminate on the basis of wealth. The federal courts, led by the U.S.

Supreme Court, generally have ruled that a classification based on wealth is not suspect, but some state courts, notably those of Pennsylvania, New Jersey, and Michigan are establishing clear stands against economic discrimination. Oregon courts have not addressed this issue.

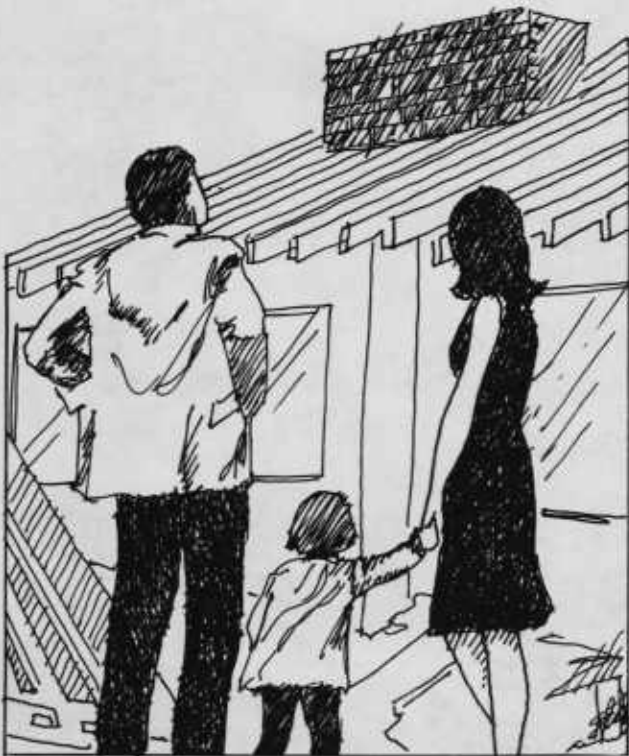
The "right to travel," which includes the right to enter and settle, is a fundamental personal right protected by the Constitution. The Supreme Court has stated<sup>10</sup> that: "This court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unit to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." To date, this opinion has not been extended to restrict the powers of local governments to enact growth management strategies. The "right to travel" is a new and developing issue in case law that may or may not affect growth management considerations.

### Potential Side Effects

If a growth control strategy effectively limits the rate or amount of growth, undesirable side effects may appear. Unfortunately, however, few data exist on the occurrence or severity of these side effects. First, growth controls may increase housing costs, either directly through the imposi-

tion of new costs as in exactions or indirectly by limiting the supply of buildable land or housing. An increase in housing costs will put the heaviest burdens on the poor and therefore will create exclusionary effects. Young families just entering the housing market may find higher housing costs make it more difficult to buy their first house. Those with jobs in the community may not be able to afford to live there. A rise in real estate prices may create windfall profits for developers, landlords, and other holders of land or housing. Second, growth limitations, particularly severe moratoria, may create hardships for builders and all those employed in the building trades if building is severely curtailed for a period. Third, growth limitations may inhibit growth of the economic base of the community and make it difficult for the young people of the community to find jobs in the area. Finally, growth management strategies may simply shift growth to neighboring communities that are no better prepared to handle it than the community limiting growth.

In considering the need for a growth management strategy, citizens and community leaders should recognize that any local stimulus for economic growth requires a responsibility to provide adequate housing. If the community has a desire to control the rate or amount of population growth or new housing development then local actions and policies related to economic growth need to be examined.



## Summary

Communities across the nation are experimenting with techniques to control the adverse impacts of rapid growth. These include controls on land availability, controls on the location and adequacy of urban services, and direct controls on the amount of growth. Oregon communities experiencing the problems of rapid growth may wish to consider using some of these techniques. Each such community must examine its own desires for the future against regional growth pressures, community capabilities, and legal rights of all citizens. Any growth management plan must be designed for the unique circumstances and goals of each community. The strategies designed for other communities may provide useful ideas and experience but should not be transplanted wholesale to another community in a different situation. More information is available through local planning departments, state and university organizations, and the educational programs of the Oregon State University Extension Service.

## Footnotes

<sup>1</sup> Bureau of Governmental Research and Service, *Oregon Population Shifts in the 1970's: Executive Summary*, University of Oregon, Eugene, Oregon, 1978.

<sup>2</sup> *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel*, 119 N.J. Super. 164, 290 A.2d 465 (1972) aff'd 336 A.2d 713 (N.J. 1975)

<sup>3</sup> *National Land and Investment Co. v. Easttown Board of Adjustment*, 419 Pa 527, 532, (1965).

<sup>4</sup> *Arvida Corporation vs. City of Boca Raton*. Case No. 74 1431 CA (L) 01 F, Circuit Court of the Fifteenth Judicial Circuit of Florida.

<sup>5</sup> *Berman v. Parker*, 348 U.S. 26,33.

<sup>6</sup> *Oregon City v. Hartke*, 240 Or 35 (1965) and *Kroner v. City of Portland* 116 Or 141 (1925).

<sup>7</sup> *National Land and Investment Co. v. Easttown Board of Adjustment*, 419 Pa 527, 532, (1965).

<sup>8</sup> *Appeal of Kit-Mar Builders*, 439 Pa 466 (1970).

<sup>9</sup> *Joyce v. City of Portland*, 24 Or App 689 (1976) and *Multnomah County v. Howell* 9 Or App 374 (1972).

<sup>10</sup> *Shapiro v. Thompson*, 394 U.S. 618, 629 (1968).

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# EXTENSION *Community Development* PROJECT

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