

ZONING FOR MIXED-USE DEVELOPMENT

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Author's Synopsis: Mixed-use development combines residential, commercial, and office uses into projects that emphasize diversity and community, accessibility to work and shopping, and public space. It is part of a strategy for sustainable development and good urban form, with the objectives of attaining economic vitality, social equity, and environmental quality. A wide variety of zoning alternatives are available, but there is little appreciation of their advantages and disadvantages, how they function, and how zoning should differ with different types of development. Zoning for mixed-use development also is market related, and decisions must be made on the extent to which zoning should control market development.

Mixed-use development can be planned or unplanned, which is development resulting from the separate, unrelated actions of several different developers. It can also be vertical or horizontal. This article considers horizontal mixed-use development.

Walkability, a multilayered public realm, inclusive living choices, and authenticity are important for planned mixed-use development. Retail space is a major challenge. Decisions must be made on land use mix, design detail, how markets work, and zoning that will support active retail uses. A compact, walkable urban village is recommended, good design and configuration are essential, and vacancies must be controlled. Office space can be integrated with retail space, built separately as individual structures, or included in an office campus. Social objectives include internal trip capture, which is the measure of the number of trips that begin and end in a development, housing cost issues, and racial and income diversity issues.

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The structure of zoning is an obstacle because it is designed to prevent the mixing of uses. Authorizing mixed-use development usually requires a zoning change, which may include discretionary review and approval. A variety of zoning alternatives are available. They include planned unit development, design guidelines, and form-based zoning. Unplanned mixed-use development requires the adoption of zoning districts in which mixed use is permitted, requires attention to scale, and may require a variety of mixed-use districts. Planned mixed-use development requires more zoning detail that can define critical project elements and that may include extensive design controls. Mixed-use zoning can also be used for special development objectives that can include transit-oriented development, mall redevelopment, and live/work units.

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I. INTRODUCTION

Glenwood Park in midtown Atlanta is a successful 28-acre brownfield development consisting of onsite retail, office, and residential properties.¹ Marketed as “a lively new city neighborhood” and “a compelling alternative to conventional development,” Glenwood Park was designed to be walkable, environmentally sensitive, and convenient for its residents, the employees working in its office spaces, and the customers visiting its retail locations.² The ongoing transformation of San Diego County, California provides several other examples of wide-ranging mixed-use development projects, demonstrating how well mixed-use development can jump-start urban growth.³ Mixed-use development is a dominant urban form that combines residential, commercial, and office use. It emphasizes diversity and community, accessibility to work and shopping,

¹ See Simmons B. Buntin, *Glenwood Park*, in UNSPRAWL 65, 66–67 (2013); Joshua D. Herndon, *Mixed-Use Development in Theory and Practice: Learning from Atlanta’s Mixed Experiences* 75–84 (May 5, 2011), https://smartech.gatech.edu/bitstream/handle/1853/40790/JoshuaHerndon_Mixed-Use%20Development%20in%20Theory%20and%20Practice.pdf (discussing Atlanta’s experience and Glenwood Park project). For a discussion of a major mixed-use development project in Las Vegas, see Patrick J. Kiger, *Solution File: UnCommons Addresses Walkable Urbanism, Mixed Use in Las Vegas*, URB. LAND (Sept. 6, 2022), <https://urbanland.uli.org/development-business/solution-file-uncommons-addresses-walkable-urbanism-mixed-use-in-las-vegas/>.

² See *Founding Philosophy*, GLENWOOD PARK, <https://www.glenwoodpark.com/philosophy?s=0.0.0.6078>. Glenwood Park is built according to green building principles and houses, and it hosts office space for over 1,000 residents and workers. There are five restaurants, a dentist, a gym, and a clothing retailer located onsite. Glenwood Park self-identifies as an exemplar of New Urbanism. See *Development Principles*, GLENWOOD PARK, <https://www.glenwoodpark.com/info/7391?s=0.0.0.6078>.

³ See Karen Jordan, *San Diego County’s Urban Revival*, URB. LAND (Apr. 7, 2022), <https://urbanland.uli.org/development-business/san-diego-countys-urban-revival/>. Some examples of San Diego mixed use development projects include “West,” a thirty-seven story building that combines office, residential, and retail uses at the previous site of the county courthouse, the redevelopment of Horton Plaza, a project along San Diego Bay, and the redevelopment of the former campus of the Thomas Jefferson School of Law. See Ray Huard, *Mixed-Use West Project Includes \$80M Tunnel*, SAN DIEGO BUS. J. (Mar. 7, 2022), <https://www.sdbj.com/real-estate/construction/mixed-use-west-project-includes-80m-tunnel/>; see also Diana Ionescu, *San Diego County Development Turns Inward*, PLANETIZEN (Apr. 10, 2022), <https://www.planetizen.com/news/2022/04/116786-san-diego-county-development-turns-inward>.

and public space. Mixed-use development has transformed and revitalized the real estate industry, but has also upended zoning practice.

A wide array of zoning alternatives is available for mixed-use development, but there has been little appreciation of how they function, how zoning requirements should differ with different types of mixed-use developments, and their advantages and disadvantages. This Article fills this gap.

Zoning for mixed-use development is market related, and important decisions must be made on how zoning should control market development. A minimal zoning strategy provides an opportunity for mixed-use development projects but allows developers to make the development decisions, such as what mix of land uses is allowed. More comprehensive zoning is required if a municipality wants to control the design and character of planned mixed-use developments, which can be done through a variety of zoning techniques, such as design review. Another important choice for any zoning regulation is whether mixed-use development can occur by right, or whether it will require approval through discretionary review. This Article provides a roadmap to help lawyers navigate the decisions that must be made to tailor zoning alternatives to the different types of mixed-use developments that occur in the market.

Part II defines mixed-use development, considers variable applications of that definition, and then discusses its social objectives, including housing cost, diversity, and internal trip capture. Part III explains the particular land use issues that arise in planning mixed-use developments. Part IV explains how to change zoning ordinances to better facilitate and regulate mixed-use development. Part V catalogues four different approaches to mixed-use development regulation and oversight, discussing planned unit development, design guidelines and standards, form-based zoning, and zoning alternatives. Part VI discusses special purpose applications for mixed-use development for transit-oriented development, mall redevelopment, and live/work units.

II. THE CONCEPT AND OBJECTIVES OF MIXED-USE DEVELOPMENT

A. Defining “Mixed Use”

Jill Grant, who has extensively studied mixed-use development, explains that “[m]ixed use’ has become a mantra in contemporary planning, its benefits taken for granted.”⁴ She claims that mixed use

⁴ Jill Grant, *Mixed Use in Theory and Practice*, 68 J. AM. PLAN. ASS’N 71, 71 (2002).

provides an urban environment active at all hours, a greater range of housing choice that increases affordability and equity, and a reduction in the environmental effects from the use of automobiles by reducing car ownership and use.⁵ Mixed use forms part of a strategy for sustainable development and good urban form⁶ with the objectives of attaining economic vitality, social equity, and environmental quality.⁷

Mixed-use development is not a standardized product.⁸ “It can differ by the nature and combination of uses, the dimension in which the uses are being mixed, the scale at which the mix of uses is occurring, and the urban texture that is created both within the development and throughout the surrounding area.”⁹ Professor Grant finds at least three conceptual levels for mixed-use development: increasing the intensity of land use, increasing the diversity of uses, and integrating segregated uses.¹⁰

There is no universally accepted definition of mixed-use development. The definition differs depending on how land-use categories are defined, how a functional measurement of land use mix is selected, and the scale of geographic analysis, as land use diversity and intensity may differ at regional, neighborhood, street block, or even building levels.¹¹ A definition by several national development organizations captures the essentials. They define mixed-use development as “a real estate project with planned integration of some combination of retail, office, residential, hotel, recreation or other functions” that “is pedestrian-oriented and contains elements of a live-work-play environment. It maximizes space usage, has

⁵ See *id.* at 72–73 (providing that mixed use is an urban environment active at all hours, a greater range of housing choice that increases affordability and equity, and a reduction in car ownership and use with an increased use of pedestrian and transit use that alleviates the environmental effects of automobile use).

⁶ See MONTGOMERY CNTY. PLAN. COMM’N, VILLAGE MIXED USE DISTRICT 8–9 (2010), https://www.montcopa.org/DocumentCenter/View/4105/village_mixed_use_district_Dec2010_web?bidId= (discussing benefits of mixed-use development, such as “providing an ability to walk to destinations . . . providing a greater sense of community . . . providing more attractive nonresidential development,” and “decreasing external motor vehicle trips on external roads”).

⁷ See Grant, *supra* note 4, at 73.

⁸ See Herndon, *supra* note 1, at 21.

⁹ *Id.*

¹⁰ See *id.* at 22.

¹¹ See Herman Geyer & Lyle Quin, *Social Diversity and Modal Choice Strategies in Mixed Land-Use Development in South Africa*, 101 S. AFR. GEOGRAPHICAL J. 1, 4 (2019) (discussing definition).

amenities and architectural expression and tends to mitigate traffic and sprawl.”¹²

Mixed-use development can be planned or unplanned, deliberate or spontaneous. The Urban Land Institute (ULI) defines mixed-use development in a way that anticipates a mixture of uses resulting from a deliberate process. ULI defines a mixed-use development as three¹³ or more significant revenue-producing uses with significantly integrated physical and functional project components that are developed in conformance with a coherent development strategy and plan.¹⁴ Mixed-use development plans are more complex than for single-purpose development and typically contain a wide collection of materials such as “the types and scale of land uses, permitted densities, and general areas on the site where different types of development are to occur.”¹⁵

¹² INT’L COUNCIL SHOPPING CTRS. ET AL., WHAT EXACTLY IS MIXED-USE? (2006), quoted in James R. DeLisle & Terry V. Grissom, *An Empirical Study of the Efficacy of Mixed-Use Development: The Seattle Experience*, 21 J. REAL EST. LITERATURE 25, 25–26 (2013); see Herndon, *supra* note 1, at 10–16 (discussing definitions); *Don’t Get Mixed Up on Mixed-Use*, PLACE MAKERS (Apr. 4, 2013), www.placemakers.com/2013/04/04/mixed-up-on-mixed-use (“[M]ixed-use makes for three-dimensional, pedestrian-oriented places that layer compatible land uses, public amenities, and utilities together at various scales and intensities. This variety of uses allows for people to live, work, play and shop in one place, which then becomes a destination for people from other neighborhoods”). But see Qing Shen & Feiyang Sun, *What Makes Mixed-Use Development Economically Desirable?* 4 (Lincoln Inst. Land Pol’y, Working Paper No. WP2P20QS1, 2020), <https://www.lincolninst.edu/publications/working-papers/what-makes-mixed-use-development-economically-desirable> (criticizing the definition of mixed use as “the number of primary uses occupying the same geographic location,” arguing that “mixed use as a concept remains somewhat ambiguous in scholarly writings and professional documents,” and characterizing “mixed use by three main dimensions: urban functionalities, spatial arrangement and morphology, and last but not least institution and financing”).

¹³ Some definitions require only two or more uses. See Guang Tian et al., *Traffic Generated by Mixed-Use Developments—A Follow-up 31-Region Study*, TRANS. RSCH. PART D 1, 3 (2020) (on file with author) [hereinafter Tian et al., *31-Region Study*].

¹⁴ See URB. LAND INST., MIXED USE DEVELOPMENT HANDBOOK 4–5 (2d ed. 2003).

¹⁵ *Id.* at 6; see DANIEL R. MANDELKER, AM. PLAN. ASS’N, PLANNING ADVISORY SERV. REP. NO. 545, PLANNED UNIT DEVELOPMENTS 32–34 (2007) [hereinafter PLANNED UNIT DEVELOPMENTS] (discussing concept plans, and including diagram of Kiley Ranch Concept Plan); Daniel R. Mandelker, *New Perspectives on Planned Unit Developments*, 52 REAL PROP. TR. & EST. L.J. 229, 257–60 (2017) [hereinafter *New Perspectives*] (discussing concept and development plans).

Mixed-use development plans can cover a subarea, such as a downtown¹⁶ or another subarea,¹⁷ an activity center,¹⁸ or a neighborhood.¹⁹ They can be included in a comprehensive plan²⁰ and adopted as a concept plan for a master planned community.

Despite the Urban Land Institute's definition, mixed-use development also, of course, can be unplanned, "often resulting from the separate, unrelated actions of several different developers."²¹ Unplanned mixed-use development may occur in the absence of interfacing with zoning authorities as long as there is sufficiently flexible zoning applicable to the area that authorizes a mixture of uses. For example, Mukilteo, Washington invites this sort of spontaneous, mixed-use development in designated mixed-use districts. In Mukilteo, a mixed-use district is intended to accommodate and foster pedestrian usage by combining commercial/retail uses and residential uses in the same buildings or in close vicinity of each other.²²

¹⁶ See, e.g., CITY OF ROCKVILLE, ROCKVILLE TOWN CENTER MASTER PLAN (2001); see also COMPREHENSIVE PLAN OF THE CITY OF ROCKVILLE, MARYLAND 254 (Aug. 2, 2021), <https://www.rockvillemd.gov/DocumentCenter/View/42694/City-of-Rockville-Comprehensive-Plan---Combined---single-page-SQUARE?bidId=> (including policies in the Town Center Master Plan).

¹⁷ See, e.g., ARLINGTON CNTY., VA., CLARENDON AREA PLAN (2006), <https://arlington.va.s3.dualstack.us-east-1.amazonaws.com/cbo/2006/may/0520/45a-att.pdf#:~:text=A%20area%20plan%20for%20the%20Clarendon%20area%20was,urban%20design%20guidelines%20for%20future%20redevelopment%20in%20Clarendon> (proposing mixed-use development in urban transit village).

¹⁸ See, e.g., MIAMI TWP., OHIO, DAYTON MALL AREA MASTER PLAN (2015), <https://www.miamitownship.com/308/Dayton-Mall-Area-Master-Plan>.

¹⁹ See Herndon, *supra* note 1, at 75 (showing master plan of Glenwood Park).

²⁰ A state can mandate adoption of a comprehensive plan, require that zoning ordinances must be consistent with the plan, require consistency with a plan if a plan has been adopted, or not require consistency even with an adopted plan. See Edward J. Sullivan & Matthew J. Michel, *Ramapo Plus Thirty: The Changing Role of the Plan in Land Use Regulation*, 35 URB. LAW. 75 (2003); Edward J. Sullivan, *The Evolving Role of the Comprehensive Plan*, 32 URB. LAW. 813, 822–23 (2000) (noting trend toward accepting a plan as the criterion for evaluating land use regulations and actions).

²¹ URB. LAND INST., *supra* note 14, at 6.

²² See MUKILTEO, WASH., MUN. CODE § 17.25.010 (2003), <https://www.codepublishing.com/WA/Mukilteo/#!/Mukilteo17/Mukilteo1725.html#17.25> (stating the purpose for the ordinance).

Mixed-use developments can also be vertical or horizontal.²³ Vertical mixed-use development is the mixing of uses in a single building, usually ground floor commercial use and residential upper stories.²⁴ Vertical mixed-use development can occur in a single standalone building, or in buildings that are part of a horizontal mixed-use development. It requires specialized zoning.²⁵ Horizontal mixed use-development is the integrated mixing of uses in more than one building.²⁶ This Article considers horizontal mixed-use development.

B. The Goals of Mixed-Use Development

The success of mixed-unit developments can be measured by how it achieves expected social objectives.²⁷ Although several social objectives

²³ For a study of vertical mixed-use development in Maryland, see HR&A ADVISORS, INC., MONTGOMERY COUNTY MIXED-USE DEVELOPMENT STUDY (2021), https://montgomeryplanning.org/wp-content/uploads/2021/07/Montgomery-County-Mixed-Use-Study-7-12-21_FINAL.pdf. The study identified the following success factors: sustainability, walkability, authenticity, convenience, flexibility, and inclusion. *See id.* at 71.

²⁴ *But see* Email from Donald Elliott, Dir. Clarion Assocs., to author (Oct. 11, 2021, 18:06 CST) (on file with author) (“[Y]ou do not need to require vertical mixes of uses to get the advantage of mixed-use development, so we don’t require it”).

²⁵ *See* AUSTIN, TEX., LAND DEV. CODE § 4.32022 (2022), https://library.municode.com/tx/austin/codes/land_development_code?nodeId=TIT25LADE_CH25-2ZO_SUBC_HAPTER_EDESTMIUS_ART4MIUS_S4.3VEMIUSBU (containing extensive regulations for vertical mixed use, including that “[a] use on the ground floor must be different from a use on an upper floor,” a commercial space requirement for street frontage, dimensional requirements, and compatibility and neighborhood standards).

²⁶ The Urban Land Institute divides mixed-use developments into mixed-use towers, integrated multi-tower structures, and mixed-use town centers, urban villages, and districts. The first two categories are examples of vertical mixed-uses. The third category is an example of horizontal mixed uses. Integrated tower structures are buildings and towers that are architecturally connected. *See* URBAN LAND INST., *supra* note 14, at 6–8. For a history of mixed-use development, *see id.* at 6–28.

²⁷ Canadian studies by Professor Grant found difficulties in early mixed-use developments. *See* Jill Grant, *Encouraging Mixed Use in Practice*, in INCENTIVES, REGULATIONS, AND PLANS: THE ROLE OF STATES AND NATION-STATES IN SMART GROWTH PLANNING 58 (Gerrit Jan Knaap et al. eds., 2005) (discussing problems with mixing, including social diversity, and the framework for urban development); *see also* Grant, *supra* note 4 (examining mixed-use development in nine cities). She also found suburban opposition to increased density and mix. *See* Jill L. Grant et al., *Path Dependencies Affecting Suburban Density, Mix, and Diversity in Halifax*, 63 CANADIAN GEOGRAPHER 240, 243 (2019) (noting that contemporary suburbs remained relatively low-density, auto-oriented, and segregated); *see also* Kirk Brewer & Jill L. Grant, *Seeking Density and Mix in the Suburbs: Challenges for Mid-Sized Cities*, 16 PLAN. THEORY & PRAC. 151 (2015),

could be identified as metrics for measuring the positive impact of mixed-use development, this section focuses on just three: internal trip capture, which indicates success in internalizing trips within a mixed-use development; housing cost issues; and racial and income diversity.

1. Internal Trip Capture

Internalizing trips is a key social objective in mixed-use development. Internal trip capture,²⁸ which has been heavily studied, is the measure of the number of trips that begin and end in a development.

Internal trip capture is the portion of trips generated by a mixed-use development that both begin and end within the development. The importance of internal trip capture is that those trips satisfy a portion of the total development's trip generation and they do so without using the external road system.²⁹

Calculating an internal trip capture rate requires building a predictive model³⁰ with acceptable quantitative variables that can predict the number

<http://dx.doi.org/10.1080/14649357.2015.1011216> (describing study finding opposition to higher densities and mixed-use development in mid-sized city, little incentive for more compact neighborhoods).

²⁸ A related and important factor to consider is traffic generation, or the amount of external traffic generated by a mixed-use development. Traffic generation creates concerns about congestion, community image and character, public health, and safety. Estimates of traffic generation have important supply-side impacts because they affect project design and costs, such as street widths, parking supply, access point design, and the design and cost of ancillary infrastructure such as storm water drainage systems. Space available for revenue-producing uses is limited by overdesigned traffic elements. See Reid Ewing et al., *Traffic Generated by Mixed-Use Developments—Six-Region Study Using Consistent Built Environmental Measures*, 137 J. URB. PLAN. & DEV. 248, 249 (2011). For a discussion of the methodology issues that occur in estimating trip generation, see John Gard & Corwin Bell, *Still Getting Trip Generation Right: Revalidating MXD+*, PAS MEMO Nov.-Dec. 2020.

²⁹ BRIAN S. BOCHNER & BENJAMIN R. SPERRY, INTERNAL TRIP CAPTURE ESTIMATOR FOR MIXED-USE DEVELOPMENTS (Dec. 2007), <https://static.tti.tamu.edu/tti.tamu.edu/documents/5-9032-01-1.pdf#:~:text=Internal%20trip%20capture%20is%20the%20portion%20of%20trips,do%20so%20without%20using%20the%20external%20road%20system> (Abstract) (explaining report).

³⁰ Recent model building innovation has questioned traditional models that discounted internal capture and has built improved models that predict more accurately. See Tian et al., *31-Region Study*, *supra* note 13, at 3–5 (discussing methodology that includes the selection of mixed-use developments, data sources and variables, and multilevel logistic

of trips that are internal to a mixed-use development.³¹ It is a significant measure of walkability.

There is no agreement on an optimal trip capture rate, and studies of internal trip capture in mixed-use developments produced mixed results. One set of studies examined a substantial number of mixed-use developments in a large number of regional areas.³² Results varied significantly,³³ and internal trip capture rates were as low as seven percent and as high as forty-seven percent.³⁴

Another study found that larger, denser, and more walkable mixed-use developments had a higher internal capture rate than conventional suburban developments, and that well-designed mixed-use developments

regressions that modeled three travel outcomes: choice of internal destination, choice of walking on internal trips, and choice of walking, biking, transit, or auto on external trips; variables included demographics, density, development scale, design, destination accessibility, and distance to transit); *see also* Ewing et al., *supra* note 28, at 249–51 (discussing methodology).

³¹ *See* Tian et al., *31-Region Study*, *supra* note 13, at 9–11 (explaining variables); *see also* Guang Tian et al., *Traffic Generated by Mixed-Use Developments: Thirteen-Region Study Using Consistent Measures of Built Environment*, TRANS. RSCH. REC., at 116, 123–24 (2015) (on file with author) [hereinafter Tian et al., *13-Region Study*] (same).

³² *See* Tian et al., *31-Region Study*, *supra* note 13; Tian et al., *13-Region Study*, *supra* note 31; *see also* Ewing et al., *supra* note 28. An Austin study examined 42 mixed-use developments that varied widely in size from 25 to 550 acres. *See* MING ZHANG ET AL., TRIP INTERNALIZATION AND MIXED-USE DEVELOPMENT: A CASE STUDY OF AUSTIN TEXAS 20 (2009), https://rosap.ntl.bts.gov/view/dot/17811/dot_17811_DS1.pdf?download-document-submit=Download (inventory table of sites). The size and type of the project were not included as variables. *See id.* at 21 (Urban Form Variable Definition Table). The study found that mixed-use developments had a 40% higher internal rate of capture than developments that were not mixed use. *See id.* at 61. The study found that “[o]n the role of urban form attributes, population and job densities at origins and destinations influence travel mode choice independent from the effects of system performance and socio-demographic factors. Network connectivity and sidewalk provision also matter.” *Id.*

³³ The most recent study examined 622 mixed-use developments and used development scale or size, density, diversity, design, and distance to transit as variables, but did not distinguish between unplanned and planned mixed-use developments. *See* Tian et al., *31-Region Study*, *supra* note 13.

³⁴ *See* Ewing et al., *supra* note 28, at 152 (finding great variation in internal capture rates among mixed-use developments and from region to region; average internal capture rates varied from a low of 15.9% to a high of 31.1%). In the most comprehensive study, internal capture rates ranged from a low of 0% in Provo-Orem, Utah to a high of 47.1% in Syracuse, New York. *See* Tian et al., *31-Region Study*, *supra* note 13, at 5. The internal capture rate average was 7.4%, and the highest was 35%. *See id.* at 43. The internal capture rate average in an Austin study was 7.4%, and the highest was 35%. *See* ZHANG ET AL., *supra* note 32, at 43. In another study, mixed-use development had a 40% higher internal rate of capture than conventional development. *See id.* at 61.

had walk shares of more than fifty percent on internal trips.³⁵ Studies also found that internal trip capture gained from a high value for job to population balance that translated into more opportunities to live and work on site, and from high intersection density that increased routing options, made routes more direct, and created frequent street crossing opportunities.³⁶ Larger mixed-use developments may have higher trip captures because they capture more destinations on site.³⁷ These findings can provide the basis for design guidelines that help produce good internal trip capture rates.

Even if a mixed-use development does not have a high internal trip capture rate, it can be environmentally beneficial because it offers people more options to live near their work or school that is not in their development. Trips can be shorter even though a development does not reduce trips through internal trip capture.³⁸

2. Housing Cost

“Mix is a necessary but not sufficient condition for achieving good community.”³⁹

An important community issue is whether residents in mixed-use developments pay a housing premium.⁴⁰ Studies are limited, and the issue is complicated because housing cost premiums vary with the type of mixed-use development studied and its location. A Dutch study of mixed-use neighborhoods in Rotterdam that did not include mixed-use development found that a good mixture of land uses can increase housing costs by

³⁵ See Tian et al., *31-Region Study*, *supra* note 13 (summarizing findings in abstract).

³⁶ See *id.* at 5–6; see also Tian et al., *13-Region Study*, *supra* note 31, at 120–21; Ewing et al., *supra* note 28, at 255 (explaining that odds of an internal trip decline with household size and vehicle ownership per capita for home-based work trips and increase with job-population balance; odds of internal capture for home-based other trips decline with household size and vehicle ownership per capita and increase with a development’s land area, job-population balance, and intersection density).

³⁷ See Tian et al., *31-Region Study*, *supra* note 13, at 5.

³⁸ See Email from Donald Elliott, Dir., Clarion Assocs., to author (Aug. 29, 2021, 13:28 CST) (on file with author).

³⁹ Jill Grant, *The Challenges of Achieving Social Objectives Through Mixed Use*, in *NEW URBANISM AND BEYOND: THE FUTURE OF URBAN DESIGN* 86, 91 (Tigran Haas ed., 2008).

⁴⁰ Studies have also considered the externalities of mixed-use development on property values at the neighborhood level. See Shen & Sun, *supra* note 12, at 15–18 (discussing studies showing mixed results).

up to six percent compared to the cost of homes in monofunctional areas.⁴¹ A Toronto study that focused primarily on high-rise condominiums in the downtown core found that housing costs were fifty-nine percent and sixty-four percent higher in mixed-use zones when compared with costs for owning and renting in the metropolitan region.⁴²

Housing costs in mixed-use developments are offset by lower transportation costs. An extensive study of 337 metropolitan regions found that households in more compact neighborhoods enjoyed combined housing and transportation cost savings equivalent up to a ten to twenty percent increase in pre-tax income.⁴³ Remedial measures can mitigate housing cost issues through community affordable housing programs⁴⁴ or by requiring mixed-use developments to provide affordable housing.⁴⁵

3. Diversity

Advocates of compact, high-density mixed-use development claim it increases diversity by spatially integrating various racial and income groups.⁴⁶ There is some support for this claim. Compared with residents

⁴¹ See Hans R.A. Koster & Jan Rouwendal, *The Impact of Mixed Land Use on Residential Property Values*, 52 J. REG'L SCI. 733, 753 (2012).

⁴² See Markus Moos et al., *Planning for Mixed Use: Affordable for Whom?*, 84 J. AM. PLAN. ASS'N 7, 15 (2018). The study period ran from 1991 to 2006. Toronto experienced growing income inequality as low-income earners moved from downtown to the inner suburbs. Areas with increasing social status were mostly in central downtown locations and connected to transit. *See id.* at 11.

⁴³ See TODD LITMAN, VICTORIA TRANSP. POL'Y INST., EVALUATING TRANSPORTATION LAND USE IMPACTS: CONSIDERING THE IMPACTS, BENEFITS AND COSTS OF DIFFERENT LAND USE DEVELOPMENT PATTERNS 20 (July 14, 2022) (finding that households in automobile dependent areas devote more than twenty percent of annual household expenditures to transportation, while those in smart growth communities spend less than seventeen percent, and that vehicles tend to depreciate much more than housing).

⁴⁴ See Amrita Kulka et al., *How to Increase Housing Affordability? Understanding Local Deterrents to Building Multifamily Housing* 34–35 (Fed. Rsrv. Bank of Bos. Rsch. Dep't Working Paper No. 22-10 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4082457.

⁴⁵ A commitment to affordable housing can be required when a mixed-use development is approved as a planned unit development. *See* PLANNED UNIT DEVELOPMENTS, *supra* note 15, at 88–89 (discussing affordable housing requirements). This requirement may be effective only in projects large enough to support an affordable housing contribution.

⁴⁶ See Geyer & Quin, *supra* note 11, at 5; *see also* ARLINGTON, VA., MISSING MIDDLE HOUSING STUDY: EXPANDING HOUSING CHOICE (May 2, 2022), https://www.arlingtonva.us/files/sharedassets/public/housing/documents/missing-middle/mmhs-phase-2-public-presentation_05.02.pdf (recommending to “[m]aintain and expand valued neighborhood features: diversity, connection with neighbors, walkability” as community priorities).

of car-oriented suburbs, residents of walkable, mixed-use neighborhoods have increased community cohesion. They are more likely to know their neighbors, participate politically, trust others, and be socially engaged.⁴⁷ A South African study found that mixed-use development significantly increases diversity, income equality, mixed tenure, diversity of modal choices, public motorized transportation, non-motorized transportation, and decreases private motorized transportation.⁴⁸

III. PLANNING CONSIDERATIONS FOR MIXED-USE DEVELOPMENT

Walkability, a multilayered public realm, inclusive living choices, and an authenticity that defines a community and its setting are critical for planned mixed-use development.⁴⁹ Walkability,⁵⁰ density,⁵¹ and compact-

⁴⁷ See LITMAN, *supra* note 43, at 34 (quoting Kevin M. Leyden, *Social Capital and the Built Environment: The Importance of Walkable Neighborhoods*, 93 AM. J. PUB. HEALTH 1546, 1551 (2003), <https://ajph.aphapublications.org/doi/10.2105/AJPH.93.9.1546>).

⁴⁸ See Geyer & Quin, *supra* note 11, at 1–2.

⁴⁹ See David Dixon, *Planning*, in SUBURBAN REMIX 252–64 (Jason Beske & David Dixon eds., 2018). The Urban Land Institute’s mixed-use development publication discusses urban design and place-making and suggests starting with public spaces and the circulation system discussing central organizing elements, the general configuration and approach to the integration of uses, design approach and philosophy, connection to surrounding uses, visual orientation and pedestrian circulation, landscape and streetscape, and signage. See URB. LAND INST., *supra* note 14, at 174–88. The entire development must present an attractive and coherent urban design image and architectural profiles. Much of this guidance may require the adoption of design guidelines.

⁵⁰ See Ann Forsyth, *What Is a Walkable Place? The Walkability Debate in Urban Design*, 30 URB. DESIGN INT’L 274, 281 (2015), <https://link.springer.com/article/10.1007/s12015-015-22> (“A related but slightly different definition of a place being walkable is that destinations are close enough to get to in a reasonable time on foot. Thus the compact place—with a high density or proximity of destinations and people—is a walkable place.”). This definition focuses on distance and destinations. See *id.* Whether a mixed-use community succeeds as a walkable place depends on other factors, such as whether it is physically enticing. See *id.* at 282–83.

⁵¹ See generally URB. LAND INST., COMPACT DEVELOPMENT: CHANGING THE RULES TO MAKE IT HAPPEN 16 (2006) [hereinafter COMPACT DEVELOPMENT] (arguing that density depends on context, and that the density of compact development can range from moderate to very high). *But see* ABT ASSOC., INC., RESEARCH ON FACTORS RELATING TO DENSITY AND CLIMATE CHANGE 5 (2010) (on file with author) (finding link between density and climate change but “relationship is affected by a complex set of interactions between density and at least a dozen factors, such as socioeconomic characteristics of residents, the availability of public transit, neighborhood accessibility to jobs and services, and the time and cost of various forms of transit”).

ness⁵² must be integrally connected and central in order to promote retail space and the other factors that mark successful urban places.⁵³ Walkability is the defining threshold ingredient,⁵⁴ and “[a] walkable urban place needs a critical mass of people, disposable income, and activity to draw the full community and function as a center for community life.”⁵⁵

A. Retail Use

Retail space is a major challenge. Decisions must be made on what to put in the land use mix, providing design detail where it is needed, learning how markets work, and supporting zoning for active uses.⁵⁶ Providing successful retail space is complicated by changes in retail marketing, especially the rise in e-commerce,⁵⁷ the decline in auto-oriented mass market retail, and an increasing focus on food and drink with niche retail that responds to the values and tastes of the surrounding community.⁵⁸ Adaptation is necessary.

A choice must be made between destination and local retail. Destination retail⁵⁹ relies on a customer base located outside a mixed-use

⁵² See COMPACT DEVELOPMENT, *supra* note 51 (discussing inevitability of and rules for compact development).

⁵³ See Email from David Dixon, Vice President, Stantec Urb. Places Fellow, to author (Mar. 22, 2022, 12:31 CDT) (on file with author).

⁵⁴ See Dixon, *supra* note 49, at 247.

⁵⁵ *Id.* Human connection and connectivity are the critical ingredients for economic competitiveness. Walkability nurtures these qualities. See *id.*; see also ADRIENNE SCHMITZ & JASON SCULLY, CREATING WALKABLE PLACES 16–18 (Urb. Land Inst. 2006) (discussing requirements for walkability).

⁵⁶ See Interview with David Dixon, Vice President, Stantec Urb. Places Fellow (Sept. 29, 2021) (explaining land mix issues) (on file with author). There are three conventional retail categories: neighborhood goods and services; food and beverage; and general merchandise, apparel, furniture, and other. See Bobby Boone & Rick Liu, *Planning for a Resilient Retail Landscape*, PAS MEMO, Jan./Feb. 2020, at 2. General merchandise retailers often draw from a larger geography than the other categories. See *id.*

⁵⁷ See Boone & Liu, *supra* note 56, at 2–4 (discussing the changing world of retail real estate and noting that shopping online has advantages of choice, cost, convenience, and control).

⁵⁸ See Email from David Dixon, *supra* note 53.

⁵⁹ Destination retail may create design problems because these businesses often are “formula” businesses that are required to have a uniform chain-wide design. Uniformity requirements may include uniform exteriors, architecture, and signs that can conflict with the design selected for a mixed-use development. See Patricia E. Salkin, *Municipal Regulation of Formula Businesses: Creating and Protecting Communities*, 58 CASE W.

development; can be expected to survive only in top-tier, highest-trafficked locations;⁶⁰ and can have criteria for identifying locations⁶¹ that may not include mixed-use developments. Some mixed-use developments decide to include only local, independent, community-based retail,⁶² which has been recommended.⁶³

Density is an important issue because residential density must be high enough to support walkability. A compact, walkable urban village is recommended that has a radius based on how far people will travel.⁶⁴ The radius should be less than a half-mile in order to encourage utilitarian

RES. L. REV. 1251, 1272–77 (2008) (noting that the definition of formula business can be troublesome and that some definitions emphasize the common or uniform attributes of a business, quoting a definition that includes common architecture, exterior design, or sign). A municipality can prohibit or limit the location of formula businesses or require approval of a special permit that will allow the municipality to review design features. See Dina Botwinick et al., *Saving Mom and Pop: Zoning and Legislating for Small and Local Business Retention*, 18 J.L. & POL'Y 607, 619–22 (2010) (discussing ordinances restricting formula businesses); Salkin, *supra* note 59, at 1273–75; see also *Mead Square Commons, LLC v. Vill. of Victor*, 948 N.Y.S.2d 514, 516 (N.Y. App. Div. 2012) (upholding an ordinance prohibiting formula fast food restaurants with standard method of operation, including standardized menus). For a discussion of the legal problems raised by a formula business regulation, see DISCRETIONARY LAND USE CONTROLS § 8:67–:79 (2021) [hereinafter DISCRETIONARY CONTROLS].

⁶⁰ See Boone & Liu, *supra* note 56, at 8.

⁶¹ See, e.g., Email from John Mandelker, Partner, Arch Equity Partners, to author (Feb. 1, 2022, 16:22CDT) (on file with author) (discussing location criteria for music stores; realized standard demographics did not correlate with success, created own “psych-demographics” identifying three types of locations: mixed-income urban settings, college towns, and well-off areas; middle class Ville areas did not work out, lacked diversity, disposable income, and interest in music).

⁶² See, e.g., Interview with Stuart Meddin, Owner, The Meddin Co. (Jan. 28, 2022) (discussing moderate-sized, inner city mixed-use residential and retail development, where developer allowed only community oriented, nonchain, noncredit retail based on community need) (on file with author); *Project Overview*, RIVERWALK SAN DIEGO, https://riverwalksd.com/project_overview/ (discussing “balanced, mixed-use community with a large new public park, residential living, community-oriented retail uses, new transit access, and office space”).

⁶³ See Boone & Liu, *supra* note 56, at 9 (“Encourage growth of local, independent retail—whether through regulations or incentives—as it is more resilient against e-commerce, improves the retail mix, and contributes to the local economy.”); Jennifer Gerend, *Getting Local Chains in the Mix*, PLANNING, Jan. 2004, at 18.

⁶⁴ See Telephone Interview with Lee Einsweiler, Founding Principal, Code Studio, (Aug. 27, 2021).

walking trips less than ten minutes in duration.⁶⁵ This development model⁶⁶ requires an urban village with a density of 5,000 to 10,000 residents, or 2,000 to 4,000 homes in a 250- to 350-acre walkshed.⁶⁷ Office space can also provide retail support, but an office area requires twice as much space to support the same amount of retail space.⁶⁸ Some developers do not rely on fixed formulas but use intuitive judgment to decide on the size retail space and what it should contain.⁶⁹

⁶⁵ To ensure minimum residential densities, development can be delayed until there is the required minimum density within a five-minute walk. *See* Email from Donald Elliott, Dir., Clarion Assocs., to author (Jan. 31, 2022, 10:11 CST.) (on file with author). The ordinance can also “require a public hearing before a planning board or other appointed body to let them decide whether an exception to the . . . [walkability requirement] should be made based on objective criteria about whether the surrounding community (beyond a 5 minute walk) is underserved for the type of retail the applicant is proposing.” *Id.* This is not the preferred option. *See id.* Whether these decisions can be made administratively will depend on how the zoning ordinance is structured and how the courts interpret it. *See* PLANNED UNIT DEVELOPMENTS, *supra* note 15, at 68–69 (discussing phasing in planned developments).

⁶⁶ Recent research on walkability suggests that the walkability circle can be customized as walkability varies significantly across age groups and trip purposes. Walkability for shopping tends to be shortest. *See* Louis A. Merlin et al., *Redrawing the Planners’ Circle: Analyzing Trip-Level Walk Distances Across Two National Surveys*, 87 J. AM. PLAN. ASS’N 470, 473 (2021), <https://www.tandfonline.com/doi/full/10.1080/01944363.2021.1877181> (discussing literature survey and studies in United States and Germany and concluding that planners can customize the size of the walkshed they draw to consider and take into account any primary trip purposes as well as considering any demographic segments that must be taken under consideration); *see also* City of Portland, Or., *5b. 20-Minute Neighborhoods*, PORTLAND PLAN (2022), <https://www.portlandonline.com/portlandplan/index.cfm?a=288098&c=52256> (explaining a mapping analysis of the city that highlighted areas that have relatively good and walkable access to commercial services and good access to amenities).

⁶⁷ *See* Dixon, *supra* note 49, at 247 (recommending that 2,000 to 4,000 housing units located within a five-minute walk are required to provide the critical mass of support for independent, community-oriented retail); *see also* Todd Litman, *Urban Villages: The Key to Sustainable Community Economic Development*, PLANETIZEN BLOG (Jan. 25, 2022, 11:00 AM), <https://www.planetizen.com/blogs/115912-urban-villages-key-sustainable-community-economic-development> (suggesting that sufficient density can be achieved if a third of developable land is devoted to small-lot single-family housing, a third to two to three story missing middle multiplexes and townhouses, and a third to mid-rise, which would be three to six story multifamily residences).

⁶⁸ *See* Dixon, *supra* note 49, at 247.

⁶⁹ *See* Interview with Stuart Meddin, *supra* note 62 (discussing moderate-sized, inner city mixed-use residential and retail development and relying on what retail use was there and what was needed).

Good design and configuration are essential.⁷⁰ Retail space must attract an adequate threshold demand, be compatible with a mix of complementary uses,⁷¹ and be vibrant, pedestrian friendly, and experience-driven with active ground floor space.⁷² A choice must be made on how design should be determined. Developers can be allowed to make design decisions without guidance from the municipality, or the municipality can adopt design guidelines⁷³ for mixed-use developments that cover design issues such as scale, physical form and massing, and building heights, setbacks, and facades.

Vacancy rates can be a problem. An early Seattle study that did not include development size as a variable examined multiple, unplanned, and moderate-size projects distributed throughout the city in response to a zoning change.⁷⁴ Though limited and dated,⁷⁵ its conclusions on vacancy rates are instructive, as it found that forty-seven percent of the commercial space in built mixed-use projects was vacant.⁷⁶

⁷⁰ See Jim Schutz & Kelly Kline, *Getting to the Bottom of Mixed Use*, PLANNING, Jan. 2004, at 16 (“The design and configuration of retail space may determine an entire project’s ultimate success or failure.”).

⁷¹ See JOSEPH S. RABIANSKI & J. SHERWOOD CLEMENTS, MIXED-USE DEVELOPMENT: A REVIEW OF PROFESSIONAL LITERATURE 8–9 (Nov. 2007), [https://www.cdfa.net/cdfa/cdfa/web.nsf/ord/e85f455bb30951708825793600673c68/\\$file/mixed-use.pdf](https://www.cdfa.net/cdfa/cdfa/web.nsf/ord/e85f455bb30951708825793600673c68/$file/mixed-use.pdf) (discussing economic factors, and noting that “[g]enerating and maintaining strong linkages to other land users external to the mixed-use development are also important market factors”) (emphasis omitted).

⁷² See *id.* at 16–17; see also URB. LAND INST., *supra* note 14, at 188–191 (suggesting a central location; good visibility, identity, and access; creating a traditional Main Street retail setting; and good storefront design).

⁷³ See RABIANSKI & CLEMENTS, *supra* note 71, at 19 (noting that communities are considering design guidelines to ensure retail functionality because each developer has a different understanding of what retailers need).

⁷⁴ See DeLisle & Grissom, *supra* note 12, at 26.

⁷⁵ See Shen & Sun, *supra* note 12, at 19 (finding that the study raises more questions than it answers and uses basic empirical analysis); see *id.* at 23 (finding two major limitations exist in existing economic studies of mixed-use development, a disconnection between evaluations at different spatial levels, and a failure to consider the role of institution and organization).

⁷⁶ Sixty-two percent of the tenants of mixed-use projects were not oriented toward serving the immediate neighborhood, and sixty-one percent of the occupants were in either personal or professional services that draw a substantial patronage from outside a development. See DeLisle & Grissom, *supra* note 12, at 39, 44. Location was important. Projects in isolated locations were likely to have high vacancies, while most of the

The Seattle study indicates the importance of vacancy control, and vacancy issues require a municipality's attention to the market. Montgomery County, Maryland does not have a serious problem with vacant storefronts, largely because of an aggressive planning program. "The county regularly studies the local retail market, prepares annual reports analyzing issues within its downtown planning districts, and maintains flexibility about what constitutes 'active ground-floor uses.'"⁷⁷ Municipalities should also require an analysis of market conditions by requiring developers to submit an economic feasibility study that a municipality can use when deciding whether to approve a mixed-use development.⁷⁸ Zoning for mixed-use development is market-related.

Retail is fluid.⁷⁹ Decreasing demand due in part to an increase in e-commerce, shifts in retail use, and problems with retail turnover require adaptation⁸⁰ and flexibility that can anticipate changes in retail space.⁸¹ Flexibility includes redevelopment to replace anchor and large space stores that close with smaller and more adaptable retail space,⁸² and design

successful mixed-use buildings appeared to be located in core locations or on main core business streets. *See id.* at 39.

In some cases, these new projects were located in Urban Villages, which were set up as nuclei within the broader market, while in others they were located outside of such areas of concentration along major corridors and arterials, which were more dependent on secondary and tertiary market support than the proximate trade area assumed by most advocates of mixed-use projects.

Id.

⁷⁷ Tom Smith, *Activating Ground Floors in Mixed-Use Buildings After COVID*, ZONING PRAC., Aug. 2022, at 4.

⁷⁸ *See* CULVER CITY, CAL., MUN. CODE § 17.400.065(D)(6) (2008), https://code.library.amlegal.com/codes/culvercity/latest/culvercity_ca/0-0-0-54594 ("At the Director's discretion, an economic feasibility study evaluating the viability of the proposed commercial uses within the mixed use development may be required.").

⁷⁹ *See* Schutz & Kline, *supra* note 70, at 21 ("Of all the different land uses, retail is the most fluid.").

⁸⁰ *See* Chris Harris, *Three Rules to Break in Retail Mixed-Use Design*, URB. LAND (May 12, 2021), <https://urbanland.uli.org/economy-markets-trends/three-rules-to-break-in-retail-mixed-use-design/>; Sarah Sieloff, *Creating Models for a More Sustainable Future for Retail*, URB. LAND (Mar. 3, 2021), <https://urbanland.uli.org/economy-markets-trends/creating-models-for-a-more-sustainable-future-for-retail/>.

⁸¹ *See* Schutz & Kline, *supra* note 70, at 21.

⁸² *See* Jon Banister, *With Store Closures, Mall Redevelopments, Tysons Retail Enters a New Generation*, BISNOW (Jan. 10, 2022), <https://www.bisnow.com/washington-dc/news/retail/with-store-closures-mall-redevelopments-and-mixed-use-projects-tysons-retail-is-entering-a-new-generation-111451>.

changes such as smaller storefronts because in-store e-commerce shipments reduce space needs.⁸³

Zoning flexibility can deal with these problems. “Ground floor frontages can be designed and zoned for nonresidential/retail development without requiring that they be occupied by these uses, so that the market can fill or not fill these spaces over time.”⁸⁴ Expanding the permitted nonresidential use list to add additional nonresidential uses such as entertainment and food,⁸⁵ craft brewing, artisan workshops, museums and galleries, shared commercial kitchens, and offices⁸⁶ improves the appeal of nonresidential space and helps to avoid vacancies.

B. Office Use

Mixed-use developments can include office space, which can be integrated with retail space, built separately as individual structures, or included in an office campus. Changing trends in office development⁸⁷ have changed how office development is built. The single purpose suburban office park that once dominated the market is obsolete.⁸⁸ It fell out of favor because of shifting employee preference for a mixed-use environment; employer preference for spaces that are flexible, sustainable, and adaptable to their daily needs and long-term goals; and a preference for projects that appeal to a wider pool of potential tenants.⁸⁹

⁸³ See Boone & Liu, *supra* note 56, at 2, 4, 6 (discussing changing space needs).

⁸⁴ Email from Donald Elliott, Director, Clarion Assocs., to author (Sept. 1, 2022, 12:24 CDT) (on file with author).

⁸⁵ See Boone & Liu, *supra* note 56, at 5–6 (discussing experience-driven retail); Smith, *supra* note 77, at 8–9 (explaining that restaurants were added in Los Angeles).

⁸⁶ See Smith, *supra* note 77, at 7 (discussing changes in an Arlington County, Virginia ordinance; explaining that animal boarding and urban agriculture were also added).

⁸⁷ See Jack Kelly, *We’ll Soon See Office Parks in the Suburbs Catering to Remote and Hybrid Workers*, FORBES (Apr. 13, 2022), <https://www.forbes.com/sites/jackkelly/2022/04/13/well-soon-see-office-parks-in-the-suburbs-catering-to-remote-and-hybrid-workers/?sh=13cb0fa88d73> (explaining changes).

⁸⁸ See NEWMARK GRUBB & KNIGHT FRANK, *SUBURBAN OFFICE OBSOLESCENCE 3* (2015), <https://www.nmrk.com/storage-nmrk/uploads/documents/Suburban-Office-Obsolescence.pdf> (discussing study of five representative suburban markets, finding 14% to 22% of suburban inventory in some stage of obsolescence; incurable factors include floorplate and building size and location); Jeffrey Spivak, *Renovate or Die*, 83 PLANNING 33 (Nov. 2017) (discussing changes in office park development).

⁸⁹ See Arista Strungys & Christopher Jennette, *Modernizing Suburban Office and Industrial Zoning*, ZONING PRAC., Dec. 2014, at 2; see also CHESTER CNTY. PLAN. COMM’N, *REINVENTING OFFICE PARKS FOR THE 21ST CENTURY 9* (2015), <https://chescoplanning.org/>

Zoning changes similar to those suggested for retail space are needed.⁹⁰ They can improve flexibility by simplifying setbacks, increasing allowable building height, allowing mixed uses, and adding design guidelines⁹¹ that can address building form, the relationship of buildings to each other, and unifying architectural details.⁹² Riverwalk in San Diego is primarily a mixed-use office development with limited retail and residential use.⁹³

IV. THE ZONING CHALLENGE

A municipality that wants to adopt a zoning ordinance that can effectively regulate mixed-use development faces a complicated task. Decisions must be made on two important issues. The first issue is whether to allow mixed-use development by right without discretionary review, or whether to allow mixed-use development only after it is approved through a discretionary review. The second issue is whether to rely on zoning that provides only an opportunity for unplanned mixed use development, on zoning that provides detailed design guidance for planned mixed-use development, or a combination of both. This section discusses these issues and begins by discussing the structure of zoning.

[MuniCorner/ComLand/PDF/DocOfficeParks.pdf](#) (noting that walkable environments and a mix of uses is preferred).

⁹⁰ Industrial mixed-use development presents similar challenges. See Strungys & Jennette, *supra* note 89, at 4–5.

⁹¹ See CHESTER CNTY. PLAN. COMM’N, *supra* note 89, at 19–22 (recommending, e.g., diverse uses and building types in zoning, reducing setbacks, increasing building heights, good design elements, and making requirements clear at the beginning of a project); ALLISON ARIEF ET AL., SPUR, RETHINKING THE CORPORATE CAMPUS: THE NEXT BAY AREA WORKPLACE 8, 34 (Apr. 2017), https://www.spur.org/sites/default/files/2017-04/SPUR_Rethinking_the_Corporate-Campus_print.pdf (recommending that “job centers that are denser, include a mix of different uses, encourage people to walk rather than drive and are well-served by public transit are sustainable, efficient and high-performing” and also recommending that municipalities should consider “[c]hanging zoning codes to allow or encourage a denser mix of jobs, housing, retail and open space . . .”); Strungys & Jennette, *supra* note 89, at 2.

⁹² See Strungys & Jennette, *supra* note 89, at 4; see also URB. LAND INST., *supra* note 14, at 194–96 (suggesting good placement and identity and well-designed entrances). For design suggestions on hotels, see *id.* at 196–98.

⁹³ See RIVERWALK SAN DIEGO, SAN DIEGO’S FIRST TRANSIT-ORIENTED VILLAGE, https://riverwalksd.com/wp-content/uploads/2020/06/Riverwalk_FactSheet_061920v2.pdf.

A. The Structure of Zoning

Mixed-use development occurs naturally in the urban environment. It presents a zoning problem because zoning as originally conceived was limited to ensuring that “nearby uses were not harmful to each other,”⁹⁴ and mixed uses could possibly be harmful to each other. Zoning carries out a harm-preventing purpose by separating industrial, commercial, and residential uses,⁹⁵ a practice upheld in an early and influential Supreme Court case.⁹⁶ Use separation is provided through zoning districts authorized under legislation based on the model Standard State Zoning Enabling Act, which most states adopted, and which confers the authority to divide a municipality⁹⁷ into districts to “carry out the purposes of this act,” and within such districts to regulate the construction and use of land.⁹⁸

Non-cumulative zoning is another barrier.⁹⁹ It is not required by the model zoning statute but has become the dominant zoning practice that limits each zoning district to permitted exclusive uses, which are usually a narrow range of uses permitted by right or as a conditional use.¹⁰⁰ Expanding the range of uses allowed in each zoning district can remedy the noncumulative zoning problem, but this change will create a uniformity problem. Zoning statutes based on the model law require that zoning regulations must be uniform throughout a zoning district,¹⁰¹ and allowing

⁹⁴ Lee D. Einsweiler, *Simplifying Zoning*, ZONING PRAC., Jan. 2018, at 2.

⁹⁵ See generally Sonia A. Hirt, *Rooting Out Mixed Use: Revisiting the Original Rationales*, 50 LAND USE POL’Y 134 (2016) (discussing health and safety/environmental, property-base/economic, moral/pastoral v. pro-urban, social equality/populism, and social privilege/exclusion justifications for separating uses).

⁹⁶ See generally *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). This type of zoning is called Euclidean zoning because it is named after the Supreme Court decision.

⁹⁷ In this Article, the term “municipality” means a city, county, township, or town.

⁹⁸ A STANDARD STATE ZONING ENABLING ACT § 2 (U.S. Dep’t of Com. 1926) [hereinafter ZONING ENABLING ACT], <https://cpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/a/3075/files/2022/01/StndZoningEnablingAct1926.pdf>.

⁹⁹ See Michael Allan Wolf, *Zoning Reformed*, 70 U. KAN. L. REV. 171, 195–99 (2021) (discussing noncumulative zoning).

¹⁰⁰ Cumulative zoning allows less restrictive permitted uses in more restrictive zoning districts. This is a clumsy fix for mixed-use development because there is no control over how mixed-use development should be structured. Einsweiler, *supra* note 94, at 6 (criticizing cumulative zoning because “[e]very district is *not* a consolidation of all the less intense uses plus some new more intense ones”).

¹⁰¹ See ZONING ENABLING ACT, *supra* note 98, § 2 (providing that “[a]ll such regulations shall be uniform for each class or kind of buildings throughout each district”).

mixed-use development in a zoning district could violate this requirement. There is some judicial support for a contrary view holding that a mixed-use district does not violate the uniformity requirement if it is reasonable and based on public policy.¹⁰²

Zoning was expected to be self-executing, nondiscretionary, and by right.¹⁰³ Uses within a district were to be permitted by right without discretionary review.¹⁰⁴ The problem is that the by right system of zoning is no longer dominant. All intensive development now occurs through zoning or administrative changes that are “applied for and granted on the threshold of development.”¹⁰⁵ The difficulty is that these administrative changes are not adaptable for mixed-use development. Zoning legislation authorizes the administrative approval only of hardship variances¹⁰⁶ defined by statute, and special exceptions, also known as conditional uses¹⁰⁷ under criteria provided by the zoning ordinance.

Zoning ordinances can also be amended by map amendment,¹⁰⁸ a change in the zoning map that moves a tract of land from a zoning district where it is not permitted to a zoning district where it is permitted.¹⁰⁹ Map

¹⁰² See *Albuquerque Commons P’ship v. City Council of Albuquerque*, 149 P.3d 67, 82 (N.M. Ct. App. 2006) (holding that mixing uses within a zoning district does not violate the uniformity requirement if it is reasonable and based on public policy; approving mixed-use zoning district and discussing cases), *rev’d on other grounds*, 184 P.3d 411 (N.M. 2008). The district must allow the same list of possible uses on all properties in the district.

¹⁰³ See NAT’L COMM’N ON URB. PROBS., *BUILDING THE AMERICAN CITY* 202 (1968), https://ia804508.us.archive.org/13/items/buildingamerican00unit_0/buildingamerican00unit_0.pdf.

¹⁰⁴ The Standard Act did authorize special exceptions, which are uses approved under criteria contained in the zoning ordinance. See ZONING ENABLING ACT, *supra* note 98, § 7.

¹⁰⁵ Jan Z. Krasnowiecki, *Abolish Zoning*, 31 SYRACUSE L. REV. 718, 718 (1980) (emphasis omitted).

¹⁰⁶ See DANIEL R. MANDELKER & MICHAEL ALLEN WOLF, *LAND USE LAW* § 6.37–.49 (6th ed. 2015, updated 2021) (discussing variances). Some states apply a “practical difficulties” standard for area variances. DISCRETIONARY CONTROLS, *supra* note 59, § 2:13.

¹⁰⁷ See ZONING ENABLING ACT, *supra* note 98, § 7; Brian Blaesser, *Special Use Permits: The “Wait-and-See” Weapon of Local Communities*, 21 ZONING & PLAN. L. REP. 69, 69 (1998) [hereinafter *Special Use Permits*].

¹⁰⁸ See ZONING ENABLING ACT, *supra* note 98, § 5.

¹⁰⁹ Zoning map changes are called spot zoning and are reviewed under a set of court-made rules that require consideration of the compatibility of the map change with adjoining property, their public purpose, and their consistency with a comprehensive plan. These factors vary depending on the court and create considerable uncertainty about whether a spot zoning will be approved. See generally Daniel R. Mandelker, *Spot Zoning: New Ideas for an Old Problem*, 48 URB. LAW. 738 (2016) (discussing rules for spot zoning).

amendments can permit mixed-use development, but they are legislative decisions in most states and cannot regulate project detail. Some control of project detail can be obtained in states where conditional zoning¹¹⁰ is authorized, or through floating zones,¹¹¹ which are zoning districts included in the text of a zoning ordinance but mapped only when they are individually approved.¹¹² A mixed-use development district can be adopted as a floating zone.¹¹³ A zoning ordinance also can require the approval of a development plan for a mixed-use development.¹¹⁴

¹¹⁰ See DISCRETIONARY CONTROLS, *supra* note 59, at *Introduction to ch. 7, pt. III* (describing conditional zoning and explaining that “[t]he majority of significant land use and development decisions occur through a government-developer bargaining process that results in the new zoning classification requested by the developer being limited or tailored more specifically to the proposed plan of development”). Judicial acceptance of this zoning technique varies. *See id.* § 7:2–:7.

¹¹¹ “A floating zone is a special detailed use district of undetermined location in which the proposed kind, size and form of structures must be preapproved. It is legislatively predeemed compatible with the area in which it eventually locates if specified standards are met and the particular application is not unreasonable.” *Sheridan v. Plan. Bd. of City of Stamford*, 266 A.2d 396, 404 (Conn. 1969); *see* DISCRETIONARY CONTROLS, *supra* note 59, § 4:6 (discussing legality of floating zones).

¹¹² The Gwinnett County, Georgia, Unified Development Ordinance defines a floating zone as a zone that allows “the property owner or developer to request mixed use at any location that meets a set of criteria that are established in the ordinance.” MIXED-USE DEVELOPMENT (Mar. 1, 2023), https://www.gwinnettcounty.com/static/departments/planning/unified_development_ordinance/pdf/ipa_mixed_use_development.pdf; *see also* Gregory B. Hladky, *More Communities Using ‘Floating Zones’ to Boost Mixed-Use Development*, HARTFORD COURANT (May 28, 2018), <https://www.courant.com/politics/hc-news-farmington-development-20180517-story.html>. *Rodgers v. Village of Tarrytown*, 96 N.E.2d 731 (N.Y. 1951), is an early case upholding a floating zone. The village adopted a textual zone with detailed site and density standards for garden apartments and required at least ten acres. *See id.* at 732. The planning board was authorized to approve a zoning map amendment to place the zone on particular property. *See id.*; *see also* *Mayor & Council v. Rylyns Enters.*, 814 A.2d 469 (Md. 2002) (holding a floating zone is subject to same conditions safeguarding the granting of special exceptions).

¹¹³ *See* DISCRETIONARY CONTROLS, *supra* note 59, § 4:5 (describing this opportunity and two mixed-use districts established by floating zones).

¹¹⁴ Monterey County is an example. *See* MONTEREY CNTY., CAL., ZONING CODE § 21.17.050 (2022), https://library.municode.com/ca/monterey_county/codes/code_of_ordinances?nodeId=TIT21ZO_CH21.17REMIUSMUDI_21.17.050GEDEPL. “The purpose of a General Development Plan is to identify multiple uses that may occupy the development, establish operational procedures, and outline the form, mass, and appearance of physical improvements within the development.” *Id.* § 21.17.050(C). The ordinance requires the integration or uses and provides that “at least one residential product type and one non-residential product type shall be incorporated in the General Development Plan.”

B. The Zoning Process

Zoning change is usually legislative and does not require an administrative process, but discretionary administrative review and approval of land use change does require administrative process. Procedures vary but can include adequate notice, a hearing by a neutral arbiter, the right to present evidence, the right to cross-examine witnesses, the right to respond to written submissions, the right to counsel, and the right to a decision on the record with stated reasons.¹¹⁵

Public hearings can create problems.¹¹⁶ Public participation to present a public point of view is critical, but public hearings increasingly are a significant obstacle to new development, including mixed-use development.¹¹⁷ Problems with public hearings are highlighted in a recent Massachusetts study that found that public hearings offer opponents ample

Id. § 21.17.050(D)(1). It also provides that “[c]ommercial uses shall be small in scale, neighborhood-serving, and compatible with residential uses.” *Id.* § 21.17.050(D)(3).

¹¹⁵ See MANDELKER & WOLF, *supra* note 106, § 6.67.

¹¹⁶ See, e.g., NORFOLK, VA., ZONING ORDINANCE § 2.3.2 (2022), <https://www.norfolk.gov/DocumentCenter/View/35581/Adopted-Zoning-Ordinance?bidId=> (Planning Commission Public Hearing Procedure); Anika Singh Lemar, *Overparticipation: Designing Effective Land Use Public Processes*, 90 FORDHAM L. REV. 1083, 1090–93 (2021) (explaining that notice and a public hearing are required for zoning decisions and that half of the states require hearings for board of adjustment decisions).

¹¹⁷ See Vicki Been et al., *Urban Land-Use Regulation: Are Homevoters Overtaking the Growth Machine?*, 11 J. EMPIRICAL LEGAL STUD. 197, 227 (2014) (discussing extensive neighbor opposition to zoning change in New York City); Grant Glovin, *Power and Democracy in Local Public Participation Law*, 51 URB. LAW. 43, 95 (2021) (discussing Massachusetts and English systems and arguing that “U.S. public meeting law has emerged as a major barrier to constructing direly needed housing”); Roderick M. Hills, Jr. & David N. Schleicher, *Balancing the “Zoning Budget,”* 62 CASE W. RESV. L. REV. 81, 90 (2011) (arguing “benefits of new development are dispersed both geographically and across many individuals,” harms are concentrated in specific geographic area of development and on individuals who have a great deal invested in the outcome of land use decisions, and this disparity in costs of political organization can result in excessive limitations on new housing). Professor Lemar argues that public participation provides an opportunity for local prejudice and misinformation; protects social capital, but the wrong kind; redistributes wealth and resources, but in the wrong direction; and prioritizes current residents, but at the expense of everyone else. See Lemar, *supra* note 116, at 1117–34. She recommends that most development should be by right and consistent with the plan at the development approval phase. See *id.* at 1140.

opportunities to stop or delay projects¹¹⁸ and to force damaging change.¹¹⁹ Opposition occurs not only to large and controversial projects but to the modest and mundane, and by an unrepresentative group of homeowners.¹²⁰

Change is needed in the administrative land-use process that will reform the system and control undisciplined hearings.¹²¹ A pre-application conference with the developer and neighbors can resolve problems that could trigger opposition.¹²² Municipalities can control the hearing agenda by listing the issues that the hearing will consider in the hearing notice.¹²³

¹¹⁸ See KATHERINE LEVINE EINSTEIN ET AL., NEIGHBORHOOD DEFENDERS: PARTICIPATORY POLITICS AND AMERICA'S HOUSING CRISIS 82 (2020). The study concentrated on special permit applications, where discussion was dominated by environmental, flooding, aesthetics, neighborhood character, and septic concerns. See *id.* at 87.

¹¹⁹ See, e.g., SCHMITZ & SCULLY, *supra* note 55, at 168 (explaining that a developer reduced project size to approximately half the size of the previously entitled project, provided a more neighborhood-oriented mix of uses, and made other concessions after discussions with neighborhood residents and taking into account earlier battles associated with the site); EINSTEIN ET AL., *supra* note 118, at 44–51 (opposition to housing project led to sixty percent less housing and forty-six percent less affordable housing; neighbors protected an historic church, kept construction relatively modest, and preserved open space and a grand old beech tree).

¹²⁰ See EINSTEIN ET AL., *supra* note 118, at 99–109.

¹²¹ Model legislation proposed by the American Planning Association includes reform of the hearing process for administrative land use decisions. See AM. PLAN. ASS'N, GROWING SMART LEGISLATIVE GUIDEBOOK: MODEL STATUTES FOR PLANNING AND THE MANAGEMENT OF CHANGE §§ 10-205 to 10-207 (Stuart Meck ed., 2002) [hereinafter GUIDEBOOK], https://planning-org-uploaded-media.s3.amazonaws.com/publication/download_pdf/Growing-Smart-Legislative-Guidebook.pdf.

¹²² Some zoning ordinances require a preliminary meeting. See, e.g., AUSTIN, TEX., LAND DEV. CODE, *supra* note 25, § 25-3-22 (“An application for zoning or rezoning to a traditional neighborhood district may not be accepted for filing before the applicant meets with the director or the director’s designee in a presubmittal meeting.”); PLANNED UNIT DEVELOPMENT, *supra* note 15, at 30–31 (discussing pre-application conferences for planned unit developments). Neighborhood meetings and community outreach are other possibilities. See *New Perspectives*, *supra* note 15, at 263–66 (same).

¹²³ Oregon has this requirement. See OR. REV. STAT. § 197.797(3)(b) (requiring municipalities to “[l]ist the applicable criteria from the ordinance and the plan that apply to the application at issue”). The statute also provides that

[a]n issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford

Agenda control limits undisciplined opposition because issues not related to the agenda cannot be considered. Clear and objective standards for discretionary review can prevent opposition built on baseless claims.¹²⁴ Time limits on decisions and the encouragement of written testimony are additional helpful requirements.¹²⁵ Litigation is another option. It can challenge a project denial that is unsupported by legitimate zoning concerns, though litigation can be expensive and cause delay.¹²⁶

V. ZONING STRATEGIES FOR MIXED-USE DEVELOPMENT

This section discusses four different zoning alternatives that can facilitate the regulation of mixed-use development.¹²⁷ There is no single metric that determines which alternative is optimal. The alternatives vary in how they manage the issues identified earlier, which are how much control to exercise over mixed-use development and how much discretion to build into the zoning system.

the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

Id. § 197.797(1). All state statutory citations in this Article refer to the current statute unless otherwise indicated.

¹²⁴ See IDAHO CODE § 67-650 9A(5) (stating “clear and objective” standards and procedures that “shall not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay”); see also OR. REV. STAT. § 197.307(4) (“[C]lear and objective standards, conditions and procedures regulating the development of housing, including needed housing [on buildable land which] [m]ay not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.”); *id.* § 227.173(2) (“[S]tandards must be clear and objective on the face of the ordinance.”); *id.* § 215.416(8)(a) (counties).

¹²⁵ See GUIDEBOOK, *supra* note 121, § 10-210.

¹²⁶ See Munir Saadi, *Neighbor Opposition to Zoning Change*, 49 URB. LAW. 393, 394–99 (2017) (discussing substantive due process and equal protection objections to zoning denials based on neighbor opposition). Courts sometimes rely on *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985) (striking down denial of a permit for group home for mentally disabled based on neighbor objections as equal protection violation).

¹²⁷ Discussion of mixed-use development zoning usually considers a number of alternatives but does not explain when they should be used. See, e.g., SCHMITZ & SCULLY, *supra* note 55, at 91–99.

A. Planned Unit Development

Planned unit development (PUD)¹²⁸ is an alternative to traditional district-based zoning.¹²⁹ It is a discretionary review process that can be used to approve a planned mixed-use development and to approve a development plan¹³⁰ for the development. The development plan controls how the mixed-use development will be built. Municipalities can exercise control over the design of a planned unit development by adopting criteria that specify the planned unit developments they will approve and the contents of development plans.¹³¹ The criteria can include requirements for the objectives and character of a PUD; its residential and nonresidential development and their location; and a circulation plan that details walkability, public space, and architectural design.¹³² Amendments to development plans must be authorized to ensure flexibility in development.¹³³

There are advantages and disadvantages to approving a mixed-use development as a planned unit development. An important advantage is that the development plan adopted for a mixed-use development can customize the land-use and design criteria that will shape the development.

¹²⁸ For discussion of the planned unit development process for mixed-use development with ordinance examples, see CECILY T. TALBERT, CREATING FLEXIBLE ZONING TOOLS FOR SUCCESSFUL MIXED USE DEVELOPMENTS (Am. L. Inst. 2007).

¹²⁹ See *New Perspectives*, *supra* note 15, at 231–32 (discussing purpose of planned unit development).

¹³⁰ Planned unit development often begins with a legislatively adopted concept plan that describes the PUD’s development concepts. See PLANNED UNIT DEVELOPMENTS, *supra* note 15, at 35–37. The planning committee is then usually tasked to adopt a development plan that describes the planned unit development in more detail, including the location, density, and intensity of land uses; circulation systems, a utility system, a landscape plan, and signage and can also include “architectural drawings and sketches that illustrate the design and character of proposed buildings and structures.” *Id.* at 37. If the preliminary development plan is approved, a final development plan is approved if it is in compliance with the preliminary plan. See *id.* at 38. For examples of mixed-use development plans see SCHMITZ & SCULLY, *supra* note 55, at 126, 146, 165, 174, 185, 198, 212, 225, 238.

¹³¹ See Interview with Stuart Meddin, *supra* note 62 (explaining decision to have Glenwood Park mixed-use development approved as a planned unit development).

¹³² See PLANNED UNIT DEVELOPMENTS, *supra* note 15, at 33; see also *New Perspectives*, *supra* note 15, at 257–60 (discussing concept and development plans).

¹³³ For model provisions for different kinds of amendments, see PLANNED UNIT DEVELOPMENTS, *supra* note 15, at 50–52. Changes can be major or minor. See *id.* at 50. Major changes, such as changes in density, intensity, and building bulk or design, will need legislative approval. See *id.* at 50–51. Minor changes, such as changes that do not affect density, can be made administratively or by the planning commission. See *id.* at 50.

Zoning ordinances and design guidelines cannot provide this customized detail.

Planned unit development has disadvantages. It often is a negotiated process between a developer and the municipality, which can produce arbitrary decisions. Discretionary review can cause uncertainty, delay, and opposition.¹³⁴ Practitioners who work with planned unit developments have had mixed experiences with discretionary review.¹³⁵ Problems also arise with multiple approvals because staff must keep track of many distinct sets of regulations for different projects instead of a uniform set of zoning rules.¹³⁶

B. Design Guidelines

Design¹³⁷ is the catalyst that brings planned mixed-use development to life because it considers appearance, form, and function¹³⁸ and describes the design qualities that mixed-use developments require.¹³⁹ There are design standards and design guidelines. Design standards are prescriptive, mandatory, and quantitative, are similar to site development and density requirements contained in zoning ordinances, and are a necessary element

¹³⁴ See *New Perspectives*, *supra* note 15, at 233. Reforms in administrative process that can remedy these problems are discussed in Part IV.

¹³⁵ See *id.* at 261–62.

¹³⁶ Planned unit development often means that zoning reforms apply only to one specific PUD and are not applied broadly to other zoning districts, leading to a stagnant zoning code and hundreds of discretionary PUDs.

¹³⁷ For discussion of design issues in mixed-use development, see SCHMITZ & SCULLY, *supra* note 55, at 126–242 (discussing design issues in case studies); Simmons B. Buttin, *Civano*, in UNSPRAWL, *supra* note 1, at 185–86 (discussing design issues in project); and RABIANSKI & CLEMENTS, *supra* note 71, at 13 (discussing design issues in mixed-use development); see also CITY OF ROCKVILLE, *supra* note 16.

¹³⁸ “Urban Design is the art of making safe, comfortable and inviting places for people. It includes the way places look, work and feel. Urban design includes the connections between places and buildings; the character of the built environment and the processes used for ensuring successful villages, towns and cities.” CITY OF BREMERTON, WASHINGTON DOWNTOWN REGIONAL CENTER SUB AREA PLAN 3–17 (2007), https://images1.loopnet.com/d2/DfddLaNeHckFVMcPJGpyFSSEoLL8O3el_zZEITu2Pgg/Downtown%20Subarea%20Plan.pdf; see also DANIEL R. MANDELKER, DESIGNING PLANNED COMMUNITIES 8 (2010) [hereinafter DESIGNING], <https://wustl.app.box.com/s/ehwllmjxfzkdildeiqrw65dyw9yv> (explaining that a narrow view focuses only on appearance, such as the appearance of buildings, while a broader view would focus on the organization and management of space).

¹³⁹ Design manuals can supplement design guidelines and standards. They usually are more detailed and are usually advisory. See DESIGNING, *supra* note 138, at 56–58 (discussing design manuals).

for mixed-use development regulation.¹⁴⁰ They describe the basic building envelope with specific, quantified, and limited textual requirements such as setbacks, building heights, floor area ratio, density, and intensity.¹⁴¹ A twenty-foot setback requirement is an example.

Design guidelines detail the design essentials for mixed-use developments.¹⁴² They can be adopted as a separate guideline or integrated into the zoning ordinance, and they can be objective or subjective. There are advantages and disadvantages to either approach. Objective design guidelines provide measurable standards¹⁴³ but can produce unacceptable design outcomes if they are rigid and do not allow an opportunity for creativity. Subjective guidelines¹⁴⁴ are not measurable and are indeterminate, qualitative, and subjective.¹⁴⁵ They address design elements that

¹⁴⁰ See, e.g., CITY OF MILL VALLEY, CAL., MULTI-FAMILY RESIDENTIAL, DOWNTOWN RESIDENTIAL, & MIXED-USE DESIGN GUIDELINES & DEVELOPMENT STANDARDS 7 (2016), <https://millvalleylibrary.org/DocumentCenter/View/570/Design-Guidelines-and-Development-Standards-PDF>.

¹⁴¹ See DESIGNING, *supra* note 138, at 56–58 (describing design standards); see also CITY OF ANTIOCH, CAL., CITYWIDE DESIGN GUIDELINES § 1.1.5 (2009), <https://www.antiochca.gov/community-development-department/planning-division/citywide-design-guidelines/> (same). Flexibility is available when the standards are set as a range or when they allow interpretation.

¹⁴² Guidelines often are written in response to a project proposed by a single developer, and this situation can provide an opportunity for negotiation. See Thomas P. Smith, *Balancing Jobs and Housing in the New Economy*, ZONING PRAC., Oct. 2018, at 2–3 (describing precise plan for mixed-use development for new corporate office and research center).

¹⁴³ See Email from Michael vanVeber Dyett, FAICP, Consulting Principal Dyett & Bhatia, to author (June 15, 2022, 11:12 CST) (on file with author) (“California is increasingly moving towards ‘objective design standards’ with ministerial review to streamline the process and avoid abuses of discretion and also has set minimum FARs for multi-family and mixed [use] sites. . . . This [does] not always work well in the Central Valley, where [the floor area ratio is] too high, and presume[s] the costs of structure parking can be assumed in a project proforma.”).

¹⁴⁴ Guidelines often include aesthetic requirements, such as requirements for building facades. Courts almost universally uphold aesthetic controls as a proper exercise of the land use power. See Lauren Ashley Smith, *Aesthetic Regulation as a Proper Governmental Purpose*, in DESIGNING, *supra* note 138, at 84 (discussing constitutionality of aesthetic controls).

¹⁴⁵ See, e.g., FAIRFAX CNTY., VA., TYSONS URB. DESIGN GUIDELINES (2017), https://www.fairfaxcounty.gov/tysons/sites/tysons/files/assets/documents/pdf/urban%20design/tysons_udg.pdf; CITY OF MILL VALLEY, CAL., *supra* note 141, at 7; PLACER CNTY., CAL., DESIGN MANUAL FOR MULTIFAMILY AND MIXED-USE DEV. 1–4 (2019), <https://www.placer.ca.gov/DocumentCenter/View/47718/Draft-Design-Manual-Development-Standards-and-Design-Guidelines-for-Multi-family-and-Mixed-Use-Development>.

cannot be measured easily or quantified, such as site design, building proportion and massing, access and circulation, and architectural expression.¹⁴⁶

Subjective design guidelines provide flexibility but can produce arbitrary decisions¹⁴⁷ if not drafted precisely.¹⁴⁸ Precise drafting is necessary to avoid claims that they are an unconstitutional delegation of power or that they violate substantive due process because they are too vague.¹⁴⁹ Courts have upheld design guidelines when there is a reasonably comprehensive attempt to provide guidance.¹⁵⁰ Detail level must also be considered. Heavily detailed guidelines may suppress development if they unnecessarily prevent development that the market prefers. Lightly detailed guidelines may not provide enough control over development design.

Compliance can be enforced through the normal development review administrative process,¹⁵¹ which can be done through staff review but which can require a hearing or the consideration of written objections. Design review¹⁵² is an alternative discretionary review process that

¹⁴⁶ Design guidelines also usually include criteria for parking, landscaping, open space, and signage. See DESIGNING, *supra* note 138, at 57.

¹⁴⁷ See Email from Michael vanVeber Dyett, FAICP, Consulting Principal Dyett & Bhatia, to author (June 15, 2022, 14:39 CST) (on file with author) (“I think the challenge for zoning standards to be applied at the project level is to try and be clear about what is specifically to be the basis for a decision.”).

¹⁴⁸ See DISCRETIONARY CONTROLS, *supra* note 59, § 8:90 (admitting this is a difficult task).

¹⁴⁹ See DESIGNING, *supra* note 138, at 85–86 (discussing constitutional issues); Elizabeth Garvin & Dawn Jourdan, *Through the Looking Glass: Analyzing the Potential Legal Challenges to Form-Based Codes*, 23 J. LAND USE & ENV'T L. 395, 411 (2008) (“Design guidelines can prove to be a legal minefield.”).

¹⁵⁰ These were cases in which courts upheld criteria for the review and approval of planned unit developments. See, e.g., *Tri-State Generation & Transmission Co. v. City of Thornton*, 647 P.2d 670 (Colo. 1982) (upholding planned unit development ordinance with twelve standards, most used indeterminate language and some outlined design requirements). For discussion, see DESIGNING, *supra* note 138, at 87–92.

¹⁵¹ See CITY OF ANTIOCH, CAL., *supra* note 142, § 1.1.4 (describing how the Design Guideline Manual will be used in the development review process); PLACER CNTY., CAL., *supra* note 145, at 1–4; SAN PABLO, CAL., MUN. CODE § 17.34.110 (2015), <https://www.sanpabloca.gov/DocumentCenter/View/5278/Zoning---Final-and-combined-document> (explaining that guidelines are not mandatory but “may . . . be imposed as conditions of approval” if approval process allows).

¹⁵² See CITY OF MILL VALLEY, CAL., *supra* note 145, at 8 (“The design guidelines will be applied by City through the design review process as outlined in the Mill Valley

usually includes an architectural review board that decides on compliance.¹⁵³ Review under either alternative can be problematic because it can generate the uncertainty, delay, and opposition that can occur in any discretionary review process.¹⁵⁴

Castle Pines, Colorado, is a good example of a comprehensive set of design guidelines.¹⁵⁵ Policy for locating mixed-use development is provided by the comprehensive plan.¹⁵⁶ The guidelines include four design elements, which are site planning and design, access and circulation, architectural design, and landscape design.¹⁵⁷ Design principles¹⁵⁸ include community character,¹⁵⁹ balance, placemaking, sustainability, and pedestrian activity and connectivity.¹⁶⁰ A guideline for street design, for example, states that, “[t]he intent of these Design Guidelines is to develop a ‘main street’ character within each mixed-use development by creating pedestrian-oriented streets where possible.”¹⁶¹ Architectural design includes the relationship between buildings, façade modulation, building height and massing, and building materials and colors.¹⁶² Architectural

Residential Design Review Handbook.”); MUKILTEO, WASH., MUN. CODE § 17.25.020 (2021), <https://www.codepublishing.com/WA/Mukilteo/html/Mukilteo17/Mukilteo1725.html>.

¹⁵³ See *Special Use Permits*, *supra* note 107, § 8:23–:39; see generally MARK L. HINSHAW & MARYA MORRIS, AM. PLAN. ASS’N, PLAN. ADVISORY SERV. REP. NO. 591, DESIGN REVIEW: GUIDING BETTER DEVELOPMENT (1995).

¹⁵⁴ See *supra* Part V.

¹⁵⁵ See generally CITY OF CASTLE PINES, COLO., MIXED-USE DESIGN GUIDELINES (2018), <https://www.castle-pinesco.gov/wp-content/uploads/2019/08/Mixed-Use-Design-Guidelines.pdf>.

¹⁵⁶ See *id.* § 1.2 (describing mixed-use districts in plan). The guidelines contain four Core Design Principles: Community Character, Balance, Placemaking, Pedestrian Activity, and Sustainability. See *id.* (summarizing principles).

¹⁵⁷ See *id.* at III (Table of Contents).

¹⁵⁸ See *id.* § 1.2; see also CITY OF ANTIOCH, CAL., *supra* note 142, § 5.1, at 5-1 (2009) (providing that for vertical mixed use, primary design issue is to successfully balance residential requirements with commercial use needs).

¹⁵⁹ Lane Kendig pioneered character planning. See generally LANE H. KENDIG WITH BRET C. KEAST, A GUIDE TO PLANNING FOR COMMUNITY CHARACTER (2011).

¹⁶⁰ See PLACER CNTY., CAL., *supra* note 145, § DS-14.B.1, at 2-32 (“A system of pedestrian walkways shall connect all buildings on a site to each other, to on-site automobile and bicycle parking areas, and to any on-site open space areas or pedestrian amenities.”).

¹⁶¹ CITY OF CASTLE PINES, COLO., *supra* note 156, § 3.1.2, at 9.

¹⁶² See *id.* ch. 4, at 12–17 (also including rooftops and roof forms, relationship of building to pedestrians, and building materials and colors). The guideline for façade

character is covered by a guideline stating that “[t]he placement, size, form and orientation of new buildings should be coordinated to create visually cohesive spaces with a variety of materials, colors and features.”¹⁶³ Block length and site coverage also are included.¹⁶⁴

C. Form-Based Zoning

Form-based zoning¹⁶⁵ is a popular and widely adopted zoning program which, like mixed-use zoning, claims a walkable, pedestrian-oriented development as a major objective.¹⁶⁶ Form-based zoning is an alternative to traditional zoning because traditional zoning regulates only land use compatibility and may not create the physical character and scale needed for new development.¹⁶⁷ As defined by the Form Based Codes Institute: “Form-based codes address the relationship between building facades and

modulation states that “[t]he intent is to add interest, create shadow and excitement, and provide articulation.” *Id.* § 4.2, at 12.

¹⁶³ *Id.* § 4.1.1, at 12; *see also* CITY OF ANTIOCH, CAL., *supra* note 142, § 5.4, at 5–8 (encouraging “[a]ppropriate building scale, height, and massing, along with high quality detailing, articulation, and materials”); PLACER CNTY., CAL., *supra* note 146, at 2–28 (“Buildings shall provide adequate architectural articulation and detail to avoid a bulky and ‘box-like’ appearance.”).

¹⁶⁴ *See* PLACER CNTY., CAL., *supra* note 146, § 2.1, at 5.

¹⁶⁵ Form-based zoning is an example of the new urbanist movement, and Jill Grant has noted the challenges. *See* Grant, *supra* note 39, at 86–91 (discussing new urbanism mixed-use projects, noting problems in achieving affordability and land-use mix, and concluding that good urban form cannot achieve social objectives). She adds that “[t]he challenge of building affordable, diverse, and inclusive communities demands much more than good urban form.” *Id.* at 91.

¹⁶⁶ *See* Daniel Parolek, *Avoiding Common Form-Based Code Mistakes, Part 1*, ZONING PRAC., May 2013, at 4 [hereinafter *Avoiding Mistakes Pt. 1*]. “From the movement’s inception, pedestrian-friendly building orientation and design has been a principal focus in all form-based codes.” DONALD L. ELLIOTT ET AL., AM. PLAN. ASS’N, PLAN. ADVISORY SERV. REP. NO. 570, THE RULES THAT SHAPE URBAN FORM 4 (2012) [hereinafter URBAN FORM]. Jill Grant concluded, however, that “[e]mpirical studies are mixed on the ability of new urbanism to deliver on its objectives.” JILL GRANT, PLANNING THE GOOD COMMUNITY: NEW URBANISM IN THEORY AND PRACTICE 69 (Cliff Hague et al. eds., 2006). She argued that “[t]he challenge of producing viable retail districts represents one of the weaker links in American new urbanism.” *Id.* at 98.

¹⁶⁷ *See* Arista Strungys, *The Five Steps to a Hybrid Code*, PLAN. PRAC. 2 (2008) (“Traditional zoning speaks more to land use compatibility than design, so it may not result in the desired physical character and scale for new development.”). For discussion of the legal challenges to form-based zoning, *see* Garvin & Jourdan, *supra* note 149, at 395.

the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks.”¹⁶⁸

Form-based codes are “keyed to a regulating plan that designates the appropriate form and scale (and therefore, character) of development, rather than only distinctions in land-use types.”¹⁶⁹ The plan has a specific future development map and is similar to a detailed development plan or preliminary plat.¹⁷⁰ Drawings and explanations of building types may be included, and development is limited to these building types.¹⁷¹ There is no standard model for form-based zoning. It varies considerably, may not include a regulating plan,¹⁷² and is seldom adopted in its pure format.

Form-based zoning covers some, but not all, of the planning and design elements required for planned mixed-use development. It is limited in its application to mixed-use development because it deemphasizes land use as the focus of regulation.¹⁷³ Simplified use tables tertiary to the form standards are recommended that are not the primary regulation,¹⁷⁴ and generalized use types are also recommended.¹⁷⁵ A prominent advocate of form-based zoning goes further and states that, “[t]he most effective [form-based codes] replace use-based zones with form-based zones.”¹⁷⁶ Other traditional land use regulations are downplayed, and regulation of

¹⁶⁸ *Form-Based Codes Defined*, FORM BASED CODES INST. (Nov. 6, 2020), <https://formbasedcodes.org/definition/>.

¹⁶⁹ *Id.*

¹⁷⁰ “The Regulating Plan is comparable to an area plan or specific plan that establishes a very specific future development map. A regulating plan has characteristics similar to a detailed development plan or preliminary plat.” Nancy Stroud & Elizabeth Garvin, *Living with Your Form-Based Code*, ZONING PRAC., Apr. 2018, at 2.

¹⁷¹ See URBAN FORM, *supra* note 166, at 9 (“These are drawings and standards that define different typical building types by name (e.g., “bungalow” or “corridor commercial building”) or that include building requirements derived from a particular type of existing or desired building, rather than an invisible box.”).

¹⁷² See *id.* at 75, 99–100 (explaining that not all cities use regulating plans and that two of the six cities in their case studies did not use them).

¹⁷³ A common question is whether improved building form, attention to the public realm, and the scale and types of streets and blocks are adequate to allow for use flexibility.

¹⁷⁴ See Daniel Parolek, *Avoiding Common Form-Based Code Mistakes, Part 2*, ZONING PRAC., June 2013, at 3–4 [hereinafter *Avoiding Mistakes Pt. 2*]

¹⁷⁵ See *id.* at 3. Simplification is recommended when the ordinance on land use is designated. See Telephone Interview with Lee Einsweiler, *supra* note 64 (recommending single page use list, toleration of marginal uses like tattoo parlors, and designing uses where they fit).

¹⁷⁶ *Avoiding Mistakes Pt. 2, supra* note 174, at 4.

land use density is deemphasized,¹⁷⁷ though this recommendation is not always followed.¹⁷⁸ Floor area ratios are not used, and this omission is criticized.¹⁷⁹

Form-based zoning discourages design detail¹⁸⁰ and design guidelines,¹⁸¹ which also are needed for mixed-use development. It is intended as a prescriptive set of regulations available by right that avoid the problems created by discretionary review. While administrative relief through variances and a deviation called a warrant¹⁸² are nevertheless available, they can overwhelm the system and they can create problems of uncertainty, delay, and opposition.¹⁸³

Despite recommendations against a focus on use, form-based codes usually include extensive use controls. They just are more flexible and

¹⁷⁷ See Norman Wright, *Beyond the Density Standard*, ZONING PRAC., Nov. 2012 (describing alternatives).

¹⁷⁸ See Email from Donald Elliott, Dir., Clarion Assocs., to author (Oct. 11, 2021, 18:06 CDT) (on file with author) (explaining that he considers land use distinctions and placing limitations on residential land use coverage).

¹⁷⁹ See Email from Michael Dyett, Consulting Principal, Dyett & Bhattia, to author (June 15, 2022, 1:12 CDT) (on file with author) (noting objection, and arguing that because floor area ratio is one of the key parameters to ensure traffic impacts are minimized and that equally situated properties are equally treated, and that floor area ratio also work well with real estate economics as developers can readily calculate how much space they can build). Dyett argues that the failure to use density and floor area ratios eliminates effective tools to implement general plans, which must have density/intensity limits. He also states that one of the leaders of the form-based code movement is against these standards and is committed to the transect concept, which does not always fit with general plan land use and urban design concepts. See *id.* “A transect is a cut or path through part of the environment showing a range of different habitats.” *The Transect*, CTR. FOR APPLIED TRANSECT STUD., <https://transect.org/transect.html>. New urbanism divides the rural to urban transect into six transect zones and adopts different regulatory standards for each zone. See *id.*

¹⁸⁰ See *Form Based Codes and Design Regulations*, FAYETTE ALL., <https://fayettealliance.com/wp/wp-content/uploads/2010/06/Form-and-Design-Presentation-5-27-10.pdf> (stating that “[m]ost Form-Based Codes will also require certain architectural features such as the building cap, windows, and doors, but will NOT regulate their design details,” and suggesting that architectural detailing can be done by an architectural review board or person charged with design review).

¹⁸¹ See *Avoiding Mistakes Pt. 1*, *supra* note 167, at 5 (“FBCs are not design guidelines.”).

¹⁸² See SMART CODE VERSION 9.2 § 1.5 (CTR. FOR APPLIED TRANSECT STUD. 2009), <http://www.growsmartri.org/training/SmartCode%20Version%209.2.pdf>.

¹⁸³ See ELLIOTT ET AL., *supra* note 166, at 23–24 (explaining that “[p]articularly detailed site standards have led to multiple requests for exceptions or alternative compliance” in close to half of all applications in Austin, Texas).

inclusive than those typically included in a traditional use-based code.¹⁸⁴ In practice, most contemporary codes adopt a hybrid form of zoning that blends form-based standards with more traditional use-based standards and that combines the advantages of form-based zoning with traditional zoning.¹⁸⁵ North Miami Beach is an example. It added regulating plans and building types to its mixed-use zoning districts and requires a neighbor-hood master plan.¹⁸⁶ Mooresville, North Carolina blended form-based zoning with traditional land-use controls, including a mixed-use district.¹⁸⁷ It has general and specific building form standards and a typical land-use matrix, but does not require regulating plans.¹⁸⁸

D. Zoning For Mixed Use

1. Zoning for Unplanned Mixed-Use

Unplanned mixed-use development is development by the separate, unrelated actions of several different developers and requires the adoption

¹⁸⁴ See Email from Donald Elliott, Dir., Clarion Assocs., to author (Aug. 29, 2022, 1:28 p.m. CDT) (on file with author).

¹⁸⁵ See Strungys, *supra* note 167, at 3–6 (explaining the five steps of hybrid coding: target the area, set the policy, describe the form, balance the regulations, and administer and implement the code).

¹⁸⁶ See N. MIA. BEACH, FLA., ZONING AND DEV. CODE § 24-58.1 (2021), https://library.municode.com/fl/north_miami_beach/codes/code_of_ordinances?nodeId=PTIICOOR_CHXXIVZOLADE_ARTVZOUSDI_S24-58.1FUMIETOCEDIMUTC; see also ARLINGTON CNTY., VA., THE COLUMBIA PIKE REVITALIZATION DISTRICT FORM BASED CODE § 11.11.1 (2003), <https://formbasedcodes.org/wp-content/uploads/2014/02/columbia-pike-code-contents.pdf> (code is intended for mixed-use development).

¹⁸⁷ See ELLIOTT ET AL., *supra* note 166, at 26–32 (discussing Mooresville, N.C. zoning).

¹⁸⁸ See *id.* at 27–30; see also MOORESVILLE, N.C., UNIF. DEV. ORDINANCE § 3.3 (Feb. 21, 2022), <https://cms5.revize.com/revize/mooresvillenc/Site%20Documents/Planning/Unified%20Development%20Ordinance.pdf> (describing several mixed-use and nonresidential base districts including concept and purpose); *id.* § 5.9 (form and design standards); ELLIOTT ET AL., *supra* note 166, at 30 (explaining Mooresville decided to adopt a “short list of specific building form standards to regulate fundamental design relationships rather than adopting a more prescriptive and detailed form-based approach and regulating plan”); ASHEVILLE, N.C., URB. PLACE FORM DIST., ASHEVILLE DEV. CODE § 7-8-26, https://codelibrary.amlegal.com/codes/ashevillenc/latest/asheville_nc/0-0-0-5737#JD_7-8-26 (discussing urban centers, explaining that one of the purposes is to mix uses and integrate a wide range of housing options closer to jobs); COLUMBIA, MO., UNIF. DEV. CODE § 29-4.2 (2022), https://library.municode.com/mo/columbia/codes/code_of_ordinances?nodeId=COORCOMI_CH29UNDECO_ART4FODECO (providing form and development controls for mixed-use, downtown, pedestrian-oriented district that included only a secondary focus on land uses).

of zoning districts in which mixed-use development is permitted.¹⁸⁹ As Donald Elliott explains, the key advantages of mixed-use districts “can be achieved by simply opening up those opportunities rather than requiring a particular type or mix of development.”¹⁹⁰

Scale is important.¹⁹¹ To manage scale, Elliott generally prefers zoning a range of mixed-use districts organized by size, including a small neighborhood scale, a medium community scale, and a large scale for regional or major redevelopment areas.¹⁹² He may control space by limiting the area available for residential use so that it does not dominate the zoning district, and by limiting residential use only to upper stories on key street segments where non-residential ground floor uses are particularly important.¹⁹³ Mixed-use zoning adopting this strategy minimizes

¹⁸⁹ For a description of mixed-use districts in several cities, see Tyler Adams, *Mixed Use Zoning: Using a Medieval Design to Solve Modern Problems*, 44 ZONING & PLAN. REPS., Oct. 2021, at 1, 4–7 and Tyler Adams, *Mixed-Use Zoning*, SUSTAINABLE DEV. CODE (2022), https://sustainablecitycode.org/brief/mixed-use-zoning/#_edn8 (providing examples of cities with mixed-use districts). A zoning study found a correlation between a model ordinance that authorized vertical mixed use and walkability. See Carol L. Cannon et al., *Testing the Results of Municipal Mixed-Use Zoning Ordinances: A Novel Methodological Approach*, 38 J. HEALTH POLITICS, POL’Y & L. 815 (2013).

¹⁹⁰ Email from Donald Elliott, Dir., Clarion Assocs., to author (Sept. 1, 2022, 14:04 CDT) (on file with author). Elliott often converts old commercial districts into mixed-use districts by retitling them and broadening the range of uses, but he does not use what he considers the complexity of overlay districts. See Email from Donald Elliott, Dir., Clarion Assocs., to author (Oct. 11, 2021, 18:06 CST) (on file with author). Neither does he usually require a mix of residential and non-residential development within a particular project or parcel. See *id.*

¹⁹¹ LAKEWOOD, COLO., ZONING ORDINANCE section 17.3.4 (2019), <https://www.lakewood.org/files/assets/public/planning/development-assistance/pdfs/zoning-ordinance/article-3.pdf>, describes the purpose of each mixed-use zoning district, assigns a context for each mixed-use district and provides a statement of purpose and intent, for each mixed-use district. See also SMART CODES: MODEL LAND-DEV. REGULS. §§ 101, 102 (AM. PLAN. ASS’N 2009) (describing purpose of town center district and subdistricts); GARDENA, CAL., MUN. CODE § 18.19.020, <https://www.codepublishing.com/CA/Gardena/html/Gardena18/Gardena1819.html> (describing mixed use overlay zone is intended to allow the greater flexibility of development alternatives and character of four focus areas).

¹⁹² See Email from Donald Elliott, Dir., Clarion Assocs., to author (Oct. 11, 2021, 18:06 CST) (on file with author).

¹⁹³ See *id.* Some practitioners rarely use density in mixed-use zoning. See Email from Lee D. Einsweiler, Founding Principal, Code Studio, to author (Aug. 30, 2021, 19:42 CDT) (on file with author) (explaining that they sometimes use minimum heights, usually something like two stories, for the sake of decent urban form); see also Norman Wright, *Beyond the Density Standard*, PLAN. PRAC., Nov. 2012 (discussing alternatives to density controls).

regulation, may or may not regulate design, and leaves most development decisions to developers.¹⁹⁴

Elliott's mixed-use zoning for Bloomington, Indiana illustrates his approach and includes a variety of mixed-use districts, including neighborhood, medium scale, and downtown districts.¹⁹⁵ The Mixed-Use Neighborhood Scale district, for example,

is intended to promote a mix of neighborhood-scale residential, commercial, and institutional uses with pedestrian-oriented design and multi-modal transportation availability, in order to promote context sensitive neighborhood-serving development at nodes and corridors near low- and medium-density residential neighborhoods.¹⁹⁶

Use Regulations are contained in a separate chapter¹⁹⁷ and include an Allowed Use Table.¹⁹⁸ The Table designates permitted, conditional, and accessory uses for all districts, including the mixed-use districts, where it provides a mix is appropriate to the district's purpose.¹⁹⁹ Typical dimensional standards are provided and include lot dimensions, building setbacks, and other standards such as impervious surface coverage.²⁰⁰ The ordinance adds building design standards such as standards for exterior finish, facades, eaves and roofs, and anti-monotony standards.²⁰¹

Minimal zoning that is limited to authorizing mixed-use development avoids the problems of more detailed regulation but can create problems

¹⁹⁴ See ATLANTA, GA., CODE OF ORDINANCES ch. 34 (2022), https://library.municode.com/ga/atlanta/codes/code_of_ordinances?nodeId=PTIICOORANDECO_PT16ZO_CH34MRMIRECODIRE (mixed residential commercial district regulations); see also EDINA, MINN., CODE OF ORDINANCES §§ 36-548 to 36-555, https://library.municode.com/mn/edina/codes/code_of_ordinances?nodeId=SPBLADERE_CH36ZO_ARTVIIIIDIDIRE (mixed use).

¹⁹⁵ See BLOOMINGTON, IND., UNIFIED DEV. ORDINANCE ch. 20.04 (2021), https://library.municode.com/in/bloomington/codes/code_of_ordinances?nodeId=TIT20UNDEOR_C H20.04DESTIN.

¹⁹⁶ *Id.* § 20.02.020(b)(1) (describing Statement of Purpose). The Code includes a figure showing Illustrative Scale and Character. See *id.* ch. 20.04 Figures are used throughout the Code. See *id.*

¹⁹⁷ See *id.* ch. 20.03.

¹⁹⁸ See *id.* § 20.03.020.

¹⁹⁹ See *id.*

²⁰⁰ See *id.* § 20.02.080.

²⁰¹ See *id.* § 20.04.070.

because it leaves major development decisions to the market. Zoning can provide greater control over unplanned mixed-use development by adding design requirements, such as comprehensive form-based standards that control building mass and facades and streetscape,²⁰² equity-driven zoning that eliminates single-family zoning,²⁰³ and design criteria²⁰⁴ that define the character of mixed-use developments or that require pedestrian connectivity. The Bloomington ordinance adopts some of these options.²⁰⁵ Alternatives to by-right zoning can provide more control,²⁰⁶ such as a floating zone. This alternative provides flexibility because it is not approved until a developer makes an application for approval, which

²⁰² See CLEVELAND, OHIO, NEIGHBORHOOD FORM-BASED CODE URB. FLEX DIST., Div. 2.5 (Draft Aug. 12, 2021), https://www.dropbox.com/s/fgyvam17z5yn5as/Cleveland-Form-Based%20Code_DRAFT_Aug12.pdf?dl=0; see also Email from Lee D. Einsweiler, Founding Principal, Code Studio, to author (Aug. 30, 2021, 19:42 CST) (on file with author) (explaining “scale” as the organizing principle in the code, and the very short, one-page consolidated use table; code does not have density standards).

²⁰³ See Email from Lee D. Einsweiler, Founding Principal, Code Studio, to author (Aug. 28, 2021, 14:27 CST) (on file with author) (explaining equity-driven approach that eliminates single-family zoning by allowing three or four units for each lot).

²⁰⁴ See CULVER CITY, CAL., MUN. CODE § 17.400.065, https://codelibrary.amlegal.com/codes/culvercity/latest/culvercity_ca/0-0-0-54594 (describing mixed-use development standards, such as “[t]he street frontage shall be architecturally varied to create visual interest and shall include architectural features and pedestrian amenities.”); see also OREGON TRANSP. & GROWTH MGMT. (TGM) PROGRAM, COMMERCIAL AND MIXED-USE DEVELOPMENT CODE HANDBOOK ch. 7 § 5 (Project Advisory Comm. 1999) (model ordinance with guidelines for Compact Development; Mixed Land Use; Pedestrian Access, Safety and Comfort; Street Connections; Crime Prevention and Security; Parking and Land Use Efficiency; Creating and Protecting Public Spaces; Human Scaled Building Design, and procedures for design review) (on file with author); see also SAN DIEGO, CAL., MUN. CODE § 131.0713, <https://docs.sandiego.gov/municode/MuniCodeChapter13/Ch13Art01Division07.pdf> (describing Building Frontage Activation, Articulation and Transparency, “to create visual interest that enhances the pedestrian experience, assists in diminishing the overall mass of buildings, and creates variation from a pedestrian’s perspective”); *id.* § 131.0714 (Pedestrian Entrances and Connection).

²⁰⁵ See BLOOMINGTON, IND., UNIFIED DEV. ORDINANCE § 20.05.30 (2023), https://bloomington.in.gov/sites/default/files/2023-03/UDO%20January_2023%20-%20Final.pdf.

²⁰⁶ Another possibility is a combining district, in which zoning regulations for each lot are combined by choosing regulations from several different zoning elements and combining them. See, e.g., CITY OF L.A. ZONING CODE § 1.3.1 (proposed draft, June 2, 2020), [https://planning.lacity.org/odocument/063d01e8-812e-426b-8b8d-d38b8c2f920c/Art01-Introductory_Provisions_\(Proposed_Draft\).pdf](https://planning.lacity.org/odocument/063d01e8-812e-426b-8b8d-d38b8c2f920c/Art01-Introductory_Provisions_(Proposed_Draft).pdf). This alternative is called a Zone String in the Los Angeles zoning code, and it is “[t]he combination of zoning districts applied to a lot including, Form District, Frontage District, Development Standards District, Use District, and Density District.” *Id.*

allows the municipality to consider whether to approve and to modify the application.²⁰⁷

2. Zoning for Planned Mixed-Use Development²⁰⁸

Zoning for planned mixed-use development requires enough detail and control that will define critical project elements. It can provide the same kind of guidance that is provided by design guidelines, but it has the detail problem and requires a choice between objective and subjective criteria.

Montgomery County, Pennsylvania's model New Town Mixed Use District is an example. It "is designed for places where compact, walkable, livable, and attractive development is appropriate."²⁰⁹ The key elements are a wide variety of permitted uses, a diverse mix of uses, an attractive central plaza, pedestrian friendly building design, unobtrusive parking, appropriately scaled height, and a significant scale of development.²¹⁰ District regulations cover use and use mix, dimensional standards, and design standards that include general layout, building design, parking, and pedestrian design.²¹¹

²⁰⁷ See DISCRETIONARY CONTROLS, *supra* note 59, § 8:23. It does, of course, require a discretionary review. *See id.*

²⁰⁸ California authorizes the adoption of specific plans that implement the general plan and that have regulatory controls for mixed-use and other developments. *See* CAL. GOV'T CODE § 65450; *see also*, GARDENA, CAL., MUN. CODE § 18.39.010(A), <https://www.codepublishing.com/CA/Gardena/html/Gardena18/Gardena1839.html> ("The specific plan ("SP") zone is intended to provide for the classification and development of a parcel or parcels of land as a coordinated, comprehensive project that will result in a more desirable development or physical environment than would be possible through the strict application of conventional zoning regulations and standards."). Arizona also authorizes specific plans. *See* ARIZ. REV. STAT. ANN. § 9-461.08. For discussion of specific plans, *see* DESIGNING, *supra* note 138, at 51–52.

²⁰⁹ MONTGOMERY CNTY., PA. PLAN. DIST., NEW TOWN MIXED USE DISTRICT 41–56 (2010), <https://www.montcopa.org/DocumentCenter/View/4101/NTMMOrdFinal?bidId=3>; *see also* MONTGOMERY CNTY., PA., VILLAGE MIXED USE DISTRICT 41–55 (2010), https://www.montcopa.org/DocumentCenter/View/4105/village_mixed_use_district_Dec_2010_web (model ordinance for village small town character).

²¹⁰ *See* MONTGOMERY CNTY., PA. PLAN. DIST., NEW TOWN MIXED USE DISTRICT, *supra* note 209, at 3. The benefits of new town mixed-use development are explained, *id.* at 8–9, and the report explains where it should be located, *id.* at 20.

²¹¹ *See id.* at 48–52. Design standards also include open space, plaza, and lighting standards. *See id.* at 52–54.

Zoning for planned mixed-use development can be extensive. The Dublin, Ohio Bridge Street District²¹² is a 127-page form-based code that implements a Bridge Street District Area Plan²¹³ with detailed design guidelines for a densely developed, walkable, mixed-use planned development in a 1000 acre historic center. The Code's General Purpose includes Principles of Walkable Urbanism²¹⁴ and an Urban Design Framework that describes Walkable Focus Areas with three types of character emphasis.²¹⁵

VI. SPECIAL PURPOSE MIXED-USE ZONING

There are a number of special purpose land use programs that include mixed-use development and that have specialized land-use requirements. This section describes a few examples.²¹⁶ They are examples of zoning for

²¹² See CITY OF DUBLIN, OHIO, CODE OF ORDINANCES § 153.057–.066, https://codelibrary.amlegal.com/codes/dublin/latest/dublin_oh/0-0-0-97277#JD_153.057; see also Terry Foegler, *Dublin, Ohio: Bridge Street Corridor*, in SUBURBAN REMIX 189—201 (Jason Beske & David Dixon ed., 2018)) (discussing Bridge Street District).

²¹³ See *Bridge Street Area Plan*, CITY OF DUBLIN, OHIO (July 30, 2013), <https://communityplan.dublinohiousa.gov/special-area-plans/bridge-street-district/> (displaying community plan).

²¹⁴ See CITY OF DUBLIN, OHIO, CODE OF ORDINANCES § 153.057(D). The general principles are

the creation of an urban neighborhood pattern of development, characterized by:

- (a) Quality architecture and urban design emphasizing beauty and human comfort and creating a sense of place;
- (b) Pedestrian-friendly design that places a high priority on walking, bicycling and use of public transit;
- (c) Creation of interesting and convenient destinations within walking distance for visitors as well as ordinary activities of daily living; and
- (d) Respect for the natural environment.

Id. § 153.057(D)(1).

²¹⁵ See *The Urban Design Framework*, CITY OF DUBLIN, OHIO (May 2, 2013), <https://communityplan.dublinohiousa.gov/bsd/an-urban-design-framework/>. A Scioto River Corridor Plan was prepared in 2014 for part of the Bridge Street District. See *Bridge Street District Scioto River Corridor Framework Plan and Implementation, Dublin, Ohio*, MKSK, <https://www.mkskstudios.com/projects/bridge-street-district-scioto-river-corridor-framework-plan-development>.

²¹⁶ Downtown redevelopment is an additional example. See generally SMART GROWTH AM., (RE)BUILDING DOWNTOWN: A GUIDEBOOK FOR REVITALIZATION (2015), <https://smartgrowthamerica.org/wp-content/uploads/2016/08/rebuilding-downtown-1.pdf>. Age-friendly housing development is another example of mixed use. See FAIR HOUS. COUNCIL OF OR., GUIDE FOR DEVELOPING ACCESSIBLE AND AGE FRIENDLY ZONING CODE (June 2021), https://fhco.org/wp-content/uploads/2021/10/AgeFriendlyCommunityGuide_FHCO_2022.pdf. For a mixed-use age friendly zoning district, see ROBBINSVILLE, N.J. CODE § 142-20.1 (2022), <https://ecode360.com/6347840>. Innovation districts are another

unplanned mixed-use development, but more detailed zoning for unplanned mixed-use development is an alternative.

A. Transit-Oriented Development

Transit-oriented development (TOD)²¹⁷ “is generally defined as development close to transit stations or transit stops that is compact, mixed-use, pedestrian-friendly, and well integrated with transit.”²¹⁸ It is intended to encourage transit usage, and transit-oriented development near transit stations must be resident-dense and job-dense because transit usage is driven by residential and employment density.²¹⁹ Walkability is critical: “The critical thing about making TOD work is to ensure that development actually is oriented around the station. That means enabling people to walk

example. See CITY OF COLUMBIA, S.C., INNOVISTA MASTER PLAN (July 2007), <https://planninganddevelopment.columbiasc.gov/wp-content/uploads/2021/01/innovistamasterplan.pdf>; see also Chad Burke & Zachary Zettler, *Retooling Innovation Districts for Mid-sized Cities*, URB. LAND (Feb. 11, 2022), <https://urbanland.uli.org/economy-markets-trends/retooling-innovation-districts-for-mid-sized-cities/>.

²¹⁷ A literature review of articles on TOD concluded:

in general, proximity to a station offering TOD features (density, land use mix and pedestrian-friendly design) increases the use of transit and simultaneously increases property prices in adjacent areas. In turn, an increase in property prices potentially leads to successive densification and/or gentrification of station areas, being doubtful whether public transport ridership levels remain high once high-income groups settle in a TOD.

Anna Ibraeva et al., *Transit-Oriented Development: A Review of Research Achievements and Challenges*, 132 TRANSP. RSCH. PART A 110, 128 (2020); accord, e.g., Michael Duncan, *The Impact of Transit-Oriented Development on Housing Prices in San Diego, CA*, 48 URB. STUD. 101 (2011) (finding price premium, that station proximity has a significantly stronger impact when coupled with a pedestrian-oriented environment, and that station area condominiums in more auto-oriented environments may sell at a discount); see also Jyothi Chava & John Renne, *Transit-Induced Gentrification or Vice Versa?*, 88 J. AM. PLAN. ASS’N 44 (2022) (finding that TOD resulted in gentrification that resulted in Black and low-income displacement by white residents).

²¹⁸ CAPITOL REGION COUNCIL OF GOV’TS, MODEL REGULS.: MIXED-USE TRANSIT-ORIENTED DEVELOPMENT DISTRICTS 1 (2014), <https://www.newingtonct.gov/DocumentCenter/View/143/Model-Regulations---Mixed-Use-Transit-Oriented-Development-TOD-Districts-PDF>.

²¹⁹ See David Morley, *Context-Sensitive Zoning for Transit-Oriented Development*, ZONING PRAC., Feb. 2015 at 5.

easily between the station and the destinations it serves.”²²⁰ Mixed-use promotes walking.²²¹ TOD is planned mixed-use development.²²²

TOD zoning districts are categorized in a variety of ways, such as by transit type or the type of community in which the transit station is located. The range of development density and the mix of allowable land uses typically defines TOD within these categories.²²³ A TOD ordinance can either be an overlay district or a primary base district.²²⁴ It usually has a center located around a transit station that has the highest density and use concentration, and a peripheral area with lower densities and a narrower range of land uses, such as a residential or employment district.²²⁵ Model zoning ordinances for TOD zoning districts include the standard zoning regulations but vary in whether, and to what extent, they have design standards.²²⁶ One proposed model TOD ordinance is similar to the New Town Mixed Use District ordinance. The ordinance requires existing or approved principal uses from at least two nonresidential use categories and High-Activity Nonresidential Uses at Street Level and has development and design standards, connectivity standards, and building and design

²²⁰ Hannah Twaddell, *The ABC's of TOD: Transit-Oriented Development*, PLAN. COMM'RS J., Winter 2009, at 3, <https://plannersweb.com/2009/02/the-abcs-of-tod-transit-oriented-development/>.

²²¹ See COMMUNITY DESIGN + ARCHITECTURE, INC., MODEL TRANSIT-ORIENTED DIST. OVERLAY ZONING ORDINANCE 6 (2001), <http://www.reconnectingamerica.org/assets/Uploads/bestpractice230.pdf>.

²²² See Ellen Greenberg, *Using Zoning to Reap the Benefits of TOD*, ZONING PRAC., Aug. 2004, at 6, 7 (suggesting active, walkable streets; building intensity and concentration; and careful integration of transit are key factors in TOD zoning); JOHN V. THOMAS & STEPHANIE BERTAINA, PAS QUICK NOTES NO. 21, PLANNING FOR TRANSIT-ORIENTED DEVELOPMENT (2009) (discussing planning principles and noting that “[a] mix of uses is also important to generating ridership and a quality sense of place”).

²²³ See CAPITOL REGION COUNCIL OF GOV'TS, *supra* note 218, at 4–5.

²²⁴ See SUZANNE RHEES, MODEL ORDINANCES FOR SUSTAINABLE DEVELOPMENT: TRANSIT-ORIENTED DEVELOPMENT 2, <http://www.crplanning.com/ordinances/tod.pdf>.

²²⁵ See *id.* Key considerations for TOD districts include station-area types, density, use mix, building form, and parking standards. See *id.* at 4–6.

²²⁶ See N.H. OFF. OF STRATEGIC INITIATIVES, INNOVATIVE LAND USE PLANNING TECHNIQUES: A HANDBOOK FOR SUSTAINABLE DEVELOPMENT, TRANSIT ORIENTED DEVELOPMENT § 3.1 (2008), <https://www.nh.gov/osi/planning/resources/innovative-land-use-guide.htm>; UNIV. OF S. FLA., CTR. FOR URB. TRANSP. RSCH., MODEL REGULATIONS AND PLAN AMENDMENTS FOR MULTIMODAL TRANSPORTATION DISTRICTS (Apr. 2004), <http://www.cutr.usf.edu/wp-content/uploads/2012/08/MMTD-FINAL-REPORT-April-30.pdf>; COMMUNITY DESIGN + ARCHITECTURE, INC., *supra* note 221.

standards, but includes detailed design standards.²²⁷ Design guidelines, integrating TOD with planning or approving a TOD as a planned unit development are alternatives.²²⁸

B. Mall Redevelopment

The large-scale, country-wide abandonment of single-purpose shopping malls creates opportunities for mixed-use development²²⁹ because they contain large, open parking areas that are available for conversion.²³⁰ As Lee Einsweiler explains, mall conversion of “suburban” commercial areas with sprawling parking lots, awkward circulation and limited street connections, mostly on major road corridors, requires rezoning.²³¹ “Transformational change” is needed that will convert open, undeveloped parking areas to mixed-use development with designated centers.²³² New blocks and streets are part of the change when parcels are large enough.²³³ Einsweiler’s zoning ordinance for Amherst, New York

²²⁷ See CAPITOL REGION COUNCIL OF GOV’TS, *supra* note 218, at 34 (listing building and design standards including configuration of buildings, building massing, and form); see also THE MD.-NAT’L CAPITAL PARK & PLAN. COMM’N, PRINCE GEORGE’S CNTY. PLAN. DEP’T, PRINCE GEORGE’S PLAZA, ch. 6 (2016), https://www.mncppcapps.org/planning/Publications/PDFs/328/PGP_2016_Chapter%206.pdf.

²²⁸ See Greenberg, *supra* note 222, at 7.

²²⁹ See Ian Thomas, *Seizing the Opportunity to Bring Mixed-Use Development to Ailing Malls*, URB. LAND (Jan. 27, 2022), <https://urbanland.uli.org/industry-sectors/retailer-tainment/seizing-the-opportunity-to-bring-mixed-use-development-to-ailing-malls/> (“The solution is . . . boldly rounding out its appeal as a true town center with associated mixed-use elements,” and discussing major mall conversion in Bellevue, Washington); MICHAEL D. BEYARD ET AL., TEN PRINCIPLES FOR RETHINKING THE MALL (2006), https://uli.org/wp-content/uploads/ULI-Documents/Tp_Mall.ashx.pdf; see also MONTGOMERY CNTY., MD., *supra* note 6, at 13–15 (discussing reinventing suburban commercial areas).

²³⁰ See SIMON B. BUTTIN, *Rockville Town Square*, in BUNTIN & PIRIE, *supra* note 1, at 49, 49 (describing transit-oriented development that “replace[d] a failed shopping mall with a vibrant civic, retail and residential core”).

²³¹ See Email from Lee D. Einsweiler, Founding Principal, Code Studio, to author (July 25, 2022, 7:57 CDT) (on file with author).

²³² See *id.*

²³³ See *id.* (explaining that the change includes shallow or deep corridor districts, that the code recognizes that deep corridors have more flexibility to produce new streets and blocks than shallow corridors, that height and screening is required for rear transitions to existing neighborhoods, and that parking requirements are reduced or consolidated to encourage mixing of uses).

applies these concepts.²³⁴ Mall redevelopment can also be done under a design-based zoning ordinance or a development plan.²³⁵

C. Live/Work Units

Live/work units,²³⁶ which are housing units where individuals both live and work, are an important mixed-use development because they decrease automobile use and increase internal trip capture.²³⁷ They require regulations that designate where they can be located and that include regulations for use and occupancy.²³⁸ This zoning usually is by-right zoning, but discretionary review can be required.²³⁹ When zoning is for planned mixed-use development, it can indicate where live/work units are appropriate in a mixed-use development and can provide development and performance standards that limit nonresidential use so the live/work unit

²³⁴ See AMHERST, N.Y. ZONING CODE § 5A-3, https://www.amherst.ny.us/pdf/planning/compplan/zcr/191002_zoning_mixed_use_code_adopted.pdf (describing Retrofit Districts, providing for shallow and deep corridors and centers); see also Amherst Boulevard Mall Example (2019), <https://boulevard-mall.com/> (on file with author); Amherst Retrofit Districts (2019) (on file with author). The code also provides for Infill Districts. See AMHERST, N.Y. ZONING CODE § 5A-1 (“Infill Districts allow for redevelopment and infill in a form that is pedestrian-friendly and supports the surrounding neighborhood”).

²³⁵ See Simon B. Buntin, *Belmar*, in BUNTIN & PIRIE, *supra* note 1, at 79, 85–86 (discussing development plan). A planned unit development also is an alternative. See PLANNED UNIT DEVELOPMENTS, *supra* note 15, at 70–71.

²³⁶ For discussion, see THOMAS DOLAN, LIVE-WORK PLANNING AND BUILDING CODE ISSUES (2014), <https://www.buildingincalifornia.com/wp-content/uploads/2014/02/BIC-Live-work-Article-with-photocaptions.pdf#:~:text=Top%20Building%20Code%20Issues%20The%20most%20important%20live-work,Mixed%20Occupancy%20in%20a%20single%20common%20atmosphere%20202>. Proximity is important, and work and residence can be in one common area; separated by a wall, floor, or ceiling; or detached. See *id.* at 6–10. Either the workspace or residence space may dominate or change over time. See *id.* at 12. A home occupation is different and “is a term used by many jurisdictions to grant residents the right to pursue small-scale work activities at home.” *Id.* at 13. Most zoning ordinances provide for home occupations. See Patricia E. Salkin, *Zoning for Home Occupations: Modernizing Zoning Codes to Accommodate Growth in Home-Based Businesses*, 35 REAL EST. L.J. 181 (2006).

²³⁷ See Simmons B. Buntin, *Suisun City Waterfront District*, in BUNTIN & PIRIE, *supra* note 1, at 131, 139 (picturing unique series of live/work structures along a harbor); see also HACIN & ASSOCS., INC., SEAPORT SQUARE: SETTING THE STANDARD FOR INNOVATION ON THE WATERFRONT 10–11 (map showing location of live/work spaces) (on file with author).

²³⁸ See, e.g., L.A. CNTY. CODE § 22.140.320(C)–(H) (2023), <https://file.lacounty.gov/SDSInter/bos/supdocs/97129.pdf>.

²³⁹ See, e.g., *id.* § 22.140.320(C) (requiring a ministerial site plan review application for certain types of live/work units).

is compatible with adjacent residential uses.²⁴⁰ Municipal zoning ordinances can include lists of permitted uses for live/work units²⁴¹ and detailed performance and development standards²⁴² that can include detailed regulations for use, occupancy, and employment.²⁴³

VII. CONCLUSION

This Article has discussed the zoning alternatives that are available for mixed-use development. Decisions that must be made on when to apply these alternatives should not discourage their adoption. There is no standard metric that can identify a successful one-size-fits-all-model, all zoning strategies contain risk, and zoning always requires adaptation that depends on the type of mixed-use development the zoning ordinance is intended to achieve.

Zoning for mixed-use development must consider the issues discussed in this Article. Decisions must be made on how much control the municipality wants to have over mixed-use development, and whether that control should authorize development by right or require discretionary review. The degree of control provided determines the extent to which a municipality can accept or modify development decisions in the market.

²⁴⁰ See CITY OF DUBLIN, OHIO, CODE OF ORDINANCES § 153.058(B)(1) (2021), https://codelibrary.amlegal.com/codes/dublin/latest/dublin_oh/0-0-0-97298 (allowing permitted live/work uses in Residential District); see also *id.* § 153.059(B)(9) (including Use Table showing districts where live/work uses permitted.); *id.* § 153.059(C)(1)(c) (stating that no more than two non-resident employees are permitted in addition to the resident of a dwelling, non-residential use must be operated by a resident of the live-work dwelling unit, and signs are permitted as allowed in another section).

²⁴¹ See, e.g., L.A. CNTY. CODE § 22.140.320 tbl.22.140.320-A, tbl.22.140.320-B (2022), https://library.municode.com/ca/los_angeles_county/codes/code_of_ordinances?nodeId=TIT22PLZO_DIV7STSPUS_CH22.140STSPUS_22.140.320JOLIWOUN (listing uses such as ceramics making and costume designing); see also L.A. CNTY. CODE § 22.140.320 (listing permitted uses and development standards in Joint Live/Work Units in Commercial Zones, Rural Zones, and the Mixed Use Development Zone).

²⁴² See, e.g., L.A. CNTY. CODE § 22.140.320(G)–(H) (including minimum size, direct access between the living space and working space, providing that “[a]t least one resident of the living space shall perform or oversee the commercial activity performed in the working space,” and requiring covenant and agreement to maintain joint live/work unit).

²⁴³ See, e.g., CULVER CITY, CAL., MUN. CODE § 17.400.060, https://codelibrary.amlegal.com/codes/culvercity/latest/culvercity_ca/0-0-0-54349 (including detailed regulations for use, occupancy and employment; a city approved covenant providing for maintenance of the live/work unit; development standards; and performance standards); see also SMART CODES: MODEL LAND-DEV. REGULS. § 103 (Am. Plan. Ass’n, Marya Morris general ed., 2009) (discussing commercial zones, optional manufacturing zones, and development standards for ground floor units).

The decision on how to define discretionary review, if it is adopted, determines how much flexibility there is in regulating mixed-use development, how much certainty is provided, and the level of detail in development requirements. Discretionary review provides an opportunity to customize regulation for individual projects but creates uncertainty. By-right zoning provides certainty but not the customized detail that a mixed-use development needs.

Zoning for mixed-use development requires difficult choices, and there is no standard metric for making these choices. They must produce zoning for mixed-use development that reflects local goals and objectives and the extent zoning is expected to regulate the market. Creating the right zoning framework for mixed-use development can be complicated, but the social, economic, and developmental benefits of mixed-use development make it worthwhile.