

**Note: Developed by Widener Law students as an example of what similar municipal ordinances might look like. Borough council should confirm with their solicitor first.**

## **Promoting Mixed Zoning Developments for a More Sustainable Community**

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“Neighborhoods should be diverse in use and population; communities should be designed for the pedestrian and transit as well as the car; cities and towns should be shaped by physically defined and universally accessible public spaces and community institutions; urban places should be framed by architecture and landscape design that celebrate local history, climate, ecology, and building practice.”<sup>1</sup>

### **I. Introduction**

Mixed-use development is a method for tactically organizing physical space that is ideal for society to flourish and function.<sup>2</sup> Zoning was originally created to address the public health concerns during the time period when industrialization was transforming America.<sup>3</sup> The commercial aspects of these properties were not only loud and smelly, but also were potentially hazardous to the public that resulted in compartmentalization of land uses to create a barrier between the public and the nuisances of the industries.<sup>4</sup> Today, the mixing of different property uses in compact vicinities is more beneficial for a sustainable environment because commercial properties no longer have harmful and adverse effects on the public that they once had.<sup>5</sup> In essence, these Euclidean zoning ordinances forbid the idea of mixed-use development.<sup>6</sup>

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<sup>1</sup> *The Charter of the New Urbanism*, Congress For New Urbanism, (Sept. 25, 2016), <https://www.cnu.org/who-we-are/charter-new-urbanism>.

<sup>2</sup> Josh D. Herndon, *Mixed Use Development in Theory and Practice: Learning from Atlanta's Mixed Experiences*, at 22 (2011).

<sup>3</sup> *Mixed Use Zoning: A Planners' Guide*, Metropolitan Area Planning Council, (Sept. 25, 2016), [http://www.mapc.org/sites/default/files/Mixed\\_Use\\_Planners\\_Toolkit.pdf](http://www.mapc.org/sites/default/files/Mixed_Use_Planners_Toolkit.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Herndon, *supra* note 2, at 6.

Generally, the primary goal of mixed-use development is to reverse the negative effects that Euclidean zoning and sprawl have taken on our communities.<sup>7</sup>

Part II sets forth the problems that can be resolved through the implementation of mixed-use development. The problems include the negative impacts of sprawl, Euclidean zoning, and suburban use development. Furthermore, Part II also provides the solution to these problems through the promotion of smart growth, New Urbanism, and placemaking. Because of these reasons, many municipalities are implementing mixed-use development in order to promote a more sustainable environment and a healthier quality of life.

Part III provides reasons as to why a revised ordinance is needed. The unique need of each municipality is the main reason as to why revised ordinances are imperative per municipality. In addition, this section addresses the many social, environmental, and economic benefits for residents and businesses that a mixed-use development can provide.

Part IV visits other jurisdictions that have successfully implemented mixed-use development in order to obtain a healthier and more sustainable lifestyle. This section also portrays the different ways mixed-use development can be executed and the problems that can arise. On the smaller scale is Via Verde, which is a smaller community located in New York City. Seaside, Florida is an 80-acre beach town that displays a perfect example of the New Urbanism movement. Atlantic Station, which is located in Atlanta, Georgia, is on the grandest scale with a 138-acre brownfield redevelopment. Lastly, Pennsylvania's Montgomery County and Delaware Valley region are prime examples of how to achieve mixed-use development through local municipalities.

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<sup>7</sup> *Id.* at 22.

Finally, Part V addresses the key policy issues with mixed-use zoning. Public approval is a big issue that needs to be handled before moving forward with developing a mixed-use community. In addition, the section next assesses the funding aspect of a mixed-use development. Finally, the section attacks the issues of improper planning that may occur at the outset of a mixed-use master plan.

## **II. Problems and the Solutions through Mixed-Use Development**

### **A. The Issues of Sprawl, Euclidean Zoning, and Suburban Development**

Mixed-use development can have an incredibly positive effect on the negative effects of sprawl, Euclidean zoning, and suburban development. Sprawl is when society tends to expand and use more land than necessary, which increases automobile dependence. Euclidean zoning and its single use mandate is what leads society to its sprawl inducing habits. Suburban development, in turn, is the result of sprawl and Euclidean zoning.

Sprawl is one of the primary problems that need to be addressed through mixed-use development.<sup>8</sup> Sprawl is an array of low-density development and automobile dependence because of the devolution of human occupancy.<sup>9</sup> Communities are requiring more dispersed land and space per person to provide homes, places of business, retail locations and recreation zones.<sup>10</sup> This phenomenon occurs where population growth ensues outside of urban areas, but can also occur when there is population settlement outside of cities with little growth.<sup>11</sup>

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<sup>8</sup> *Defining Sprawl and Smart Growth*, Cornell University Community and Regional Development Institute, (Sept. 25, 2016), <https://cardi.cals.cornell.edu/focal-areas/land-use/sprawl/definition>.

<sup>9</sup> John C. Dembach, *AN AGENDA FOR SUSTAINABLE COMMUNITIES*, 4 *ENV'T'L & ENERGY L. & POL'Y J.* 170, 176 (2009).

<sup>10</sup> *Defining Sprawl and Smart Growth*, *supra* note 8.

<sup>11</sup> *Id.*

Disjointed local decision-making is a primary promotion of sprawl.<sup>12</sup> Not only does sprawl lead to expensive upkeep of roads, sewage systems, and other infrastructures, but it also increases traffic congestion and longer commutes from suburbs to cities.<sup>13</sup> This traffic congestion leads to higher greenhouse gas emissions that are detrimental to the environment.<sup>14</sup> Mixed use zoning developments result in people living in more connected and linked areas.<sup>15</sup> The impact of mixed use affects the public immensely by giving the community greater economic mobility, lowering cost for housing and transportation, creating more transportation options, and increasing their quality of life.<sup>16</sup>

Euclidean zoning not only promotes sprawl but also takes a toll on mixed-use development by mandating single-use development.<sup>17</sup> Originally, Euclidean zoning was created to promote public health and safety.<sup>18</sup> It did this by creating a barrier between residential and commercial uses.<sup>19</sup> However, this single-use zoning transformed our green spaces into a segregated sprawl inducing, automobile-dependent society.<sup>20</sup> The ordinances that promote Euclidean zoning prevent the creation and renovation of neighborhoods, towns and cities from being functional and sustainable.<sup>21</sup> Instead of treating zoning as a protection for suburban

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<sup>12</sup> Dernbach, *supra* note 9, at 176.

<sup>13</sup> Heather Nicholson, *Smart Growth and New Urbanism: The Implementation of Development Plans Eight Years after Hurricane Katrina on the Mississippi Gulf Coast*, The University of Southern Mississippi, at 15 (2014).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Reid Ewing & Shima Hamidi, *Measuring Sprawl 2014*, Smart Growth America, (Sept. 25, 2016), <https://www.smartgrowthamerica.org/app/legacy/documents/measuring-sprawl-2014.pdf>.

<sup>17</sup> Jason T. Burdette, *Form-Based Codes: A Cure for the Cancer Called Euclidean Zoning?*, Virginia Polytechnic Institute and State University, at 2 (2004).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Burdette*, at 11.

residents it should be used to create a positive and functional environment for the community as a whole.<sup>22</sup>

However, Euclidean zoning cannot be entirely blamed for creating sprawl.<sup>23</sup> Early 20<sup>th</sup> century factors and post World War II policies and events increased sprawl as well and influenced the current land development practices.<sup>24</sup> During the industrialization period, Americans became increasingly wealthy.<sup>25</sup> The increased wealth of the American people resulted in an increased desire for a larger house or an automobile.<sup>26</sup> Through technological innovations, manufacturing was made cheaper and more affordable to the common citizen and the same technological innovations provided for the mass production of tract housing.<sup>27</sup> In addition, the 1947 Interstate Highway Act assisted the “white flight” from urban areas.<sup>28</sup> The new highways made suburban areas easier to reach and offered an escape from the grit and crime of urban life.<sup>29</sup>

Overall, the implementation of zoning use requirements will dictate what and whom will locate where.<sup>30</sup> This is most often seen through suburban land development.<sup>31</sup> Suburban zoning regulations seek to exclude certain populations from neighborhoods and their community.<sup>32</sup> Wealthier people are primarily directed towards the suburbs, whereas; the poor are directed toward the cities resulting in a *de facto* type of discrimination based on wealth.<sup>33</sup> Although Euclidean zoning was meant to prevent the mixing of incompatible uses for the public good, its

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<sup>22</sup> *Id.* at 14.

<sup>23</sup> *Id.* at 17.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Burdette, at 17.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

underlying objectives remain a popular tool for wealthier communities to exclude unwanted activities and people based on social class.<sup>34</sup>

Mixed-use development can address the aforementioned problems that society endures. Reducing sprawl by eliminating low-density development and automobile dependence can increase the functionality of a community overall. By breaking through the barrier of Euclidean zoning, mixed-use development can smoothly be initiated without burdensome obstacles such as single-use districts. Lastly, suburban zoning regulations can be expanded to include multiple uses, which in turn will eradicate the discriminatory exclusion from neighborhoods. Solutions can be achieved through the uses of smart growth, new urbanism, and placemaking.

## **B. Mixed-Use that Promotes Smart Growth, New Urbanism, and Placemaking**

Smart growth, New Urbanism, and placemaking are solutions to the problems that sprawl and Euclidean zoning have created. Smart growth battles these issues by mixing property uses to help bring health, safety, and convenience into the lives of society. New Urbanism is an effective tool to generate walkable and efficient neighborhoods. Placemaking is a way in which the creative design of the neighborhood entices people to relax and spend time in the community.

Smart growth is an attractive, convenient, safe, and healthy solution that crafts new neighborhoods or renovates existing ones.<sup>35</sup> According to Smart Growth America, “[s]mart growth is an approach to development that encourages a mix of building types and uses, diverse housing and transportation options, development within existing neighborhoods, and community

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<sup>34</sup> *Id.* at 19.

<sup>35</sup> *This is Smart Growth*, Smart Growth Network, (Sept. 25, 2016), <https://www.epa.gov/sites/production/files/2014-04/documents/this-is-smart-growth.pdf>.

engagement.”<sup>36</sup> The foundation of the smart growth approach includes ten principles.<sup>37</sup> The first is mix land uses, which is intended to have homes, shops, offices, schools, parks, and restaurants located in the same vicinity.<sup>38</sup> The plethora of uses can be located on the same block or even in the same building, which makes everyday life more convenient while preserving green spaces.<sup>39</sup> This mixing of land uses brings life into a neighborhood at all hours of the day, which not only bolsters the businesses, but also increases the safety of the community.<sup>40</sup> Furthermore, the close vicinity decreases auto-dependence and encourages walking and biking because people live closer to where they work.<sup>41</sup> In addition, offering transportation options decreases gas emissions from vehicles and controls traffic congestion.<sup>42</sup> All of these benefits lead to a healthier and more efficient lifestyle, which in turn is very attractive to society.<sup>43</sup>

While smart growth encourages a mix of building types and uses, diverse housing and transportation options, New Urbanism deals with designing communities to promote smart growth. According to the Congress for the New Urbanism (CNU), “New Urbanism is about creating sustainable, human-scaled places where people can live healthy and happy lives.”<sup>44</sup> New Urbanism is a great way to combat sprawl through an environmentally efficient design of neighborhoods.<sup>45</sup> New Urbanists fight for the return of human-scale neighborhoods by pushing

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<sup>36</sup> *What is Smart Growth?*, Smart Growth America, (Sept. 25, 2016), <https://smartgrowthamerica.org/our-vision/what-is-smart-growth/>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *This is Smart Growth*, Smart Growth Network, (Sept. 25, 2016), <https://www.epa.gov/sites/production/files/2014-04/documents/this-is-smart-growth.pdf>.

<sup>43</sup> *Id.*

<sup>44</sup> *What is New Urbanism?*, Congress For New Urbanism, (Sept. 25, 2016), <https://www.cnu.org/resources/what-new-urbanism>.

<sup>45</sup> Heather Nicholson, *Smart Growth and New Urbanism: The Implementation of Development Plans Eight Years after Hurricane Katrina on the Mississippi Gulf Coast*, The University of Southern Mississippi, at 17 (2014).

to reform zoning and street design, while creating a community that is a five-minute walk from center to edge.<sup>46</sup> Placemaking and public interaction are of primary importance when creating a mixed-use community.<sup>47</sup> The streets are specially designed for people, encouraging them to walk, bike, and use public transit, while sidewalks, courtyards, and cafes are strategically placed to promote public interaction.<sup>48</sup> A New Urbanist mixed-use community is created through a holistic approach with a combination of architecture and open spaces.<sup>49</sup> Every detail in the design has a purpose in relation to the function of the community.<sup>50</sup> This approach also transforms neglected housing and places into functional multi-use districts that have character embedded into an urban design.<sup>51</sup>

Smart growth and New Urbanism build neighborhoods through mixing uses with an effective design. However, the community should have character in its structures that is appealing to the patrons. “Placemaking is the process of creating quality places that people want to live, work, play and learn in.”<sup>52</sup> Placemaking is the means to the end and the end is the creation of quality places.<sup>53</sup> Quality places are places with strong sense of place that people desire to be in.<sup>54</sup> These places stimulate people’s subconscious through capturing unique locations, art, and activities in one single vicinity, while being safe and people friendly at the same time.<sup>55</sup> In order to create communities with a strong sense of place, mixed-use development

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<sup>46</sup> *What is New Urbanism?*, *supra* note 49.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Mark A. Wyckoff, *DEFINITION OF PLACEMAKING: Four Different Types*, Michigan State University Land Policy Institute, at 2.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*



is crucial.<sup>56</sup> A sense of place lures visitors in over and over again because of the unique experience that the community provides.<sup>57</sup>

### III. Why a Revised Ordinance is Needed

Permission and regulation of mixed-use development is feasible through the use of municipal zoning ordinances.<sup>58</sup> A revised ordinance is necessary in every municipality because the mixed-use zoning aspect is exclusive to the community layout and the goals that the municipality is trying to accomplish.<sup>59</sup> The municipality must first come to the decision as to where the mixed-use zone will be permitted and then determine whether they need to draft or amend existing ordinances in order to advance their desired usage.<sup>60</sup> The specifics of the ordinance must divulge the desired type of mixed-use that the municipality is seeking.<sup>61</sup> For example, whether the mixed-use development is geared toward renovating an existing building into multi-use zones or it is directed toward the creation of a new multi-use community, must be embedded in the details of the ordinance.<sup>62</sup> In addition, the mixed-use ordinance must include communal amenities and public infrastructure such as community parking and sewage systems that have cost effective and environmentally friendly motivations.<sup>63</sup> Mixed-use development projects that are on a larger scale may require public and private partnerships in order to assess

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<sup>56</sup> *Mixed-use Development and Ordinances*, Chester County Planning Commission, (Sept. 25, 2016), <http://www.landscapes2.org/ToolsLandscape/Pages/MixedUse.cfm>.

<sup>57</sup> Josh D. Herndon, *Mixed Use Development in Theory and Practice: Learning from Atlanta's Mixed Experiences*, at 74 (2011).

<sup>58</sup> *Mixed-use Development and Ordinances*, *supra* note 57.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Mixed-use Development and Ordinances*, *supra* note 57.

<sup>63</sup> *Id.*

issues that are outside the mixed-use property, such as roadway improvements.<sup>64</sup> Issues such as these, require an initial feasibility analysis to make sure the project can commence without interruption.<sup>65</sup>

One of the Pennsylvania Governor's goals is for The Pennsylvania Housing Finance Agency to create 165 residential units in mixed-use development projects by 2020.<sup>66</sup> This goal is to ensure that local economies are stimulated through residential units in mixed-use development projects.<sup>67</sup> Because of this, it is imperative that zoning ordinances that promote mixing uses are available to local municipalities to help guide their development process.<sup>68</sup> This ordinance will help local municipalities achieve this goal, by not only setting up the procedural process, but also by explaining why mixed-use developments are vital for a sustainable environment.

Proposing a mixed-use zoning ordinance has many social, environmental, and economic benefits for residents and businesses in a municipality.<sup>69</sup> The social benefit is the sense of place that it creates for the residents of the community.<sup>70</sup> A quality place, such as a mixed-use development, increases the public interaction, which in turn makes the community a safer place to live.<sup>71</sup> The environmental benefit that is associated with mixed-use zoning is energy conservation through the implementation of efficient land use.<sup>72</sup> In addition, a mixed-use development would decrease the automobile dependence due to the walkability and transit

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Infrastructure and Development*, Governor's Goals BETA, (Dec. 8, 2016), <https://goals.governor.pa.gov/the-pennsylvania-housing-finance-agency-will-create-165-residential-units-in-mixed-use-development-projects-by-2020/>.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

options of the compact community, which in turn would decrease gas emissions from vehicles.<sup>73</sup> This means the ordinance needs to address and create paths and promenades that are as convenient and comfortable as possible.<sup>74</sup> For a truly walkable community and a bikeable environment, adjoining properties should be designed to connect effortlessly.<sup>75</sup> The economic benefit that stems from mixed-use developments is the increase in population within a compact location due to convenience.<sup>76</sup> Mixing uses can foster economic development through job generation, new business creation, and higher tax revenues for municipalities.<sup>77</sup> In turn, the walkability to local business within the development can create a booming economy for the businesses.<sup>78</sup> Therefore, by adding commercial to a residential development offers the prospect of elevated sales and property taxes.<sup>79</sup>

#### **IV. How Problems have been Addressed in Other Jurisdictions**

Communities that are “going green” through mixed-use development are very attractive to society. The convenience of having housing, shops, offices, and schools in one safe and compact vicinity, which promotes walkability, is appealing. Seaside, Florida is an example of the first New Urbanist beach town, while Via Verde is a sustainable apartment complex in New York City. On the grandest scale is Atlantic Station in Atlanta, Georgia that turned a lead-contaminated wasteland into a popular urban community. In addition, Pennsylvania’s Montgomery County and Delaware Valley area are transforming their existing communities into

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<sup>73</sup> *Id.*

<sup>74</sup> *Mixed Use Development Delivers Great Benefits*, Useful Community Development, (Sept. 25, 2016), <http://www.useful-community-development.org/mixed-use-development.html>.

<sup>75</sup> *Id.*

<sup>76</sup> *Mixed-use Development and Ordinances*, *supra* note 57.

<sup>77</sup> *Financing Mixed-Use Development In The Delaware Valley Region*, Delaware Valley Regional Planning Commission, (Dec. 8, 2016), <http://www.dvrpc.org/reports/08037.pdf>.

<sup>78</sup> *Id.*

<sup>79</sup> *Mixed Use Development Delivers Great Benefits*, *supra* note 72.

a mixed-use healthy environment through zoning overlay districts and amending existing zoning laws.

### A. Seaside, Florida

Seaside, Florida is the first 80-acre New Urbanist town that revolutionized the mixed-use community.<sup>80</sup> Founder Robert Davis wanted to create a utopian urban atmosphere for people that were bored of the suburbs.<sup>81</sup> In addition the aim was to create a better quality of life while battling suburban sprawl.<sup>82</sup> It includes 300 bungalow-style homes, 12 restaurants and eateries and 41 shops and galleries.<sup>83</sup> It has the live, work, and play feel with everything in walking distance, which eliminates auto-dependence.<sup>84</sup> The streets are designed with pedestrian alleys and many open spaces throughout Seaside.<sup>85</sup> There are tennis courts, a community pool, an amphitheater, and a charter school.<sup>86</sup> However, the issue of high housing prices occurred in Seaside because of the desirability to live in the quaint town.<sup>87</sup> Because Seaside became so desirable the original idea of diverse housing prices failed.<sup>88</sup> Despite the expensive housing prices, Seaside is still known for becoming the first New Urbanism town.<sup>89</sup>

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<sup>80</sup> *THE SUBURBAN REVOLUTION: THE TOWN THAT CHANGED AMERICA TURNS 30*, (Sept. 25, 2016), <http://www.seasidefl.com/in-the-media/2012/06/the-suburban-revolution-the-town-that-changed-america-turns-30-seaside-florida-the-first-new-urbanist-community-credited-with-inspiring-mixed-use-development-across-the-u-s/>.

<sup>81</sup> Jennifer Parker, *SEASIDE, ABOUT THE COMMUNITY AND THE BUILDING OF THE SEASIDE RESEARCH PORTAL*, The Seaside Research Portal Archiving The First New Urban Community, (Sept. 25, 2016), <https://seaside.library.nd.edu/essays/the-community-and-building-the-portal>.

<sup>82</sup> *Id.*

<sup>83</sup> *THE SUBURBAN REVOLUTION*, *supra* note 77.

<sup>84</sup> *Id.*

<sup>85</sup> Heather Nicholson, *Smart Growth and New Urbanism: The Implementation of Development Plans Eight Years after Hurricane Katrina on the Mississippi Gulf Coast*, The University of Southern, at 17 (2014).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 18.

<sup>88</sup> *Id.* at 37.

<sup>89</sup> *Id.*

Seaside expanded its uses through the planned development section of its zoning ordinance.<sup>90</sup> The purpose of that section is to encourage orderly tracts of land that are large enough to allow for comprehensive planning and to provide a degree of flexibility in the application of certain regulations that cannot be achieved through traditional lot-by-lot subdivisions.<sup>91</sup> The owners of the property must submit applications for their development plan for approval to the Planning Department.<sup>92</sup> If their plan is approved, they can move forward with their mixing of uses.<sup>93</sup>

## **B. Via Verde**

On a smaller scale, Via Verde is a 98.8 million dollar mixed-use residential development in New York City that is a successful attempt to give life to the Bronx.<sup>94</sup> In the 1960s and 70s the area was scattered with blighted areas with an unfortunate high crime rate.<sup>95</sup> Now, it is an incredible urban development that provides a healthy living for 400 residents within 1.5 acres.<sup>96</sup>

The main focus was to create a sustainable design while providing affordable housing for all income levels with health promoting amenities.<sup>97</sup> There are 222 residential units, 7,500 square feet of retail space, and 40,000 square feet of open space for residents.<sup>98</sup> The secondary focus was to battle health issues of obesity and asthma by offering state of the art health amenities.<sup>99</sup>

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<sup>90</sup> City of Seaside, Florida, Municipal Code § 83-10.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *ULI Case Studies Via Verde*, Urban Land Use Institute, (Sept. 25, 2016), <http://casestudies.uli.org/via-verde/>.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

The health promoting amenities include space for outdoor activity, an indoor fitness center, a rooftop vegetable garden, and a medical and pharmacy center on the first floor.<sup>100</sup>

The sustainability and healthy living components to Via Verde are remarkable.<sup>101</sup> The green roofs are signature to Via Verde in which they dissipate heat and absorb rainwater.<sup>102</sup> The roof gardens encompass evergreen trees on the third floor, fruit trees on the fourth, and vegetable gardens on the fifth.<sup>103</sup> The seventh floor has an outdoor fitness facility with open spaces for social events and fitness classes.<sup>104</sup>

This single building is extremely energy efficient, which in turn is cost efficient.<sup>105</sup> The stairwells have windows that provide natural light while parts of the development include lighting initiated by motion sensors for energy conservation.<sup>106</sup> In addition, solar panels provide the electricity for the common areas.<sup>107</sup> Remarkably, it is more than thirty percent more energy efficient than any standard building.<sup>108</sup> Some of the building materials were made of recycled materials while most of the construction waste was recycled.<sup>109</sup>

Walkability eliminates auto-dependence.<sup>110</sup> Via Verde is located within easy walking distances of businesses and transit systems that meet an average person's daily needs.<sup>111</sup> Walking

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<sup>100</sup> *ULI Case Studies, supra* note 87.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *ULI Case Studies Via Verde*, Urban Land Use Institute, (Sept. 25, 2016), <http://casestudies.uli.org/via-verde/>.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

to the grocery store or to the nearest subway is just minutes away. In addition, there is a public school within the block.<sup>112</sup>

Via Verde was the result of a public and private partnership between the development team and the city.<sup>113</sup> Many city agencies played key roles such as project approvals and financing.<sup>114</sup> The design and development team worked with the local community board in order to rezone the property so the project was able to move forward.<sup>115</sup> The development required zoning exceptions.<sup>116</sup> They needed to acquire special permits in order for the development to proceed because the standard regulations would have prohibited this mixing of uses.<sup>117</sup>

### **C. Atlantic Station**

Atlantic Station in Atlanta, Georgia is one of the largest brownfield redevelopments in U.S. history.<sup>118</sup> This former steel mill was a lead contaminated 138-acre desolate property that was transformed into a 2 billion dollar mixed-use redevelopment.<sup>119</sup> This community was Atlanta's way of battling sprawl through smart growth principles.<sup>120</sup> This project was designed to be pedestrian and transit-friendly with a live, work, and play environment.<sup>121</sup> In addition, energy conservation is another aim that the community had in mind, considering many of the buildings are certified in Leadership in Energy and Environmental Design (LEED).<sup>122</sup> Atlantic Station is

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<sup>112</sup> *Id.*

<sup>113</sup> *ULI Case Studies Via Verde*, Urban Land Use Institute, (Sept. 25, 2016), <http://casestudies.uli.org/via-verde/>.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> Josh D. Herndon, *Mixed Use Development in Theory and Practice: Learning from Atlanta's Mixed Experiences*, at 73 (2011).

<sup>119</sup> *Id.* at 67.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

separated into three districts: The District, The Commons, and The Village.<sup>123</sup> Among the three districts there is 6,000 square feet of office space, 3,000-5,000 residential units, two million square feet of retail/entertainment space, 1,000 hotel rooms and 11 acres of public parks.<sup>124</sup>

The development of this mixed-use community also had its challenges.<sup>125</sup> Because the property was formerly a steel mill, the ground water was severely contaminated with lead and had to be fixed before the building could take place.<sup>126</sup> Twenty thousand truckloads of contaminated soil and 164,000 cubic yards of granite had to be dug up and removed from the property in order to decontaminate and level out the land for building.<sup>127</sup> The next problem that the team had to deal with was the separation from the community to the surrounding neighborhoods.<sup>128</sup> This community has instigated the building of the 17<sup>th</sup> Street Bridge that is pedestrian and transit-friendly and connects Atlantic Station to the surrounding neighborhoods.<sup>129</sup> The final issue that they endured was getting the rest of the city and region to accept the idea of this new mixed-use community.<sup>130</sup> They had a number of public hearings and discussions with community groups to get approval.<sup>131</sup>

An opportunity that the development team failed to address was creating a unique sense of place in the community.<sup>132</sup> Rather than giving the town a unique urban neighborhood feel it created an airy open mall type of vibe.<sup>133</sup> The architecture is repetitious and lacks character due

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<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 68.

<sup>125</sup> *Id.* at 70.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 71.

<sup>129</sup> Josh D. Herndon, *Mixed Use Development in Theory and Practice: Learning from Atlanta's Mixed Experiences*, at 67 (2011).

<sup>130</sup> *Id.* at 71.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 74.

<sup>133</sup> *Id.*



to the absence of a more efficient planning at the commencement of the development<sup>134</sup> Another issue is the nightclubs that operate within the community that create a negative impact on the safety of the community at night.<sup>135</sup>

Getting the property rezoned was very contentious and required the services of real estate attorneys.<sup>136</sup> The property had to be rezoned before they were allowed to follow through with the mixed-use plan.<sup>137</sup> In addition to rezoning they needed to acquire permits for the different uses.<sup>138</sup>

Overall, the project implemented smart growth principles in order to reduce auto-dependence and air emissions while conserving open green space.<sup>139</sup> Furthermore, there was an incredible decrease in stormwater runoff along with new sewer systems that created positive environmental influence by reducing pollutants in the regions river.<sup>140</sup> Despite the few mistakes, Atlantic Station is the epitome of a mixed-use development success story.

The goals set out in a master plan for a mixed-use development may not always be met. For example, Seaside failed at creating a diverse income community because of the high desirability to reside there. On the other hand, Atlantic Station failed to create the sense of place that Seaside clearly possessed. Despite these minor downfalls, the promotion of a sustainable environment along with the goal of creating a better quality of life is what mixed-use developments can provide to any given community.

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<sup>134</sup> *Id.* at 75.

<sup>135</sup> *Id.*

<sup>136</sup> Josh D. Herndon, *Mixed Use Development in Theory and Practice: Learning from Atlanta's Mixed Experiences*, at 76 (2011).

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 73.

<sup>140</sup> *Id.* at 106.

## D. Pennsylvania's Montgomery County and Delaware Valley Region

The Village Mixed Use District in Montgomery County, Pennsylvania achieved its mixed-use character by taking existing villages and transforming them into small-scale, walkable, livable, and attractive developments.<sup>141</sup> There were many existing villages and towns with appealing historic character that the community wanted to preserve, while wanting to transform it into a convenient place with a plethora of uses.<sup>142</sup> In order to achieve the true mix of uses in this historic area, this district required a minimum percentage of residential and non-residential development while keeping a requirement of historic preservation.<sup>143</sup>

Delaware Valley region of Pennsylvania overcame the single use zoning by amending existing zoning to create overlay districts that promote the mixing of uses within their community.<sup>144</sup> The underlying zoning remains in place, while the overlay district encourages more uses in a certain area.<sup>145</sup> In addition to overlay districts, the municipality also made it mandatory to get a permit for each use.<sup>146</sup> Unfortunately, this made the process considerably longer.<sup>147</sup> On the other hand, the permitting process required higher standards for building materials because multiple uses were combined in single structures, which increases the quality and the safety of the project.<sup>148</sup> However, the most efficient process is creating overlay districts because the permit process can be time consuming.<sup>149</sup>

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<sup>141</sup> *Creating A Small Town Character*, Montgomery County Planning Commission, (Dec. 8, 2016), <http://www.montcopa.org/DocumentCenter/View/4105>.

<sup>142</sup> *Id.* at 14.

<sup>143</sup> *Id.*

<sup>144</sup> *Financing Mixed-Use Development In The Delaware Valley Region*, Delaware Valley Regional Planning Commission, (Dec. 8, 2016), <http://www.dvrpc.org/reports/08037.pdf>, at 12.

<sup>145</sup> *Mixed Use Zoning: A Planners' Guide*, Metropolitan Area Planning Council, (Sept. 25, 2016), [http://www.mapc.org/sites/default/files/Mixed\\_Use\\_Planners\\_Toolkit.pdf](http://www.mapc.org/sites/default/files/Mixed_Use_Planners_Toolkit.pdf), at 2.

<sup>146</sup> *Financing Mixed-Use Development*, *supra* note 144, at 13.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

## V. Key Policy Issues

The main policy issue that developers of mixed use zoning areas will face is the receptiveness of the community.<sup>150</sup> A community fear about mixing is one of the most significant challenges that planners will face.<sup>151</sup> A common example of this is when residents feel that new development will only end up making their neighborhood unaffordable.<sup>152</sup> Additionally the public had made an emotional attachment with their suburbs.<sup>153</sup> People are comfortable being separated and segregated from urban life and these attachments to suburbs and consequent beliefs, such as their perceived safety, can create a barrier to smart growth and new urbanism.<sup>154</sup> Although not everyone in the community will agree that all their problems will be solved by implementing mixed use development, with the help and support of local government, developers and other residents this fear can be overcome.<sup>155</sup>

Another key issue with mixed-use development is funding.<sup>156</sup> When tax dollars are invested in growth and development, the public creates certain expectations.<sup>157</sup> They expect that their lives and the community as a whole will improve and want the most out of their investments.<sup>158</sup> Planners and developers of mixed-use projects must keep this in mind by using their “current resources wisely, building where it makes sense to build, and not duplicating or

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<sup>150</sup> Jill Grant, *Encouraging mixed use in practice*, National Center For Smart Growth Research and Education, at 11 (2004).

<sup>151</sup> *Id.*

<sup>152</sup> *This is Smart Growth*, Smart Growth Network, (Sept. 25, 2016), <https://www.epa.gov/sites/production/files/2014-04/documents/this-is-smart-growth.pdf>.

<sup>153</sup> *Id.*

<sup>154</sup> Heather Nicholson, *Smart Growth and New Urbanism: The Implementation of Development Plans Eight Years after Hurricane Katrina on the Mississippi Gulf Coast*, The University of Southern, at 17 (2014).

<sup>155</sup> Grant, *supra* note 126.

<sup>156</sup> Jill Grant, *Encouraging mixed use in practice*, National Center For Smart Growth Research and Education, at 8 (2004).

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

undermining previous expenditures.”<sup>159</sup> Studies have been completed and evidence shows that more compact development makes the tax dollars increase because it reduces the cost of providing services and infrastructure.<sup>160</sup>

Moreover, it is the responsibility of the state and municipal governments to direct public and private investments into areas that it believes needs the growth or revitalization.<sup>161</sup> Public investments in communities need to be based on sensible and long-term goals.<sup>162</sup> The two goals can be accomplished through the balancing of community resources between what is already in place and the new development.<sup>163</sup> Utilizing this balance, along with thoughtful public investments based on smart growth principles can accomplish both of those goals.<sup>164</sup>

Funding mixed-use developments can be quite a challenge.<sup>165</sup> Private developers can benefit financially by tapping into the real estate market by building mixed-use developments.<sup>166</sup> Financial institutions are usually less inclined to finance mixed-use projects because of the lack of importance behind them.<sup>167</sup> Explaining to the lender about how the long term returns of financing a mixed-use development can benefit them may increase the lender’s compliance with financing.<sup>168</sup>

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<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 9.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Financing Mixed-Use Development In The Delaware Valley Region*, Delaware Valley Regional Planning Commission, (Dec. 8, 2016), <http://www.dvrpc.org/reports/08037.pdf>, at 7.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

A third issue that can arise through mixed-use development is seen through improper planning.<sup>169</sup> Improperly planned development results in not enough residential buildings, increasing the issue of sprawl within communities.<sup>170</sup> A well-designed and planned mixed-use development also lends itself to placemaking, creating a real sense of place specific to the community, which results in relieving some of the aforementioned community fears.<sup>171</sup> Moreover, encompassing the idea of new urbanism, every detail has a function that works holistically within the community.<sup>172</sup> Without proper planning, the community will not function correctly or comprehensively.

To create a properly planned mixed-use development, municipalities will either permit special mixed-use zoning districts (MXD), or a zoning overlay district.<sup>173</sup> Others will apply existing planned developments, planned unit development (PUD), or planned community designation.<sup>174</sup> Additionally, the municipality must think about the specifics of the development such as vertical or horizontal developments.<sup>175</sup> Vertical developments are “uses that vary from one floor to another in a building.”<sup>176</sup> An advantage of vertical mixing is it allows for greater intensity of land use in desirable locations including: downtowns, activity centers, transit stations, universities, or major employers.<sup>177</sup> Horizontal developments mean “side-by-side

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<sup>169</sup> Nicolas M. Kublicki, *Innovative Solutions to Euclidean Sprawl*, 31 ELR 11001, 11001 (2001).

<sup>170</sup> *Id.*

<sup>171</sup> *Mixed Use Development Delivers Great Benefits*, Useful Community Development, (Sept. 25, 2016), <http://www.useful-community-development.org/mixed-use-development.html>.

<sup>172</sup> *What is New Urbanism?*, Congress For New Urbanism, (Sept. 25, 2016), <https://www.cnu.org/resources/what-new-urbanism>.

<sup>173</sup> *Mixed Use Development Delivers Great Benefits*, *supra* note 143.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Mixed Use Development Delivers Great Benefits*, Useful Community Development, (Sept. 25, 2016), <http://www.useful-community-development.org/mixed-use-development.html>.

storefront bays in the same building, which include office and retail.<sup>178</sup> It might mean a complex of buildings in which each building may include only one use.<sup>179</sup> For example, a typical block of condo buildings might end with a small storefront.”<sup>180</sup> This could also mean “whole residential blocks that might be interspersed with commercial or office development.”<sup>181</sup>

Addressing policy concerns is an important aspect of mixed-use development.

Receptiveness of the community can be achieved through educating the public about the positive effects such as a healthy living and a sustainable environment that mixed-use has to offer.

Funding is a key issue that must be addressed at the outset of the project. Improper planning is a policy issue that needs to be assessed in the master plan of the development. Once these policy concerns are resolved, moving forward with a mixed-use development project will be virtually uninterrupted.

## **VI. Conclusion**

Mixed-use development has many benefits for not only society’s quality of life, but also for the sustainability of the environment. Once municipalities can overcome the obstacle of single-use Euclidean zoning they can battle sprawl’s devolution of human occupancy that creates negative effects such as low-density suburban development and vehicle dependence.

In addition, mixed-use is one of the ten principles that creates the foundation of smart growth by creating convenience of homes, shops, offices, schools, parks, restaurants and public transit within a compact vicinity. By creating this convenience, mixed-use promotes walkability and decreases vehicle dependence. Furthermore, New Urbanism promotes the efficient design of

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<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

neighborhoods through the use of architecture and open spaces to decrease sprawl and to promote healthy living. While implementing smart growth and New Urbanism, placemaking is an important aspect of to keep in mind while creating the master plan in a mixed-use development. It is important to create quality places that encompass architectural character in order to make visitors want to come back or even stay forever.

However, the master plan of a mixed-use development cannot be crafted without the correct municipal zoning ordinances in place. Revised or amended ordinances are exclusive to every community depending on the zoning laws that are already in place.

Other jurisdictions have implemented incredibly successful mixed-use developments. Seaside, Florida created an expensive beach bungalow-styled utopia scattered with mixed-use. Via Verde promotes healthy living and battles obesity with their community of apartments, fitness centers and rooftop gardens. Atlantic Station turned a lead-polluted wasteland into a 2 billion dollar mixed-use community with a bridge that connects it to the surrounding neighborhoods. Whether the development is a small one-building community such as Via-Verde or a large-scale brownfield redevelopment like Atlantic Station, these places exemplify the practicality and diversity of mixed-use developments. In addition, Pennsylvania has attempted to pursue mixed-use developments in Montgomery County and the Delaware Valley region.

The key policy issues to be aware of include public receptiveness, funding, and improper planning. Getting the community on board to promote a mixed-use community may be the most difficult task. Attempting to change the minds of a community to move from suburban to an urban style of living may take some educating through public hearings and town hall meetings. Funding a mixed-use development is extremely pricey. However, with public and private

partnerships the feasibility is possible. Improper planning can be battled through making sure the master plan is realistic with a design that efficient and functional for an ideal human lifestyle.

Ultimately, the goal of mixed-use development is to create a healthy lifestyle for society while promoting sustainability practices for the environment. If more municipalities move toward a promoting properly planned mixed-use developments, their communities as a whole will be nothing but prosperous.



Jocelyn Schultz and Jordan Mazzone

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE COUNTY OF \_\_\_\_\_, PENNSYLVANIA, FOR THE ZONING OF MIXED-USE DEVELOPMENTS PURSUANT TO MUNICIPALITY DEVELOPMENT PLANS.**

**Now, THEREFORE,** Be it enacted and ordained by the \_\_\_\_\_ Municipality \_\_\_\_\_, \_\_\_\_\_ County, Pennsylvania and it is hereby enacted and ordained with the authority of same as follows:

**SECTION 1. Short title.** This ordinance shall be known and may be cited as the Mixed-Use Zoning Ordinance of \_\_\_\_\_ Municipality, \_\_\_\_\_ County, Pennsylvania.

**SECTION 2. Purpose and intent.**

(a) Purpose.--A mixed-use development is established to encourage the following:<sup>182</sup>

(1) Smart-growth planning and development.<sup>183</sup>

(2) The creation of planned small communities where citizens may live, work, and enjoy recreation without dependence on automobiles.<sup>184</sup>

(b) Intent.--The following purposes shall be considered in the planning of a mixed-use development:<sup>185</sup>

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<sup>182</sup> Powder Springs, Georgia, Municipal Code § 7.12.01.

<sup>183</sup> Hampden Township, Cumberland County, Pennsylvania, Municipal Code § 7-A.

<sup>184</sup> Powder Springs, Georgia, Municipal Code § 7.12.01.

<sup>185</sup> *Id.*

(1) Combine residential, commercial and recreational elements in order to create a livable, more desirable environment for the residents of the municipality.<sup>186</sup>

(2) Help reduce problems associated with sprawl, auto-dependence and single-use development.<sup>187</sup>

**SECTION 3. Definitions.**--The following words and phrases when used in this ordinance shall have the meaning given to them in this section unless the context clearly indicates otherwise:

"Awning." Means a secondary covering attached to the exterior wall of a building.<sup>188</sup>

"Blank wall." Means an exterior building wall with no openings and generally constructed of a single material, uniform texture and on a single plane.<sup>189</sup>

"Block." Means a unit of land bounded by streets or by a combination of streets and public land, railroad right of way, waterways, or another barrier to the continuity of development.<sup>190</sup>

"Buffer." Means an area of land, together with a specified type and amount of plantings, walls, berms or fences thereon,

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<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> Hazleton, Pennsylvania, Municipal Code § 12 (2011).

<sup>189</sup> Hampden Township, Cumberland County, Municipal Code § 16-A.

<sup>190</sup> Model Ordinance for Traditional Neighborhood Development § 2.6.

located between different land uses to minimize potential conflicts between them.<sup>191</sup>

“Collector.” Means a low-to-moderate-capacity road which serves to move traffic from local streets to arterial roads.

“Cornice.” Means the top part of an entablature, usually molded and projecting.<sup>192</sup>

“Development.” Means a man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, filling, grading, paving, excavation, mining, dredging or drilling operations and the subdivision of land or land development.<sup>193</sup>

“Gable.” Means the part of the end wall of a building between the eaves and a pitched or gambrel roof.<sup>194</sup>

“Façade.” Means the front exterior of a building, typically facing the primary street unless otherwise noted as a side or rear facade.<sup>195</sup>

“Lot.” Means a parcel of land occupied or intended for occupancy by a use permitted in this ordinance, including one main building, together with any accessory buildings, open spaces and parking spaces required by this ordinance and having

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<sup>191</sup> Mechanicsburg, Pennsylvania, Municipal Code § 27-303.

<sup>192</sup> Hampden Township, Cumberland County, Municipal Code § 16-A.

<sup>193</sup> Mechanicsburg, Pennsylvania, Municipal Code § 27-303.

<sup>194</sup> *Id.*

<sup>195</sup> Hazleton, Pennsylvania, Municipal Code § 12 (2011).

its principal frontage upon a street or upon an officially approved place.<sup>196</sup>

“Master plan.” Means a comprehensive vision for mixed use development, which encourages a mix of compatible uses, including upgrading existing buildings, preserving and adapting reuse of historic buildings, and the introduction of new, compatible mixed-use buildings.

“Massing.” Means the three-dimensional bulk of a structure: height, width and depth.<sup>197</sup>

“Mixed use building.” Means a building that contains at least one floor devoted to nonresidential uses and at least one devoted to allowed residential uses.<sup>198</sup>

“Mixed use development.” Means the development of a tract of land or building with a variety of complementary and integrated uses as permitted by the applicable zoning district.

“Open space.” Means a square, green, neighborhood park, [township/borough] park and linear environmental corridor owned and maintained by the [township/borough].<sup>199</sup>

“Principal building.” Means a building in which the primary use of the lot on which the building is located is conducted.<sup>200</sup>

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<sup>196</sup> Model Ordinance for Traditional Neighborhood Development § 2.13.

<sup>197</sup> Hampden Township, Cumberland County, Municipal Code § 16-A.

<sup>198</sup> Model Smart Land Development Regulations, Interim PAS Report American Planning Association, Model Mixed-Use Zoning District, Municipal Code § 4.1 (2006).

<sup>199</sup> Model Ordinance for Traditional Neighborhood Development § 2.11.

"Principal use." Means the primary or predominant use of a lot.<sup>201</sup>

"Streetscaping." Means the appearance or view of a street including decorative lights, sidewalks, trashcans, ornamental verges, street furniture and other elements.<sup>202</sup>

"Transit stop." Means a stop made by a vehicle, including a train or bus on the way to its final destination.<sup>203</sup>

#### **SECTION 4. Applicability.**<sup>204</sup>

This ordinance shall apply within the [township/borough] of \_\_\_\_\_ County, Pennsylvania. From and after the effective date of this ordinance, the use of land and building or portion of a building, altered with respect to height and area, added to, or relocated, and every use within a building in the [township/borough] shall be in conformity with the provisions of this ordinance, as well as all other applicable [township/borough] ordinances, enactments, rules, regulations, and permits, including the Municipal Planning Code (MPC).<sup>205 206</sup>

This ordinance describes a general mixed use section where applicable zoning ordinances apply pursuant to any

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<sup>200</sup> Model Ordinance for Traditional Neighborhood Development § 2.17.

<sup>201</sup> Mechanicsburg, Pennsylvania, Municipal Code § 27-303.

<sup>202</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance (Many sections of this ordinance are based off the New Town Mixed Use District because of its generality. However, many Pennsylvania ordinances are in accordance with the sections of this ordinance as provided within).

<sup>203</sup> Chesapeake City, Virginia, Urban Mixed Use Zoning District.

<sup>204</sup> Atlanta Regional Commission, Mixed-Use Development, Model Ordinance (The section should be refined based on local characteristics and planning objectives).

<sup>205</sup> Rapho Township, Lancaster County, Pennsylvania. Zoning Ordinance.

<sup>206</sup> New Freedom Borough, York County, Pennsylvania, Municipal Code § 437 (2012).

[township/borough's] existing plan codified by an existing zoning ordinance or by special ordinance. It provides locational criteria for zoning district map changes and shall not affect any of the provisions of the [township/borough zoning ordinance] as they apply to the [township/borough] as a whole.

After a master plan is duly filed, approved and recorded by the municipal governing body to a [planning department] under the provisions of this Section, the land area included in the master plan shall be governed by conditions of this ordinance, including those ordinances, in whole or in part, which are incorporated herein by reference.<sup>207</sup>

**SECTION 5. Permitted and prohibited uses and general mix use development requirements.**

(a) Permitted uses.--A lot or building may be used for one or more of the following by-right permitted uses:<sup>208 209</sup>

(1) Office, entertainment, institutional and related uses, which includes the following:

(i) Professional, administrative and business office.

(ii) Financial institution, excluding a drive-through facility.

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<sup>207</sup> Carlisle, Pennsylvania, Municipal Code § 255-119.

<sup>208</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

<sup>209</sup> Model Smart Land Development Regulations, Interim PAS Report American Planning Association, Model Mixed-Use Zoning District, Municipal Code § 4.1 (2006) (The range of uses allowed should be kept as broad as possible in order to ensure that the district is economically viable).

(iii) Hotel, bed and breakfast facility, convention center, meeting space and banquet facility.

(iv) Gallery and museum.

(v) Theater.

(vi) Government administrative use, post office, community center and library.

(2) Retail, restaurant, and related uses, including any of the following:

(i) Retail commercial sale, excluding a drive-through facility.

(ii) Personal service business.

(iii) Restaurant and other food or beverage establishment, excluding a drive-through facility.

(iv) Studio.

(v) Indoor sport facility.

(3) Apartment unit, provided the dwelling unit is located on second floor and above.

(4) Park, open space use, and plaza.

(5) Structured parking.

(6) Accessory use to a principal use, including a surface parking lot.

(b) Prohibited uses.--The following uses, including a use not specially permitted, are prohibited:<sup>210 211</sup>

(1) Drive-through window or facility.

(2) Automobile or other vehicle sale, service, or repair facility.

(3) Gasoline service station or filling station.

(4) Self-service storage facility.

(5) Adult entertainment facility.

(6) Kennel and outdoor keeping of an animal.

(c) Mixed use development requirements.--A mixed use development shall meet the following requirements:<sup>212</sup>

(1) Usable open space and plaza use shall comprise at least [5] percent of the net tract area of all mixed use developments.

(2) All properties proposed for mixed use development shall be developed in accordance with a master plan by a planning commission that has been approved by the municipal governing body.

(d) Planning commission.--A planning commission shall be created for a mixed use development and shall meet the following requirements:

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<sup>210</sup> New Freedom Borough, York County, Pennsylvania, Municipal Code § 437 (2012).

<sup>211</sup> Model Smart Land Development Regulations, Interim PAS Report American Planning Association, Model Mixed-Use Zoning District, Municipal Code § 4.1 (2006).

<sup>212</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.



(1) Planning commission members shall be chosen by the municipal governing body.

(2) The planning commission shall consist of a group of [5] persons, including a developer, architect and contractor.

(e) Master plan.--A master plan shall be created for all proposed mixed use developments by a planning commission and shall meet the following requirements:<sup>213 214</sup>

(1) A master plan shall be prepared when a property is initially proposed for subdivision or land development.

(2) A master plan shall be prepared for subdivided properties that are intended to be developed at a later date.

(3) A master plan shall meet the tentative sketch plan requirements set out by the planning commission.

(4) A master plan shall show a proposed building, land use, lot, street and open space for the entire tract.

(5) A master plan shall be consistent with the municipal [Subdivision and Land Development Ordinance] and mixed use development requirements of Section 5(c).

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<sup>213</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

<sup>214</sup> Chesapeake City, Virginia, Urban Mixed Use Zoning District, Municipal Code § 7-513(A).

(f) The municipal governing body may require changes in the master plan in order to comply with other ordinances or zoning requirements.<sup>215</sup>

(g) Development of property may be done in phases but a proposed subdivision or land development of property or portion of property must be consistent with the master plan.<sup>216</sup>

(h) If the proposed mixed use development is not consistent with the master plan, the master plan must be revised and shall meet the following requirements:<sup>217</sup>

(1) The master plan shall comply with all [township/borough] requirements, including the mixed use requirements of Section 5(c).

(2) All owners of land within the original master plan approve the revisions that affect their properties.

(3) The revised master plan shall be approved by the municipal governing body.

(i) Other master plan requirements.--An applicant submitting a preliminary and final master plan shall also submit an architectural drawing, including all of the following:<sup>218</sup>

- (1) Elevations.
- (2) Perspective drawings.
- (3) Axonometrics.

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<sup>215</sup> Chesapeake City, Virginia, Urban Mixed Use Zoning District, Municipal Code §7-513(B).

<sup>216</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

(4) Cross-sections, that comply with the standards in the [township/borough].

(j) Financing mixed use developments.--Financing is up to the discretion of the [township/borough] and may consist of public and private funding.

(k) Utilities.--A mixed use development in the [township/borough] shall be served by a public sewer and a public water facility.<sup>219</sup>

(l) Unified ownership and management.--

(1) A mixed use development shall provide a unified and coordinated theme, with respect to all of the following:<sup>220</sup>

(i) Streets, access drives, parking and pedestrian ways.

(ii) Pedestrian oriented space.

(iii) Architectural space.

(iv) Landscape design.

(v) Lighting fixtures.

(vi) Signage.

(2) A mixed use development shall be under a single management and control agreement and in accordance with the master plan.<sup>221</sup>

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<sup>219</sup> *Id.*

<sup>220</sup> New Freedom Borough, York County, Pennsylvania, Municipal Code § 437 (2012).

<sup>221</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

(m) Off street parking shall be provided in accordance with chapter [ ].<sup>222</sup>

(n) Signs shall meet the requirements of chapter [ ].<sup>223</sup>

(o) Landscaping, street trees, streetscaping and buffers shall be provided in accordance with section [ ] of the [Subdivision and Land Development Ordinance].<sup>224</sup>

(p) Mixed use development approval.--

(1) The planning commission shall submit a final master plan to the municipal governing body.

(2) The municipal governing body shall approve a final master plan if it complies with the sections of this ordinance and the mixed use development requirements.

(3) A final master plan shall be duly filed and recorded to a [planning department].

**SECTION 6. Dimensional requirements.--**All lots within the mixed use development in the [township/borough] shall meet the following dimensional requirements: <sup>225</sup> <sup>226</sup>

(a) Lot area requirements.--<sup>227</sup>

(1) An apartment and non-residential use net lot area shall be consistent with the master plan.

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<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> Chesapeake City, Virginia, Urban Mixed Use Zoning District, Municipal Code § 7-512.

<sup>227</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

(2) Minimum net lot area for a townhouse and twin shall be [ ] square feet.

(3) Minimum net lot area for a single-family detached home shall be [ ] square feet.

(b) Lot width requirements.--<sup>228</sup>

(1) An apartment and non-residential use net lot width shall be consistent with the master plan.

(2) Minimum lot width for a townhome and twin shall be [ ] feet.

(3) Minimum lot width for a single-family detached home shall be [ ] feet.

**SECTION 7. Design standards and general land use.**<sup>229</sup>--All mixed use development within the [township/borough] shall comply with the design standards in this section and with the master plan:<sup>230</sup>

(a) The general layout and street pattern requirements shall be shown on the master plan through a tentative sketch.

(b) Various land uses must be laid out and spaced to make walking from one land use to another land use as easy as possible.

**SECTION 7.1. Retail and residential use design standards.**--<sup>231</sup>

(a) A retail use shall be located as physically close to as many of the following on and off-site features as possible:<sup>232</sup>

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<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

- (1) An existing retail area.
- (2) A transit stop.
- (3) An existing collector or higher classification street.
- (4) A proposed plaza area.

(b) A single-use residential building, when proposed, must be located and designed to provide a transition between abutting off-site residential zoning districts, when they exist, and the nonresidential uses in the [township/borough].<sup>233</sup>

**SECTION 7.2. Street and block design standards.--**

(a) Street design.--A mixed use development in the [township/borough] shall be laid out with streets, in accordance with the following standards: <sup>234</sup> <sup>235</sup>

- (1) A street shall be laid out to create sidewalk blocks.
- (2) A proposed building, excluding a parking garage, shall be located within a certain distance of a street.
- (3) A street shall be interconnected with each other and with streets on abutting properties in a grid or modified grid pattern.

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<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> Hampden Township, Cumberland County, Pennsylvania, Municipal Code § A-9.

(4) A street shall be extended to an abutting property in a logical location, as determined by the municipal governing body.

(5) A new street shall have a street connectivity index of [1.40] or more.

(b) Block design.--A block shall promote interconnectivity and accommodate street widths that provide multiple travel options and points of connection to existing streets, including sidewalks and other pedestrian access.<sup>236</sup>

**SECTION 7.3. Existing and future transportation design standards.--**

(a) A development shall be designed to support and integrate existing and future public transportation service.<sup>237</sup>

(b) A passenger rail station on a tract of [20] acres or more shall be designed to encourage pedestrian access to the existing or future public transportation service.<sup>238</sup>

**SECTION 7.4. Building design standards.--** <sup>239 240</sup>

(a) Building orientation and entrance requirements:<sup>241</sup>

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<sup>236</sup> Chesapeake City, Virginia, Urban Mixed Use Zoning District, Municipal Code § 7-512(M).

<sup>237</sup> *Id.*

<sup>238</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

<sup>239</sup> *Id.*

<sup>240</sup> Atlanta Regional Commission, Mixed-Use Development, Model Ordinance (The building entrance, setback and window standards above should be tailored to address local characteristics and the intent of the zone. For example, along a main street with shops set right up to the sidewalk, it may be appropriate to require 60 percent window glazing. However, in a corridor commercial zone, where there is less pedestrian activity, it may not be practical or reasonable to set such a high standard).

<sup>241</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

(1) The front façade of a building shall be oriented towards an existing and proposed street, with an everyday entrance in the front façade.<sup>242</sup>

(2) A primary building entrance shall be accentuated and accented.

(3) Permitted entrance accents shall include at least one of the following:<sup>243</sup>

- (i) a recessed accent;
- (ii) a protruding accent;
- (iii) a canopy over the entrance;
- (iv) a portico; or
- (v) an overhang accent.

(b) Wall and window requirements:<sup>244</sup>

(1) A blank wall shall not be permitted along any exterior wall facing a street or passenger train station.

(2) A ground floor façade of retail, restaurant, and related use facing a street or passenger train station shall comprise a minimum of [ ] percent clear window area, with a window providing a view of a display area or the inside of the building.

(3) Smoked, reflective or black glass in windows is not permitted.

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<sup>242</sup> Hampden Township, Cumberland County, Pennsylvania, Municipal Code § 7-A.

<sup>243</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

<sup>244</sup> *Id.*



(4) A wall or portion of a wall where a window is not provided shall have an architectural treatment designed to break up the build of the wall, including at least four of the following treatments:<sup>245</sup>

- (i) masonry, excluding flat concrete block;
- (ii) concrete or masonry plinth at the base of the wall;
- (iii) belt course of a different texture or color;
- (iv) projecting cornice;
- (v) protecting metal canopy;
- (vi) decorative tilework;
- (vii) trellis containing planting;
- (viii) medallion;
- (ix) opaque or translucent glass;
- (x) artwork;
- (xi) vertical/horizontal articulation;
- (xii) lighting fixture; or
- (xiii) a similar architectural treatment not listed above, as approved by [an administrative agency].<sup>246</sup>

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<sup>245</sup> Hampden Township, Cumberland County, Pennsylvania, Municipal Code § 7-A.

<sup>246</sup> *Id.*

(5) A rear and side façade shall have colors and materials that are similar to the front façade and shall blend with structures within the development.<sup>247</sup>

(6) A development with more than one building on the site shall have a common and coherent architectural theme throughout the development.<sup>248 249</sup>

(c) Roofs.--<sup>250</sup>

(1) A roof facing a street, parking area, or walking area shall be interrupted at least once every [100] feet by two of the following:<sup>251</sup>

(i) A gable.

(ii) A dormer.

(iii) A vertical change of [5] feet or more.

(iv) A tower.

(v) A dome.

(vi) A barrel vault.

(vii) A projecting cornice.

(viii) An articulated parapet of [5] feet or more.

(2) A building shall use a parapet or a mansard type roof style.

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<sup>247</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

<sup>248</sup> *Id.*

<sup>249</sup> Hampden Township, Cumberland County, Pennsylvania, Municipal Code § 7-A.

<sup>250</sup> *Id.*

<sup>251</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

(d) Building massing.--<sup>252</sup>

(1) A building shall be designed to achieve a fine-grained texture.

(2) A building shall have at least a [3] foot break in depth in all front facades for every [100] feet of continuance façade.

**SECTION 7.5. Parking design standards.--<sup>253</sup>**

(a) Surface parking.-- <sup>254</sup>

(1) Surface parking shall be located to the rear or side of a principal building.

(2) Surface parking shall be continuously screened if visible from a street.

(b) Structured parking.--

(1) Structured parking shall have a design treatment, including any of the following:<sup>255</sup>

- (i) a colonnade;
- (ii) an arcade;
- (iii) an awning;
- (iv) a landscape;
- (v) street furniture; or

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<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> Hampden Township, Cumberland County, Pennsylvania, Municipal Code § A-9.

<sup>255</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

(vi) any other public amenity to create the appearance of an occupied building, excluding a blank wall.

(2) A parking garage within a principal building shall have [70] percent of the first floor of the occupied space consisting of any of the following uses:<sup>256</sup>

- (i) office;
- (ii) entertainment;
- (iii) institutional;
- (iv) apartment lobby;
- (v) retail; or
- (vi) restaurant.

(3) All cars within the parking garage shall be visually screened from the street.<sup>257 258</sup>

(4) Screening includes using any of the following:<sup>259</sup>

- (i) a grill;
- (ii) a lattice;
- (iii) a mock window;
- (iv) a louver; or
- (v) false façade.

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<sup>256</sup> *Id.*

<sup>257</sup> Carlisle, Pennsylvania, Municipal Code § 255-126.

<sup>258</sup> Hampden Township, Cumberland County, Pennsylvania, Municipal Code § 7-A.

<sup>259</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

(5) Structured parking shall be consistent with the existing or future building architectural style and material.

**SECTION 7.6. Pedestrian design standards.--<sup>260 261</sup>**

(a) A sidewalk shall be along a street frontage with retail, restaurant or a related use.

(b) A sidewalk shall connect to a street frontage, including a front building entrance, parking area, plaza, and a destination that generates pedestrian traffic.

(c) A sidewalk shall connect to an existing sidewalk on an abutting tract and any nearby pedestrian destination point and transit stop.

**SECTION 7.7. Open space design standards.--**

(a) An open space shall include any of the following: <sup>262 263</sup>

- (1) plaza;
- (2) central green;
- (3) playing field;
- (4) playing court;
- (5) trail;
- (6) pedestrian mall;
- (7) promenade; or
- (8) picnic area.

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<sup>260</sup> *Id.*

<sup>261</sup> Hampden Township, Cumberland County, Pennsylvania, Municipal Code § A-9.

<sup>262</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

<sup>263</sup> Chesapeake City, Virginia, Urban Mixed Use Zoning District, Municipal Code § 7-512(L).

(b) Open space shall be designed as a focal point within the mixed use development and shall make public access as easy as possible.<sup>264</sup>

(c) Public access shall be guaranteed to open space through a deed restriction or other means acceptable to the municipal governing body.<sup>265</sup>

(d) Lighting in open space.--<sup>266</sup>

(1) Adequate lighting shall be provided in an area open to the public.

(2) Lighting shall not:

(i) shine directly from a light source onto the ground, into a window, or onto abutting property, excluding incidental light; or

(ii) shine directly on a public road, excluding a street light.

**SECTION 7.8. Screening and outdoor design standards.--<sup>267</sup>**

(a) Screening design standards.--All wall-mounted or ground-mounted mechanical, electrical, communication, and service equipment, and service and loading areas shall be screened from public view.

(b) Outdoor dining design standards.--<sup>268</sup>

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<sup>264</sup> New Town Mixed Use District, Montgomery County, Pennsylvania, Model Ordinance.

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

(1) An outdoor dining area shall not impede pedestrian traffic flow.

(2) A minimum pathway of at least [ ] feet free of obstacles shall be maintained.

(3) An advertising or promotional feature shall be limited to the following:

- (i) an umbrella;
- (ii) a menu board; or
- (iii) a canopy.

(c) Outdoor storage is not permitted.<sup>269</sup>

**SECTION 8. Severability.**<sup>270</sup>

The provisions of this ordinance are severable. If any sentence, clause or section of this ordinance is for any reason found to be unconstitutional, illegal or invalid, the unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses or sections of this ordinance. It is hereby declared to the intent of the Board of Supervisors of [\_\_\_\_\_]  
[township/borough] that this ordinance would have been adopted had the unconstitutional, illegal, or invalid sentence, clause or section not been included herein.

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<sup>269</sup> *Id.*

<sup>270</sup> Hampden Township, Cumberland County, Pennsylvania, Municipal Code § 7-A.

**SECTION 9. Repeals.**<sup>271</sup>

All other ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION 10. Effective date.**

This ordinance shall become effective 30 days after enactment.

**ENACTED AND ORDAINED THIS \_\_\_\_\_ DAY of 20\_\_\_\_\_.**

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<sup>271</sup> Carlisle, Pennsylvania, Municipal Code § 255-119.