American Planning Association, Rhode Island Chapter
PO Box 2335 – Providence, RI 02906

March 20, 2025

Honorable Chairman Stephen Casey
House Municipal Government and Housing Committee
Rhode Island State House
Providence, RI 02903

RE: H-5958 – An Act Relating to Towns and Cities – Zoning Ordinances (Mixed-Use Overlay)

Dear Chairman Casey and Committee Members:

Thank you for this opportunity for the RI Chapter of the American Planning Association (APA-RI) to comment on H-5958, a bill which proposes amendments to the Standard Provisions section of the Zoning Enabling Act to require municipalities to implement mixed-use overlay districts over at least 30% of their commercial districts. It also includes a new section in the state law, 45-24-78, that identifies and regulates the mixed-use overlay district. APA-RI supports the use of mixed-use districts, whether they are underlying or overlay districts, but does not support this bill as written.

This bill has a number of technical issues: it sets a date for amending local zoning ordinances, but no year, and it also applies this date to other uses which are already in this section but are optional in the form of "may" while the amended language uses the term "shall". This sets up an inherent conflict since the other uses identified, "authorizing development incentives" and "other amenities as desired", are by their nature optional. It is also unclear what is meant by the 30% -- is this the number of commercial districts, or the area of the land encompassing the commercial districts? Either way, it is arbitrary – a "one-size-fits-all" which is not practical to be applied over the wide variety of Rhode Island communities.

Aside from these issues, APA-RI has the concerns as described below.

45-24-33. Standard provisions.
(b)(2):

1. Allowing residential uses to be in place alongside commercial uses that are defined as retail, hotel/motel, office, medical office or personal services, is an attempt to at least restrict the commercial uses within the mixed-use overlay to those that can be considered compatible with residential. However, these categories are much too general, and the decision of compatible uses must be made by the municipality and reflect the characteristics of the underlying district.

2. If the municipality does not implement the overlay district(s) in the required period (assume July 31, 2026) the uses described in the new section 45-24-78 (b) – multi-family dwellings and mixed-use – then become allowed by right in the underlying zoning district, which would be any commercial district permitting the commercial uses listed above.

Interpreting and implementing this mandate will be a challenge, as follows:

- First, what if a municipality has a mixed-use district but it is not an overlay district; does that still count? If it does count, how does a municipality go about measuring and reviewing their existing mixed-use districts to determine if they comply with this new standard?

- Second, what if a municipality presently has a commercial-only district that includes one (or more) of the listed categories, such as a hotel, but also allows a heavy commercial use like automotive repair or other use which is inconsistent with residential uses? Does the size of the hotel matter? If potential conflicts with the uses allowed in the underlying district are valid considerations, what happens if that results in the municipality having no ability to meet the 30%, however it is measured?

- Third, what role does capacity – water and sewage disposal – and overall availability of infrastructure play when the review of these commercial districts is undertaken? Residential use can require a significant demand for potable water. What if the district or districts being evaluated cannot support the addition of residential uses because of a lack of drinking water or available sewage capacity, and this also results in the municipality being unable to meet the 30%?

- Fourth, who determines if the municipality is correct in their measurement of the 30% state mixed-use requirement?

- Last, it appears that not meeting this requirement means that multi-family uses are automatically allowed anyway, and in any number of commercial areas. If the by-right portion of the law goes into effect, how is that done without a zoning ordinance amendment? Identifying the acceptable and appropriate commercial districts into which multi-family dwellings and mixed-use buildings are allowed by-right will clearly place a major burden on local zoning officers.

45-24-78. Mixed use overlay districts.

There is no clear definition of what a mixed-use overlay district is; paragraph (a) refers to the purpose of this new section and paragraph (b) includes the two by-right uses, which are also not well defined. In addition, when the overlay districts are drafted, paragraph (c) includes very prescriptive standards, meaning the municipality cannot restrict:

1. The building height to less than 40 feet despite the limits of the underlying district
2. A floor area ratio (not defined, and removed from the enabling act last year) to less than one
3. Residential density to less than one unit per 1,200 sq. ft. of lot area
4. The size of the dwelling unit

The municipality is allowed to require one parking space for each dwelling unit (regardless of the size of the unit or the number of bedrooms), and to require ground floor commercial. However, the concern is that, once again, a one-size-fits-all puts too much control over and not enough flexibility on the municipality to craft their ordinance so that it fits the areas being converted to mixed-use.

Competing Bill – H-5800

However, our organization believes that the purpose of this bill is better met by one of Speaker Shekarchi's housing package bills, H-5800. This bill also amends 45-24-33 (a) to specifically require that local zoning ordinances provide for "residential development in all or some of the areas encompassing commercial districts in a city or town". This additional language sets a mandate for mixed-use zoning, but does not specify percentages or specific types of commercial uses that are included in the mixed-use district. It allows the municipality to develop standards for mixed uses in an integrated fashion, while addressing "medium to high density" (which should be better defined) with the use of "flexible and reasonable dimensional standards". This means that the bill language recognizes that adjustments will likely need to be made to accommodate the addition of residential uses in otherwise commercial-only districts. It gives the municipality the incentive to craft their village and mixed-use zoning districts in a creative and flexible manner. The communities which do not meet the requirements now would have until January 1, 2026 to update their zoning ordinances. APA-RI supports this bill.

Thank you for your consideration.

Sincerely,

Jane Weidman
Legislative Committee Chair

cc RI League of Cities and Towns