

## **CHAPTER 40R LOCAL ZONING BYLAW GUIDANCE DOCUMENT**

### **OVERVIEW**

This document has been developed by the Department of Housing and Community Development (DHCD, or the Department) to assist communities in drafting zoning bylaws in accordance with M.G.L. chapter 40R, the Smart Growth Zoning Overlay District Act (Chapter 40R or the Act). The Department has adopted regulations, 760 CMR 59.00 (the 40R Regulations), that expand upon the requirements of the Act for the submission of applications and the approval of Smart Growth Zoning Overlay Districts under the Act. For any capitalized terms not defined in this document, see the meaning given in the 40R Regulations.

Chapter 40R encourages communities to create dense residential or mixed-use smart growth zoning districts, including a substantial percentage of affordable housing units, to be located near transit stations, in areas of concentrated development such as existing city and town centers, and in other highly suitable locations. Projects must be developable under the community's smart growth zoning adopted under Chapter 40R, either purely as-of-right or through an as-of-right plan review process as provided for in corresponding definition contained in the sample bylaw below. Upon state review and approval of a local overlay district, communities become eligible for payments administered by DHCD, as well as other financial incentives.

The Department has developed a sample zoning bylaw, with accompanying comments, that addresses the full range of issues that must be included in a community's Smart Growth Zoning (SGZ). A community is not required to use the format or specific language of the sample bylaw (although there are some specific instances, highlighted in the comments, where DHCD will require either these specific provisions or language of substantially equivalent effect), but *applications that do not include a red-lined copy of the Smart Growth Zoning against this template will be delayed*. Here is an overview of the sample bylaw:

#### **Section A: General Regulations that apply to all Smart Growth Zoning Districts**

##### **A.1 and A.2: Purpose and Definitions**

The sample bylaw recommends referencing Chapter 40R and its smart growth goals in Section 1, as well as other applicable local purposes. Section 2 contains specific definitions relating to the sample text; other definitions should be included as necessary. Note that under the 40R Regulations, the Smart Growth Zoning must be an all-inclusive, separate section of the zoning ordinance or bylaw.

##### **A.3: Applicability (Scope & Authority)**

The sample bylaw contains provisions clarifying the physical scope of any overlay district and any sub-districts, and the relationship of the Smart Growth Zoning to underlying provisions of the local zoning bylaw. The sample bylaw reflects Chapter 40R in stating that a developer may either develop a Project in accordance with the requirements of the Smart Growth Zoning, or in accordance with the requirements of the regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the underlying zoning district(s).

**A.4: Permitted Uses - General**

The sample bylaw contains provisions for the different types of residential uses that a community may choose to permit within a District: single-family, two- and three-family, and/or multi-family (defined under 40R as a structure with four or more residential units). In addition, a community may elect to allow Mixed-use Development Projects within a District. The sample bylaw also provides for parking and other accessory uses.

**A.6: Affordability**

Chapter 40R requires that under the Smart Growth Zoning, at least 20% of all units constructed within Projects of more than 12 units shall be Affordable. The Act also requires mechanisms to ensure that at least 20% of the total number of units constructed in the District will be Affordable, and it requires provisions to ensure effective monitoring and enforcement. The Department has developed detailed language in Section 6 of the sample bylaw to address these statutory provisions; it will require the Smart Growth Zoning to contain these provisions, or language of substantially equivalent effect.

**A.7 and A.8: Dimensional, Density, and Parking Requirements - General**

The sample bylaw includes these sections, while leaving the actual physical requirements within the District (and any sub-districts) to be defined by each community. The one provision in this area that Chapter 40R does impose is minimum allowable residential densities: the SGZ must allow at least 8 units per acre for single-family residential use; at least 12 units per acre for 2- and/or 3-family residential use; and at least 20 units per acre for multi-family residential use. The Smart Growth Zoning may provide for different sub-districts with different allowable uses and densities in each, so long as each sub-district meets the minimum density standards of the Act.

**A.9 through A.12: Plan Approval Process**

A community may elect to subject some or all Projects within a District to a Plan Approval process. Chapter 40R and the Regulations spell out detailed procedural and substantive requirements for the Plan Approval process, which are reflected in these sections of the sample bylaw. Therefore, the Department will require the Smart Growth Zoning to contain these provisions, or language of substantially equivalent effect. Among other related issues, the sample bylaw addresses the phasing and segmenting of projects, and they allow the Plan Approval Authority (PAA) to issue waivers from dimensional and other requirements (but not Affordability).

**A.13: Design Standards - General**

As part of the Plan Approval process, Chapter 40R allows the PAA to apply Design Standards, to ensure that a Project is complementary to adjacent buildings and structures and shall provide for high density quality development consistent with design features traditionally found in densely settled areas of the community. The Design Standards are subject to the Department's review and approval; the Department may disallow a design standard as unduly restrictive if it would add unreasonable costs or unreasonably impair the economic feasibility of Projects within the District

or if the standard is not sufficiently clear such that it conflicts with the requirement that the SGZ be as of right.

**A.14: Severability**

**B. Establishment and Delineation of the Smart Growth Overlay Districts**

**B.1: Establishment & Delineation - (District-Specific)**

**B.2: Permitted Uses - (District-Specific)**

**B.3: Dimensional & Density Requirements – (District-Specific)**

**B.4: Parking Requirements - (District-Specific)**

**B.5: Design Standards - (District-Specific)**

## SAMPLE ZONING BYLAW WITH COMMENTS

*COMMENTS: The Regulations state that the Smart Growth Zoning must be all-inclusive. This means that the development of a Project within the District shall be governed solely by the Smart Growth Zoning, without reference to any standards or procedures contained elsewhere in the Zoning Bylaw.*

### SECTION [x]: SMART GROWTH OVERLAY DISTRICTS (SGODs)

#### A. General Regulations that apply to all Smart Growth Overlay Districts

##### 1. PURPOSE

The purpose of this Section [x] is to establish a [District Name] Smart Growth Overlay District, to encourage smart growth in accordance with the purposes of G. L. Chapter 40R.

[add other objectives as applicable]

*COMMENTS: Since the Smart Growth Zoning must be all-inclusive – that is, no other provisions of the Zoning Bylaw are applicable to a Project being developed pursuant to the Smart Growth Zoning within a District -- the Department recommends that the Smart Growth Zoning should contain a purpose section. The purpose section should state that the Smart Growth Zoning will encourage smart growth in accordance with the purposes of G.L. Chapter 40R.*

##### 2. DEFINITIONS

For purposes of this Section [x], the following definitions shall apply. All capitalized terms shall be defined in accordance with the definitions established under the Governing Laws or Section 2.0, or as set forth in the PAA Regulations. With respect to their application to this Section [X], to the extent that there is any conflict between the definitions or terms set forth in, or otherwise regulated by, the Governing Laws and those defined or used in this Section [X], inclusive of any applicable Design Standards, PAA Regulations, or any other applicable associated local zoning requirement (e.g., zoning requirement contained in another section of the Zoning [Bylaw/Ordinance] that is nonetheless incorporated by reference), the terms of the Governing Laws shall govern.

***Affordable Homeownership Unit*** - an Affordable Housing unit required to be sold to an Eligible Household.

***Affordable Housing*** - housing that is affordable to and occupied by Eligible Households.

***Affordable Housing Restriction*** - a deed restriction of Affordable Housing meeting the statutory requirements in G.L. Chapter 184, Section 31 and the requirements of Section 6.5 of this Bylaw.

***Affordable Rental Unit*** - an Affordable Housing unit required to be rented to an Eligible Household.

***Applicant*** – the individual or entity that submits a Project application for Plan Approval.

***As-of-right*** - a use allowed under Section 5.0 without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A Project that requires Plan Approval by the PAA pursuant to Sections 9.0 through 13.0 shall be considered an as-of-right Project, subject to review and approval by DHCD of any Municipal 40R regulations, guidelines, application forms, or other requirements applicable to review of Projects by the Plan Approval Authority under the 40R Zoning and 760 CMR 59.00..

***Department or DHCD*** - the Massachusetts Department of Housing and Community Development, or any successor agency.

***Design Standards*** – provisions of Section 13 made applicable to Projects within the SGOD that are subject to the Plan Approval process.

***Eligible Household*** - an individual or household whose annual income is less than or equal to 80 percent of the area-wide median income as determined by the United States Department of Housing and Urban Development (HUD), adjusted for household size, with income computed using HUD's rules for attribution of income to assets.

*COMMENTS: The Smart Growth Zoning may further decrease the maximum income limits of eligible households (below 80 percent of the area-wide median income as determined by HUD). The Municipality shall be required to prove to the Department in its submission that any such decrease will not “unduly restrict” opportunities for development within the proposed District under the Smart Growth Zoning: that means that the decrease may not add unreasonable costs or unreasonably impair the economic feasibility of proposed Projects.*

***Governing Laws*** - G.L. Chapter 40R and 760 CMR 59.00.

***Mixed-Use Development Project*** – a Project containing a mix of residential uses and non-residential uses, as allowed in Section 5.2, and subject to all applicable provisions of this Section [x].

***Monitoring Agent or Administering Agent*** – the local housing authority or other qualified housing entity designated by the municipality [the PAA, chief executive, or other designated municipal official], pursuant to Section 6.2, to

review and implement the Affordability requirements affecting Projects under Section 6.0.

**PAA Regulations** – the rules and regulations of the PAA adopted pursuant to Section 9.3.

**Plan Approval** - standards and procedures which [certain categories of] Projects in the SGOD must meet pursuant to Sections 9.0 through 13.0 and the Governing Laws.

*COMMENTS: A Municipality has the option, in Section 9.1, either to subject all Projects within the SGOD to the Plan Approval process, or to limit the review process to certain categories of Projects.*

**Plan Approval Authority (PAA)** - The local approval authority authorized under Section 9.2 to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions within the SGOD.

**Project** - a Residential Project or Mixed-use Development Project undertaken within the SGOD in accordance with the requirements of this Section [x].

**Residential Project** - a Project that consists solely of residential, parking, and accessory uses, as further defined in Section 5.1.

**SGOD** – the Smart Growth Overlay District established in accordance with this Section [x].

**Zoning [Bylaw/Ordinance]** - the Zoning [Bylaw/Ordinance] of the [City/Town] of [name of municipality].

[add other definitions as required, either here or in the PAA Regulations]

*COMMENTS: Because of the requirement in the Regulations that the local Smart Growth Zoning must be all-inclusive, it must contain a definitions Section with all defined terms, rather than referring the reader to other sections of the local zoning code. In particular, to satisfy the requirements of Chapter 40R and the 40R Regulations regarding Affordable Housing, the following definitions are required by the Department:*

- *Monitoring Agent*
- *Affordable Homeownership Unit*
- *Affordable Housing*
- *Affordable Housing Restriction*
- *Affordable Rental Unit*
- *Eligible Household*

*The sample bylaw includes certain definitions required by the text. Other definitions are likely to be required (for example, terms used in relation to the use and dimensional provisions of Sections*

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5.0 and 7.0) The drafter may choose to locate certain text elements, including Design Standard (see Section 13.0) and certain definitions, in the PAA Regulations, rather than in the Smart Growth Zoning. Note, however, that under the 40R Regulations any change in the PAA Regulations must be reviewed and approved by the Department.

### 3. APPLICABILITY OF SGODs – SCOPE AND AUTHORITY

**4.1 Applicability of SGODs.** An applicant may seek development of a Project located within the SGOD in accordance with the provisions of the Governing Laws and this Section [x], including a request for Plan Approval by the PAA, if necessary. In such case, notwithstanding anything to the contrary in the Zoning Bylaw, such application shall not be subject to any other provisions of the Zoning Bylaw, including limitations upon the issuance of building permits for residential uses related to a rate of development or phased growth limitation or to a local moratorium on the issuance of such permits, or to other building permit or dwelling unit limitations. To the extent that there is any conflict between the Governing Laws and this Section [X], inclusive of the Design Standards, the PAA Regulations, and any applicable associated local zoning requirement (e.g., zoning requirement contained in another section of the Zoning [Bylaw/Ordinance] that is nonetheless incorporated by reference), the Governing Laws shall govern.

*COMMENTS: The 40R Regulations state that Projects within a District shall not be subject to limitation of the issuance of building permits for residential uses or a local moratorium on the issuance of such permits. Therefore, the Smart Growth Zoning must specify that Projects in the SGOD are not subject to any such provisions within the Zoning Bylaw. It is also recommended that the Smart Growth Zoning state that a local rate of development provision (if any) does not apply to Projects in the SGOD.*

**4.2 Underlying Zoning.** The SGOD is an overlay district superimposed on all underlying zoning districts. The regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the underlying zoning district(s) shall remain in full force, except for those Projects undergoing development pursuant to this Section [x]. Within the boundaries of the SGOD, a developer may elect either to develop a Project in accordance with the requirements of the Smart Growth Zoning, or to develop a project in accordance with requirements of the regulations for use, dimension, and all other provisions of the Zoning Bylaw governing the underlying zoning district(s).

*COMMENTS: Chapter 40R and the 40R Regulations state that within the boundaries of a District, a developer may elect either to develop a Project in accordance with the requirements of the Smart Growth Zoning, or to develop a project in accordance with the requirements of the Underlying Zoning. Therefore, for the sake of clarity the Smart Growth Zoning must acknowledge that the underlying zoning remains in effect, except for Projects specifically being developed under the Smart Growth Zoning.*

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**4.3 Administration, Enforcement, and Appeals.** The provisions of this Section [x] shall be administered by the Building Commissioner, except as otherwise provided herein. Any legal appeal arising out of a Plan Approval decision by the PAA under Sections 9 through 13 shall be governed by the applicable provisions of G. L. Chapter 40R. Any other request for enforcement or appeal arising under this Section [x] shall be governed by the applicable provisions of G. L. Chapter 40A..

**5. PERMITTED USES - GENERAL**

The following uses are permitted As-of-Right for Projects within SGODs unless otherwise specified under the corresponding section of the District-specific requirements.

**5.1 Residential Projects.** A Residential Project within the SGOD may include:

- a) [Single-family, 2 and 3 family, and/or Multi-family] Residential Use(s);
- b) Parking accessory to any of the above permitted uses, including surface, garage-under, and structured parking (e.g., parking garages); and
- c) Accessory uses customarily incidental to any of the above permitted uses.

[Insert additional text if there are sub-districts within the District, and the permitted residential uses vary among the sub-districts.]

*COMMENTS: Chapter 40R and the 40R Regulations state that Residential Projects must be permitted as of right, although they may be subject to Plan Approval by the PAA (see definition of “as-of-right” in Section 2 above). If there are sub-districts within the District, the Smart Growth Zoning must specify which types of residential uses are allowed within each sub-district.*

*Note that Chapter 40R and the 40R Regulations state that within a Substantially Developed Sub-district, the Smart Growth Zoning must permit the as-of-right construction of additional housing units in existing residential buildings or additions thereto or replacements thereof. Drafters should consult with DHCD on this and other issues if the Smart Growth Zoning will include provisions for a Substantially Developed Sub-district. See also Section 7.2.*

**5.2 Mixed-use Development Projects.** A Mixed-use Development Project within the SGOD may include:

- a) [Single-family, 2 and 3 family, and/or Multi-family] Residential Use(s), provided that the minimum allowable as-of-right density requirements for residential use specified in Section 7.1 shall apply to the residential portion of any Mixed-use Development Project;



- b) Any of the following Non-residential uses: [specify permitted commercial, institutional, industrial, or other non-residential uses]
- c) Parking accessory to any of the above permitted uses, including surface, garage-under, and structured parking (e.g., parking garages); and
- d) Accessory uses customarily incidental to any of the above permitted uses.

[Insert additional text if there are sub-districts within the District, and Mixed-use Development Projects are allowed in some but not all of the sub-districts.]

*COMMENTS: Chapter 40R and the 40R Regulations state that if the Smart Growth Zoning allows Mixed-use Development Projects, such projects must also be allowed as-of-right. The minimum allowable as-of-right density requirements for residential use apply to the residential portion of a mixed-use development project. The Smart Growth Zoning may limit Mixed-use Development Projects to certain sub-districts of a District.*

*Under Chapter 40R and the 40R Regulations, provisions of the Smart Growth Zoning and/or the Design Standards may require that the non-residential elements of any Mixed-Use Development Project are planned and designed “in an integral manner to complement the residential uses, and help foster vibrant, workable, livable, and attractive neighborhoods” consistent with the smart growth goals of the Act. For further discussion of this issue, see the Design Standards guidance document.*

The total gross floor area devoted to Non-residential uses within a Mixed-use Development Project shall not exceed [\_\_\_%] of the total gross floor area of the Project.

*COMMENTS: The 40R Regulations state that the Smart Growth Zoning must specify the minimum portion of a mixed-use development project that must be devoted to residential use.*

**5.3 Other Uses.** Any of the following non-residential uses may be permitted as-of-right, by Plan Approval, [or by special permit]

- a) [specify business, commercial, or other uses]

*COMMENTS: Chapter 40R allows a municipality to permit business, commercial, or other uses that are consistent with the permitted primary residential use in a District. Such uses may be permitted as-of-right, through the Plan Approval process, or (in the case of projects consisting solely of non-residential uses) by special permit review.*

## **6. HOUSING AND HOUSING AFFORDABILITY**

**6.1 Number of Affordable Housing Units.** For all Projects [containing at least 13 residential units], not less than twenty percent (20%) of housing units constructed shall be Affordable Housing. Unless the PAA provides a waiver on the basis that the Project is not otherwise financially feasible, not less than twenty-five percent (25%) of rental dwelling units constructed in a Project containing rental units must be Affordable Rental Units. For purposes of calculating the number of units of Affordable Housing required within a Project, any fractional unit shall be deemed to constitute a whole unit. [A Project shall not be segmented to evade the Affordability threshold set forth above.]

*COMMENTS: Chapter 40R and the 40R Regulations require that under the Smart Growth Zoning, not less than 20 percent of all units constructed within Projects containing at least 13 units shall be Affordable. The 20% affordability standard and the 13-unit threshold apply to all units in a Project that is developed under the Smart Growth Zoning and is subject to this Section 6. Therefore, the Smart Growth Zoning must contain the above language. With the exception of Projects within the SGOD designated exclusively for the elderly, persons with disabilities, or for assisted living which per Section 6.8 must require 25% Affordable Housing, the minimum percentage of Affordable Housing required under the statute is 20%. Nonetheless, DHCD has added the default 25% requirement above for Affordable Rental Units because most 40R communities to date have inserted such a requirement so that, based on the associated rules, all of the rental units in a given Project will count as affordable on the Subsidized Housing Inventory (SHI).*

*The 40R Regulations state that the Smart Growth zoning must require that Projects are not segmented to evade the size threshold for the Affordability requirements. As discussed below, the Municipality also has the option to apply the Affordability requirements to smaller Projects, or to all Projects within the District. In the latter case, the bracketed sentence on segmentation would not be required.*

*The Smart Growth Zoning and/or the Community Housing Plan shall contain mechanisms to ensure that the total number of Affordable units constructed in the District equals not less than twenty percent (20%) of the total number of all units constructed within Projects in the District. Such mechanisms might include some or all of the following:*

- *Applying the 20% affordability standard to some or all Projects with fewer than 13 units;*
- *Increasing the affordability standard beyond 20% for certain categories of Projects; and*
- *Identifying specific Projects within the District that are projected to have significantly greater than 20% of their units Affordable (for example, Projects undertaken by a local housing authority or community development corporation).*

*The Municipality shall be required to prove to the Department in its submission that its use of such mechanisms will not “unduly restrict” opportunities for development within the proposed District under the Smart Growth Zoning: that means that the mechanisms may not add unreasonable costs or unreasonably impair the economic feasibility of proposed Projects. Note that for the purposes of satisfying the twenty percent (20%) overall Affordability requirement, any project located within the geographic boundaries of the District, and which receives a comprehensive permit under M.G.L. c.40B after the date upon which the application was*

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*submitted to the Department, shall be treated as if it were a Project developed under the Smart Growth Zoning.*

**6.2 Monitoring Agent.** A Monitoring Agent which may be the local housing authority or other qualified housing entity shall be designated by the [PAA, chief executive, or other designated municipal official] (the “designating official”). In a case where the Monitoring Agent cannot adequately carry out its administrative duties, upon certification of this fact by the designating official or by DHCD such duties shall devolve to and thereafter be administered by a qualified housing entity designated by the designating official. In any event, such Monitoring Agent shall ensure the following, both prior to issuance of a Building Permit for a Project within the SGOD, and on a continuing basis thereafter, as the case may be:

1. prices of Affordable Homeownership Units are properly computed; rental amounts of Affordable Rental Units are properly computed;
2. income eligibility of households applying for Affordable Housing is properly and reliably determined;
3. the housing marketing and resident selection plan conform to all requirements, have been approved by DHCD specifically with regard to conformance with M.G.L. c.40R and 760 CMR 59.00, and are properly administered;
4. sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given; and
5. Affordable Housing Restrictions meeting the requirements of this section are approved by DHCD specifically with regard to conformance with M.G.L. c.40R and 760 CMR. 59.00, recorded with the proper registry of deeds.

*COMMENTS: Chapter 40R and the 40R Regulations state that the Smart Growth Zoning shall contain provisions to ensure that there shall be effective monitoring and enforcement of the affordable housing restriction during the term of Affordability. Therefore, the Smart Growth Zoning must contain this provision, or language of substantially equal effect.*

**6.3 Submission Requirements.** As part of any application for Plan Approval for a Project within the SGOD submitted under Sections 9.0 through 13.0 (or, for Projects not requiring Plan Approval, prior to submission of any application for a Building Permit), the Applicant must submit the following documents to the PAA and the Monitoring Agent:

- 1) evidence that the Project complies with the cost and eligibility requirements of Section 6.4:

- 2) Project plans that demonstrate compliance with the requirements of Section 6.5; and
- 3) a form of Affordable Housing Restriction that satisfies the requirements of Section 6.6.

These documents in combination, to be submitted with an application for Plan Approval (or, for Projects not requiring Plan Approval, prior to submission of any application for a Building Permit), shall include details about construction related to the provision, within the development, of units that are accessible to the disabled and appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly.

*COMMENTS: Chapter 40R and the 40R Regulations require within a District the development of housing which is appropriate for a diverse population, including households with children, other households, individuals, households including individuals with disabilities, and the elderly. Therefore, the Smart Growth Zoning must contain this provision, or language of substantially equal effect.*

**6.4 Cost and Eligibility Requirements.** Affordable Housing shall comply with the following requirements:

1. Affordable Housing required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.
2. For an Affordable Rental Unit, the monthly rent payment, including applicable utility allowances, shall not exceed 30 percent of the maximum monthly income permissible for an Eligible Household, assuming a family size equal to the number of bedrooms in the unit plus one, unless another affordable housing program methodology for calculating rent limits as approved by DHCD applies.
3. For an Affordable Homeownership Unit the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, and insurance, shall not exceed 30 percent of the maximum monthly income permissible for an Eligible Household, assuming a family size equal to the number of bedrooms in the unit plus one, unless another affordable housing program methodology for calculating rent limits as approved by DHCD applies.

Prior to the granting of any [Building Permit or Plan Approval] for a Project, the Applicant must demonstrate, to the satisfaction of the Monitoring Agent, that the method by which such affordable rents or affordable purchase prices are computed shall be consistent with state or federal guidelines for affordability applicable to [name of community].

*COMMENTS: The Smart Growth Zoning must contain this provision, or language of*  
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*substantially equal effect. Chapter 40R and the 40R Regulations require assurances in the Smart Growth Zoning that under the affordable housing restriction on an Affordable unit, it shall be occupied by an eligible household paying an affordable rent or affordable purchase price during the term of the restriction. The Smart Growth Zoning shall contain provisions specifying the method by which such affordable rents or affordable purchase prices shall be computed.*

**6.5 Design and Construction.** Units of Affordable Housing shall be finished housing units. With respect to the minimum required number for a given Project, units of Affordable Housing shall be equitably integrated and proportionately dispersed throughout the residential portion of the Project of which they are part, across all residential buildings, floors and distinct unit types in accordance with the affordable housing restriction and marketing and tenant selection plan approved by DHCD and be comparable in initial construction quality, size and exterior design to the other housing units in the Project. Unless expressly required otherwise under one or more applicable state or federal housing subsidy programs, the bedroom-per-unit average for the Affordable Housing must be equal to or greater than the bedroom-per-unit average for the unrestricted/market-rate units.

*COMMENTS: The Smart Growth Zoning must contain this provision, or language of substantially equal effect. Only unit types (e.g., live/work units, 3-bedroom units) that contain a proportionate share of the required percentage of Affordable Housing will be considered eligible Bonus Units for the purposes of the Governing Laws.*

**6.6 Affordable Housing Restriction.** Each Project shall be subject to an Affordable Housing Restriction which is recorded with the appropriate registry of deeds or district registry of the Land Court and which contains the following:

1. specification of the term of the Affordable Housing Restriction which shall be no less than thirty years;
2. the name and address of the Monitoring Agent with a designation of its power to monitor and enforce the Affordable Housing Restriction;
3. a description of the Affordable Homeownership Unit, if any, by address and number of bedrooms; and a description of the overall quantity, initial unit designations and number of bedrooms and number of bedroom types of Affordable Rental Units in a Project or portion of a Project which are rental. Such restriction shall apply individually to the specifically identified Affordable Homeownership Unit and shall apply to a percentage of rental units of a rental Project or the rental portion of a Project with the initially designated Affordable Rental Units identified in, and able to float subject to specific approval by DHCD in accordance with, the corresponding Affirmative Fair Housing Marketing Plan (AFHMP) and DHCD's AFHMP guidelines.
4. reference to an affirmative fair housing marketing and resident selection plan, to which the Affordable Housing is subject, and which includes an

affirmative fair housing marketing program, including public notice and a fair resident selection process. Such plan shall be consistent with DHCD guidance and approved by DHCD. Consistent with DHCD guidance, such plan shall include a preference based on need for the number of bedrooms in a unit and a preference based on need for the accessibility features of a unit where applicable, and may only provide for additional preferences in resident selection to the extent such preferences are also consistent with applicable law and approved by DHCD.

5. a requirement that buyers or tenants will be selected at the initial sale or initial rental and upon all subsequent sales and rentals from a list of Eligible Households compiled in accordance with the housing marketing and selection plan;
6. reference to the formula pursuant to which rent of an Affordable Rental Unit or the maximum resale price of an Affordable Homeownership Unit will be set;
7. a requirement that only an Eligible Household may reside in Affordable Housing and that notice of any lease of any Affordable Rental Unit shall be given to the Monitoring Agent;
8. provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the Monitoring Agent;
9. provision that the AHR on an Affordable Homeownership Unit shall run in favor of the Monitoring Agent and/or the municipality, in a form approved by municipal counsel, and shall limit initial sale and re-sale to and occupancy by an Eligible Household;
10. provision that the AHR on Affordable Rental Units in a rental Project or rental portion of a Project shall run with the rental Project or rental portion of a Project and shall run in favor of the Monitoring Agent and/or the municipality, in a form approved by municipal counsel, and shall limit rental and occupancy to an Eligible Household;
11. provision that the owner[s] or manager[s] of Affordable Rental Unit[s] shall file an annual report to the Monitoring Agent, in a form specified by that agent certifying compliance with the Affordability provisions of this Bylaw and containing such other information as may be reasonably requested in order to ensure affordability; and
12. a requirement that residents in Affordable Housing provide such information as the Monitoring Agent may reasonably request in order to ensure affordability.



*COMMENTS: Chapter 40R and the 40R Regulations state that the Smart Growth Zoning shall contain provisions to ensure that there shall be effective monitoring and enforcement of the affordable housing restriction during the term of Affordability. Therefore, the Smart Growth Zoning must contain this provision, or language of substantially equal effect.*

**6.7 Costs of Housing Marketing and Selection Plan.** The housing marketing and selection plan may make provision for payment by the Project applicant of reasonable costs to the Monitoring Agent to develop, advertise, and maintain the list of Eligible Households and to monitor and enforce compliance with affordability requirements.

*COMMENTS: To ensure that the costs of the marketing and enforcement measures are not unduly burdensome, the Smart Growth Zoning must contain this provision, or language of substantially equal effect.*

**6.8 Age Restrictions.** Nothing in this Section [x] shall permit the imposition of restrictions on age upon Projects unless proposed or agreed to voluntarily by the Applicant. However, the PAA may, in its review of a submission under Section 6.3, allow a specific Project within the SGOD designated exclusively for the elderly, persons with disabilities, or for assisted living, provided that any such Project shall be in compliance with all applicable federal, state and local fair housing laws and regulations and not less than twenty-five percent (25%) of the housing units in such a restricted Project shall be restricted as Affordable units.

*COMMENTS: Chapter 40R and the 40R Regulations state that the Smart Growth Zoning for the proposed District shall not impose restrictions on age or any other forms of occupancy restrictions upon the District as a whole. This provision does not preclude the development of specific Projects within the District that may be exclusively for the elderly, persons with disabilities, or for assisted living, provided that any such Project shall be in compliance with all applicable fair housing laws. Not less than twenty-five percent (25%) of the housing units in such a Project shall be Affordable. Therefore, the Smart Growth Zoning must contain this provision, or language of substantially equal effect.*

**6.9 Phasing.** For any Project that is approved and developed in phases in accordance with Section 9.4, the percentage of Affordable units in each phase shall be at least equal to the minimum percentage of Affordable Housing required under Section 6.1. Where the percentage of Affordable Housing is not uniform across all phases, the unit dispersal and bedroom proportionality requirements under Section 6.5 shall be applied proportionately to the Affordable Housing provided for in each respective phase.

*COMMENTS: To address the proportionality requirements of the 40R Regulations, the Smart Growth Zoning must contain this provision, or language of substantially equal effect.*



**6.10 No Waiver.** Notwithstanding anything to the contrary herein, the Affordability provisions in this Section 6.0 shall not be waived unless expressly approved in writing by DHCD.

*COMMENTS: The 40R Regulations state that the Affordability requirements may not be waived as part of the Plan Approval process for a Project. Therefore, the Smart Growth Zoning must contain this provision.*

## 7. DIMENSIONAL AND DENSITY REQUIREMENTS - GENERAL

**7.1 Table of Requirements.** Notwithstanding anything to the contrary in this Zoning Bylaw, the dimensional requirements applicable in the SGOD are as follows:

[Insert applicable dimensional requirements. Insert additional provisions if there are sub-districts within the District, and the dimensional requirements vary among the sub-districts.]

*COMMENTS: Without limitation, the Smart Growth Zoning shall set out the dimensional, use, parking, and other standards applicable to Projects within the District (including within any Substantially Developed sub-district) including but not limited to height limits, setbacks, lot areas, lot dimensions, unit to lot ratios, floor area ratios, lot coverage ratios, and open space ratios. (For discussion of parking ratios, parking locations, and roadway design standards, see Sections 8.0 and 13.0.)*

*For large Projects containing multiple buildings and uses, it may preserve greater flexibility for minimum lot size, setback, and yard standards to apply to the Project site as a whole, and not to internal dimensions.*

*The Smart Growth Zoning must provide for any one or more of the following minimum allowable as-of-right densities unless the Department has previously approved a density reduction:*

1. *a density of at least 8 units per acre for Developable Land zoned for single-family residential use;*
2. *a density of at least 12 units per acre for Developable Land zoned for 2- and/or 3-family residential use; or*
3. *a density of at least 20 units per acre for Developable Land zoned for multi-family residential use.*

*If the SGOD is anticipated to contain only a single Project, then restricting the total number of residential units developable within the SGOD is permissible, provided that the maximum number will permit the SGOD to achieve the minimum applicable as-of right density required by chapter 40R.*

*A District may contain one or more sub-districts. The allowable residential density and other dimensional requirements may vary from one sub-district to another (even for the same permitted residential use), so long as each residential sub-district meets the minimum allowable as-of-right*

*density requirements. For Substantially Developed Sub-districts, see COMMENTS on Section 7.2 below.*

*Under Chapter 40R and the 40R Regulations, a Municipality may adopt Design Standards to ensure that the physical character of Projects within the District will be “complementary to nearby buildings and structures,” and will provide for “high-density quality development consistent with the character of building types, streetscapes, and other community features traditionally found in densely settled areas of the Municipality or in the region of the Municipality.” On the possible inclusion of the Design Standards within the Smart Growth Zoning, see COMMENTS on Section 13. For discussion of the relationship between dimensional requirements and Design Standards in meeting these goals, see the Design Standards guidance document.*

**7.2 Dimensional Waivers in Substantially Developed Sub-district.** The PAA may, in order to encourage the development of infill housing units on undeveloped lots within a Substantially Developed Sub-district, grant a waiver to the dimensional standards of Section 7.1, in accordance with Section 11.3.

*COMMENTS: The Chapter 40R Regulations allow that for some or all of the “substantially developed land” (as defined in the Regulations) within a District, the Smart Growth Zoning need not satisfy the minimum As-of-right residential densities, so long as the allowable residential densities in the Substantially Developed sub-district are no less than those in the Underlying Zoning. Within the sub-district, the Smart Growth Zoning shall modify the dimensional and other applicable standards of the Underlying Zoning when the Smart Growth Zoning provides for a greater residential density than the Underlying Zoning, in order to permit the As-of-right construction of infill housing on existing vacant lots. The Smart Growth Zoning may impose reasonable lot area, frontage, setback and other dimensional requirements within such Substantially Developed sub-districts, consistent with neighborhood building and use patterns, and building, fire, and safety codes.*

## **8. PARKING REQUIREMENTS - GENERAL**

The parking requirements applicable for Projects within the SGOD are as follows.

**8.1 Number of parking spaces.** Unless otherwise found to be Unduly Restrictive with respect to Project feasibility and approved by the PAA, the following [minimum and] maximum numbers of off-street parking spaces shall be [provided and] allowed [, respectively,] by use, either in surface parking, within garages or other structures, [or on-street:]

[Insert applicable parking requirements]

The PAA may allow for additional visitor parking spaces beyond the \_\_\_\_ maximum spaces per unit if deemed appropriate given the design, layout and density of the proposed residential or other development. The PAA may allow

for a decrease in any required parking as provided in Sections 8.2 and 8.3 below.

*COMMENTS: To support the smart growth goals of Chapter 40R and encourage alternatives to automobile travel, the Department requires that the SGZ at least establish parking maximums along with any minimum parking ratios that the municipality may choose to require under the SGZ. Where minimum requirements are deemed necessary, DHCD encourages allowing the reduction of minimum parking requirements beyond what is commonly required. Particularly for locations near transit stations, setting maximum as well as minimum parking requirements can further support the smart growth goals of Chapter 40R. For further discussion of this issue, see the Design Standards guidance document.*

**8.2 Shared Parking.** Notwithstanding anything to the contrary herein, the use of shared parking to fulfill parking demands noted above that occur at different times of day is strongly encouraged. Minimum parking requirements above may be reduced by the PAA through the Plan Approval process (or, for Projects not requiring Plan Approval, prior to submission of any application for a Building Permit), if the Applicant can demonstrate that shared spaces will meet parking demands by using accepted methodologies (e.g. the Urban Land Institute Shared Parking Report, ITE Shared Parking Guidelines, or other approved studies).

*COMMENTS: Where minimum requirements are deemed necessary, DHCD encourages allowing the reduction of minimum parking requirements if parking is shared by different uses, within Mixed-use Development Projects or otherwise.*

**8.3 Reduction in parking requirements.** Notwithstanding anything to the contrary herein, any minimum required amount of parking may be reduced by the PAA through the Plan Approval process (or, for Projects not requiring Plan Approval, prior to submission of any application for a Building Permit), if the Applicant can demonstrate that the lesser amount of parking will not cause excessive congestion, endanger public safety, or that lesser amount of parking will provide positive environmental or other benefits, taking into consideration:

- a) the availability of surplus off street parking in the vicinity of the use being served and/or the proximity of a bus stop or transit station;
- b) the availability of public or commercial parking facilities in the vicinity of the use being served;
- c) shared use of off street parking spaces serving other uses having peak user demands at different times;
- d) To the extent consistent with 760 CMR 59.04(1)(g) and 760 CMR 59.04(1)(i)1., age or other occupancy restrictions which are likely to result in a lower level of auto usage;
- e) impact of the parking requirement on the physical environment of the affected lot or the adjacent lots including reduction in green space, destruction of significant existing trees and other vegetation, destruction

of existing dwelling units, or loss of pedestrian amenities along public ways; and

- f) Any applicable transportation demand management strategies that will be integrated into the Project or such other factors as may be considered by the PAA.

*COMMENTS: The Department encourages communities to consider provisions allowing the reduction of minimum parking requirements.*

**8.4 Location of Parking.** Any surface parking lot shall, to the maximum extent feasible, be located at the rear or side of a building, relative to any principal street, public open space, or pedestrian way.

*COMMENTS: For further discussion of issues relating to the location and design of parking, in order to achieve Chapter 40R's goal of creating "high-density quality development consistent with the character of building types, streetscapes, and other community features traditionally found in densely settled areas of the Municipality or in the region of the Municipality," see the Design Standards guidance document.*

## **9. PLAN APPROVAL OF PROJECTS: GENERAL PROVISIONS**

*The 40R Regulations state that the Plan Approval provisions of the Smart Growth Zoning and/or any separate Design Standards must be clearly written, fairly and consistently applied, and allow for flexibility and creativity, consistent with the goals of the Act. The contents of the following Sections 9.0 through 13.0 are intended to satisfy these regulatory requirements. For any community that subjects Projects to Plan Approval, the Smart Growth Zoning must contain these provisions, or language of substantially equivalent effect.*

**9.1 Plan Approval.** An application for Plan Approval shall be reviewed by the PAA for consistency with the purpose and intent of Sections 9.0 through 13.0. Such Plan Approval process shall be construed as an As-of-Right review and approval process as required by and in accordance with the Governing Laws. The following categories of Projects shall be subject to the Plan Approval process:

- a) Any Residential Project containing at least [13] residential units;
- b) Any Mixed-use Development Project;
- [c) any project consisting solely of non-residential uses; and
- d) Any Project seeking a waiver].

*COMMENTS: The 40R Regulations state that if the Smart Growth Zoning provides for Plan Approval of Projects within the District, it shall specify the categories of Projects that will be subject to Plan Approval(defined by size, type, or otherwise). The sample bylaw suggests that a*

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*reasonable threshold of review for Residential Projects would be the size of Project that would be subject to the Affordability requirements of Section 6 – see COMMENTS on that section. The sample bylaw also suggests that all Mixed-use Development Projects and all projects consisting solely of non-residential uses should be subject to Plan Approval, to ensure that the non-residential elements are planned and designed in an integral manner to complement the residential uses – see Sections 5.2 and 13.4.*

**9.2 Plan Approval Authority (PAA).** The [name of local approval authority], consistent with G.L. Chapter 40R and 760 CMR 59.00, shall be the Plan Approval Authority (the “PAA”), and it is authorized to conduct the Plan Approval process for purposes of reviewing Project applications and issuing Plan Approval decisions within the SGOD.

*COMMENTS: The 40R Regulations state that if the Smart Growth Zoning provides for Plan Approval of Projects within the District, it shall specify the Approving Authority. Therefore, the Department will require the Smart Growth Zoning to contain this provision if Projects are subject to Plan Approval.*

**9.3 PAA Regulations.** The Plan Approval Authority may adopt administrative rules and regulations relative to Plan Approval. Such rules and regulations and any amendments thereof must be approved by the Department of Housing and Community Development.

*COMMENTS: If the Smart Growth Zoning empowers the PAA to adopt rules and regulations for the Plan Approval of Projects, such regulations must be dated and approved by DHCD.*

**9.4 Project Phasing.** An Applicant may propose, in a Plan Approval submission, that a Project be developed in phases, provided that the submission shows the full buildout of the Project and all associated impacts as of the completion of the final phase, and subject to the approval of the PAA. Any phased Project shall comply with the provisions of Section 6.9.

*COMMENTS: The 40R Regulations permit Projects to be phased; see also Section 11.4 below. Therefore, the Department will require the Smart Growth Zoning to contain this provision. (However, the 40R Regulations also state that the Smart Growth Zoning must require that Projects are not segmented to evade the size threshold for the Affordability requirements. See Section 6.1.)*

## **10. PLAN APPROVAL PROCEDURES**

**10.1 Preapplication.** Prior to the submittal of a Plan Approval submission, a “Concept Plan” may be submitted to help guide the development of the definitive submission for Project buildout and individual elements thereof. Such Concept Plan should reflect the following:

1. Overall building envelope areas;

2. Open space and natural resource areas; and
3. General site improvements, groupings of buildings, and proposed land uses.

The Concept Plan is intended to be used as a tool for both the Applicant and the PAA to ensure that the proposed Project design will be consistent with the Design Standards and other requirements of the SGOD.

*COMMENTS: Voluntary pre-application provisions are recommended, although Chapter 40R does not permit a municipality to require a mandatory pre-application process.*

**10.2 Required Submittals.** An application for Plan Approval shall be submitted to the PAA on the form provided by the PAA and approved by DHCD, [along with application fee(s)] which shall be as set forth in the PAA Regulations. The application shall be accompanied by such plans and documents as may be required and set forth in the PAA Regulations. For any Project that is subject to the Affordability requirements of Section 6.0, the application shall be accompanied by all materials required under Section 6.3. All site plans shall be prepared by a certified architect, landscape architect, and/or a civil engineer registered in the Commonwealth of Massachusetts. All landscape plans shall be prepared by a certified landscape architect registered in the Commonwealth of Massachusetts. All building elevations shall be prepared by a certified architect registered in the Commonwealth of Massachusetts. All plans shall be signed and stamped, and drawings prepared at a scale of [one inch equals forty feet (1"=40') or larger], or at a scale as approved in advance by the PAA.

*COMMENTS: The 40R Regulations state that if the Smart Growth Zoning provides for Plan Approval of Projects within the District, it shall specify the procedures for such review, including the contents of an application for approval of a Project. The Department recommends that the form of application, and rules governing the content of the application to be filed with the PAA, be included in the PAA Regulations, rather than including such requirements in the Smart Growth Zoning. Note that the PAA Regulations will be subject to review and approval by the Department. Where filing fees are required, documentation must be submitted justifying the required fee(s).*

**10.3 Filing.** An Applicant for Plan Approval shall file the required number of copies of the application form and the other required submittals as set forth in the PAA Regulations with the [City/Town] Clerk and a copy of the application including the date of filing certified by the [City/Town] Clerk shall be filed forthwith with the PAA.

*COMMENTS: The Department will require the Smart Growth Zoning to contain this provision if Projects are subject to Plan Approval.*

**10.4 Circulation to Other Boards.** Upon receipt of the application, the PAA

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shall immediately provide a copy of the application materials to the [Select Board / City Council], Board of Appeals, Board of Health, Conservation Commission, Fire Department, Police Department, Building Commissioner, Department of Public Works, the Monitoring Agent (if already identified, for any Project subject to the Affordability requirements of Section 6.0), and other municipal officers, agencies or boards for comment, and any such board, agency or officer shall provide any written comments within 60 days of its receipt of a copy of the plan and application for approval.

*COMMENTS: If an application is to be referred to any municipal officer, agency or board, including but not limited to the Monitoring Agent referenced in Section 6.0, the Department will require the Smart Growth Zoning to contain this provision.*

**10.5 Hearing.** The PAA shall hold a public hearing for which notice has been given as provided in Section 11 of G.L. Chapter 40A. The decision of the PAA shall be made, and a written notice of the decision filed with the [City/ Town] Clerk, within 120 days of the receipt of the application by the [City/ Town] Clerk. The required time limits for such action may be extended by written agreement between the Applicant and the PAA, with a copy of such agreement being filed in the office of the [City / Town] Clerk. Failure of the PAA to take action within said 120 days or extended time, if applicable, shall be deemed to be an approval of the Plan Approval application.

*COMMENTS: The Department will require the Smart Growth Zoning to contain this provision if Projects are subject to Plan Approval.*

**10.6 Peer Review.** The Applicant shall be required to pay for reasonable consulting fees to provide peer review of the Plan Approval application, pursuant to G.L. Chapter 40R, Section 11(a). Such fees shall be held by the [City / Town] in a separate account and used only for expenses associated with the review of the application by outside consultants, including, but not limited to, attorneys, engineers, urban designers, housing consultants, planners, and others. Any surplus remaining after the completion of such review, including any interest accrued, shall be returned to the Applicant forthwith.

*COMMENTS: If an application is to be reviewed by outside consultants, the Department will require the Smart Growth Zoning to contain this provision.*

## **11. PLAN APPROVAL DECISIONS**

**11.1 Plan Approval.** Plan Approval shall be granted where the PAA finds that:

1. the Applicant has submitted the required fees and information as set forth in the PAA Regulations; and
2. the Project as described in the application meets all of the requirements and standards set forth in this Section [x] and the PAA Regulations, or a



waiver has been granted therefrom; and

3. any extraordinary adverse potential impacts of the Project on nearby properties have been adequately mitigated.

For a Project subject to the Affordability requirements of Section 6.0, compliance with condition (2) above shall include written confirmation by the Monitoring Agent that all requirements of that Section have been satisfied. Any Plan Approval decision for a Project subject to the affordability restrictions of Section 6.0 shall specify the term of such affordability, which shall be no less than thirty years. The PAA may attach conditions to the Plan Approval decision that are necessary to ensure substantial compliance with this Section [x], or to mitigate any extraordinary adverse potential impacts of the Project on nearby properties.

*COMMENTS: The 40R Regulations state that if the Smart Growth Zoning provides for Plan Approval of Projects within the District, it shall specify the criteria upon which the Approving Authority may condition its approval. The Department will require the Smart Growth Zoning to contain this provision if Projects are subject to Plan Approval.*

**11.2 Plan Disapproval.** A Plan Approval application may be disapproved only where the PAA finds that:

1. the Applicant has not submitted the required fees and information as set forth in the Regulations; or
2. the Project as described in the application does not meet all of the requirements and standards set forth in this Section [x] and the PAA Regulations, or that a requested waiver therefrom has not been granted; or
3. it is not possible to adequately mitigate extraordinary adverse Project impacts on nearby properties by means of suitable conditions.

*COMMENTS: The 40R Regulations state that if the Smart Growth Zoning provides for Plan Approval of Projects within the District, it shall specify the criteria upon which the Approving Authority may disapprove a proposed Project, or condition its approval. Chapter 40R states that a proposed Project may be denied Plan Approval only on the grounds that:*

- 1) *the Project does not meet the conditions and requirements set forth in the Smart Growth Zoning;*
- 2) *the applicant failed to submit information and fees required by the Smart Growth Zoning and necessary for an adequate and timely review of the design of the Project or potential Project impacts; or*
- 3) *it is not possible to adequately mitigate significant adverse Project impacts on nearby properties by means of suitable conditions.*

*To implement this provision, the Department will require the Smart Growth Zoning to contain this provision if Projects are subject to Plan Approval.*

**11.3 Waivers.** Upon the request of the Applicant and subject to compliance with M.G.L. c. 40R, 760 CMR 59.00 and Section 6.10, the Plan Approval Authority may waive dimensional and other requirements of Section [x], including the Design Standards, in the interests of design flexibility and overall project quality, and upon a finding of consistency of such variation with the overall purpose and objectives of the SGOD, or if it finds that such waiver will allow the Project to achieve the density, affordability, mix of uses, and/or physical character allowable under this Section [x].

*COMMENTS: Chapter 40R states that the Smart Growth Zoning may allow the Approving Authority, through the Plan Approval process, to waive specific dimensional and other standards (other than Affordability requirements) otherwise applicable to a Project, if it finds that the waiver will allow the Project to achieve the density, Affordability, mix of uses, and/or physical character allowable under the Smart Growth Zoning, and that the Project is consistent with the Design Standards. The 40R Regulations state that the waiver criteria must be defined in the Smart Growth Zoning. Therefore, if the community intends to grant waivers through the Plan Approval process, the Smart Growth Zoning must contain this provision.*

**11.4 Project Phasing.** The PAA, as a condition of any Plan Approval, may allow a Project to be phased at the request of the Applicant, or it may require a Project to be phased for the purpose of coordinating its development with the construction of Planned Infrastructure Improvements (as that term is defined under 760 CMR 59.00), or to mitigate any extraordinary adverse Project impacts on nearby properties. For Projects that are approved and developed in phases, unless otherwise explicitly approved in writing by the Department in relation to the specific Project, the proportion of Affordable units in each phase shall be at least equal to the minimum percentage of Affordable Housing required under Section 6.1.

*COMMENTS: The Chapter 40R Regulations state that the Smart Growth Zoning may permit the Plan Approval approvals of proposed Projects to be phased for the purpose of coordinating development with the construction of Planned Infrastructure Upgrades or that are required to mitigate any extraordinary adverse Project impacts on neighboring properties. For Projects that are approved and developed in phases, the proportion of Affordable units shall be at least equal to the minimum percentage of Affordable Housing required under Section 6.1. Therefore, the Department will require the Smart Growth Zoning to contain this provision if Projects are subject to Plan Approval.*

**11.5 Form of Decision.** The PAA shall issue to the Applicant a copy of its decision containing the name and address of the owner, identifying the land affected, and the plans that were the subject of the decision, and certifying that a copy of the decision has been filed with the [City / Town] Clerk and that all plans referred to in the decision are on file with the PAA. If twenty (20) days have elapsed after the decision has been filed in the office of the [City / Town] Clerk without an appeal having been filed or if such appeal, having been filed, is

dismissed or denied, the [City/Town] Clerk shall so certify on a copy of the decision. If a plan is approved by reason of the failure of the PAA to timely act, the [City/ Town] Clerk shall make such certification on a copy of the application. A copy of the decision or application bearing such certification shall be recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the Applicant.

*COMMENTS: The Department will require the Smart Growth Zoning to contain this provision if Projects are subject to Plan Approval.*

**11.6 Validity of Decision.** A Plan Approval shall remain valid and shall run with the land indefinitely, provided that construction has commenced within two years after the decision is issued, which time shall be extended by the time required to adjudicate any appeal from such approval and which time shall also be extended if the Project proponent is actively pursuing other required permits for the Project or there is other good cause for the failure to commence construction, or as may be provided in a Plan Approval for a multi-phase Project.

*COMMENTS: The Department recommends that the Smart Growth Zoning contain this provision if Projects are subject to Plan Approval.*

## **12. CHANGE IN PLANS AFTER APPROVAL BY PAA**

**12.1 Minor Change.** After Plan Approval, an Applicant may apply to make minor changes in a Project involving minor utility or building orientation adjustments, or minor adjustments to parking or other site details that do not affect the overall buildout or building envelope of the site, or provision of open space, number of housing units, or housing need or affordability features. Such minor changes must be submitted to the PAA on redlined prints of the approved plan, reflecting the proposed change, and on application forms provided by the PAA. The PAA may authorize such changes at any regularly scheduled meeting, without the need to hold a public hearing. The PAA shall set forth any decision to approve or deny such minor change by motion and written decision, and provide a copy to the Applicant for filing with the [City/ Town] Clerk.

*COMMENTS: The Department recommends that the Smart Growth Zoning contain this provision if Projects are subject to Plan Approval.*

**12.2 Major Change.** Those changes deemed by the PAA to constitute a major change in a Project because of the nature of the change in relation to the prior approved plan, or because such change cannot be appropriately characterized as a minor change as described above, shall be processed by the PAA as a new application for Plan Approval pursuant to Sections 9.0 - through 13.0.

*COMMENTS: The Department recommends that the Smart Growth Zoning contain this provision if Projects are subject to Plan Approval*

### 13. DESIGN STANDARDS - GENERAL

**13.1 Adoption of Design Standards.** Any Project undergoing the Plan Approval process shall be subject to design standards [as set forth below in this Section 13.0 (“Design Standards”)] [or] [referenced in the ordinance or bylaw but contained in a separate document].

**13.2 Purpose.** The Design Standards are adopted to ensure that the physical character of Projects within the SGOD:

- 1) will be complementary to nearby buildings and structures;
- 2) will be consistent with the Comprehensive Housing Plan, an applicable master plan, an area specific plan, or any other plan document adopted by the [City / Town]; and
- 3) will provide for high-density quality development consistent with the character of building types, streetscapes, and other community features traditionally found in densely settled areas of the [City / Town] or in the region of the [City / Town].

*COMMENTS: The Design Standards may address some or all of the following factors:*

- a) the scale, proportions, and exterior appearance of buildings;
- b) the placement, alignment, width, and grade of streets and sidewalks;
- c) the type and location of infrastructure;
- d) the location of building and garage entrances;
- e) off-street parking;
- f) the protection of significant natural site features;
- g) the location and design of on-site open spaces;
- h) landscaping;
- i) exterior signs; and
- j) buffering in relation to adjacent properties.

*Under the Chapter 40R Regulations, the Municipality has the option either to include the Design Standards within the Smart Growth Zoning, or to make them a part of the PAA Regulations. In either case, they must be reviewed and approved by the Department before they can take effect. The Municipality must demonstrate to the satisfaction of the Department that its Design Standards will not “unduly restrict” the development of Projects in the District: that means that the Design Standards may not add unreasonable costs or unreasonably impair the economic feasibility of proposed Projects. The Department may disapprove a proposed District if the Design Standards fail to meet this test.*

*If the Design Standards are to be contained within the PAA Regulations, the Department*

*requires the Smart Growth Zoning contain the following provisions:*

**13.1. Design Standards.** *The Plan Approval Authority may adopt, by simple majority vote, Design Standards which shall be applicable to Development Projects subject to Plan Approval by the Plan Approval Authority. Such Design Standards must be objective and not subjective and may only address the scale and proportions of buildings, the alignment, width, and grade of streets and sidewalks, the type and location of infrastructure, the location of building and garage entrances, off street parking, the protection of significant natural site features, the location and design of on-site open spaces, exterior signs, and buffering in relation to adjacent properties. DHCD may, at its discretion, may require Design Standards to contain graphics illustrating a particular standard or definition in order to make such standard or definition clear and understandable.*

**13.2. DHCD Approval.** *After adopting Design Standards, the PAA shall submit Design Standards to DHCD for approval. Design Standards shall not take effect until approved by DHCD and filed with the Town Clerk. In submitting proposed Design Standard for DHCD approval, the PAA shall also submit sufficient documentation clearly showing that the proposed Design Standards will not add unreasonable costs to Development Projects or unreasonably impair the economic feasibility of a Development Project. A letter from a developer, property owner or other interested party indicating that the Design Standards will not add unreasonable costs or unreasonably impair the economic feasibility of a Development Project shall not constitute sufficient documentation. At its discretion, DHCD may disapprove Design Standards if it finds that the PAA has not adopted objective Design Standards or has not submitted such documentation.*

**13.3. Plan Approval.** *An application for Plan Approval that has been submitted to the Town Clerk pursuant to this Section [x] shall not be subject to Design Standards that have not been approved by DHCD and filed with the Town Clerk.*

#### **14. SEVERABILITY.**

If any provision of this Section [x] is found to be invalid by a court of competent jurisdiction, the remainder of Section [x] shall not be affected but shall remain in full force. The invalidity of any provision of this Section [x] shall not affect the validity of the remainder of the [Town's/City's Zoning Bylaw/Ordinance].

*COMMENTS: The Department recommends that the Smart Growth Zoning should contain this section.*

#### **B. Establishment and Delineation of the Smart Growth Overlay Districts**

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1. [DISTRICT NAME] SMART GROWTH OVERLAY DISTRICT

**1.1 Establishment.** The [District Name] Smart Growth Overlay District, hereinafter referred to as the “SGOD,” is an overlay district having a land area of approximately \_\_ acres in size that is superimposed over the underlying zoning district (s) and is shown on the Zoning Map as set forth on the map entitled “[Name of District] Smart Growth Overlay District, dated \_\_, prepared by \_\_.” This map is hereby made a part of the Zoning By-law and is on file in the Office of the [Town/City] Clerk.

*COMMENTS: The Smart Growth Zoning must specify that the District is an overlay district. The Department will further require that the Smart Growth Zoning sufficiently identify the smart growth district overlay map. The Smart Growth Zoning must state that the map is part of the local zoning bylaw and is on file in the office of the municipal clerk.*

**1.2 Subdistricts.** The SGOD contains the following subdistricts: [Single-family Subdistrict / Multi-family Subdistrict / Mixed-use Subdistrict / Non-residential Subdistrict / Substantially Developed Subdistrict].

*COMMENTS: A District may contain one or more sub-districts. The Smart Growth Zoning may limit a sub-district to certain type(s) of residential use(s), or the minimum allowable density may vary for the permitted residential use(s) so long as each residential sub-district meets the minimum allowable as-of-right density requirements (see COMMENTS under Section 7.0).*

*Chapter 40R authorizes municipalities to permit business, commercial or other uses that are consistent with primary residential use. Therefore, a District may also contain one or more sub-districts in which Mixed-use Development Projects are allowed, or in which only non-residential uses are allowed.*

*If a District includes “Substantially Developed Land,” as defined under the 40R Regulations, it may contain a separate Substantially Developed Sub-district. See COMMENTS under Section 5.0 for permitted uses within a Substantially Developed Sub-district, and under Section 7.0 below for dimensional requirements applying within a Substantially Developed Sub-district.*

2. PERMITTED USES – (DISTRICT-SPECIFIC)

The following uses are permitted As-of-Right for Projects within the [NAME]SGOD.

**2.1 Residential Projects.** A Residential Project within the [NAME]SGOD may include:

- a) [Single-family, 2 and 3 family, and/or Multi-family] Residential Use(s);



- b) Parking accessory to any of the above permitted uses, including surface, garage-under, and structured parking (e.g., parking garages); and
- c) Accessory uses customarily incidental to any of the above permitted uses.

[Insert additional text if there are sub-districts within the District, and the permitted residential uses vary among the sub-districts.]

*COMMENTS: Chapter 40R and the 40R Regulations state that Residential Projects must be permitted as of right, although they may be subject to Plan Approval by the PAA (see definition of “as-of-right” in Section 2 above). If there are sub-districts within the District, the Smart Growth Zoning must specify which types of residential uses are allowed within each sub-district.*

*Note that Chapter 40R and the 40R Regulations state that within a Substantially Developed Sub-district, the Smart Growth Zoning must permit the as-of-right construction of additional housing units in existing residential buildings or additions thereto or replacements thereof. Drafters should consult with DHCD on this and other issues if the Smart Growth Zoning will include provisions for a Substantially Developed Sub-district. See also Section 7.2.*

**2.2 Mixed-use Development Projects.** A Mixed-use Development Project within the [NAME]SGOD may include:

- c) [Single-family, 2 and 3 family, and/or Multi-family] Residential Use(s), provided that the minimum allowable as-of-right density requirements for residential use specified in Section 7.1 shall apply to the residential portion of any Mixed-use Development Project;
- d) Any of the following Non-residential uses: [specify permitted commercial, institutional, industrial, or other non-residential uses]
- c) Parking accessory to any of the above permitted uses, including surface, garage-under, and structured parking (e.g., parking garages); and
- d) Accessory uses customarily incidental to any of the above permitted uses.

[Insert additional text if there are sub-districts within the District, and Mixed-use Development Projects are allowed in some but not all of the sub-districts.]

*COMMENTS: Chapter 40R and the 40R Regulations state that if the Smart Growth Zoning allows Mixed-use Development Projects, such projects must also be allowed as-of-right. The minimum allowable as-of-right density requirements for residential use apply to the residential portion of a mixed-use development project. The Smart Growth Zoning may limit Mixed-use Development Projects to certain sub-districts of a District.*

*Under Chapter 40R and the 40R Regulations, provisions of the Smart Growth Zoning and/or the Design Standards may require that the non-residential elements of any Mixed-Use Development Project are planned and designed “in an integral manner to complement the residential uses, and*



*help foster vibrant, workable, livable, and attractive neighborhoods” consistent with the smart growth goals of the Act. For further discussion of this issue, see the Design Standards guidance document.*

The total gross floor area devoted to Non-residential uses within a Mixed-use Development Project shall not exceed [\_\_\_%] of the total gross floor area of the Project.

*COMMENTS: The 40R Regulations state that the Smart Growth Zoning must specify the minimum portion of a mixed-use development project that must be devoted to residential use.*

**2.3 Other Uses.** Any of the following non-residential uses may be permitted as-of-right, by Plan Approval, [or by special permit]

- a) [specify business, commercial, or other uses]
- b) Until such time that DHCD has confirmed receipt of copies of occupancy permits for [minimum # units corresponding to Zoning Incentive Payment] number of eligible Bonus Units permitted under the Smart Growth Zoning, the total gross floor area devoted to Non-residential uses on Developable or Underutilized Land and not contained within a Mixed-use Development Project shall not exceed [\_\_\_%] of the total gross floor area allowed on Developable or Underutilized Land in the District.

*COMMENTS: While Chapter 40R allows a municipality to permit business, commercial, or other uses that are consistent with the permitted primary residential use in a District, in order to ensure that the development permitted pursuant to the Smart Growth Zoning on Developable or Underutilized Land is primarily residential, where such non-residential uses are permitted outside on of Mixed-Use Projects, the aggregate of all such non-residential gross floor area must be restricted to a percentage of the total gross floor area developable on such land so as to allow enough remaining buildable gross floor area to accommodate the remaining number of Bonus Units necessary to at least equal the minimum number of Incentive Units associated with the corresponding Zoning Incentive Payment. Such uses may be permitted as-of-right, through the Plan Approval process, or (in the case of projects consisting solely of non-residential uses) by special permit review.*

### **3. DIMENSIONAL AND DENSITY REQUIREMENTS – (DISTRICT-SPECIFIC)**

**3.1 Table of Requirements.** Notwithstanding anything to the contrary in this Zoning Bylaw, the dimensional requirements applicable in the SGOD are as follows:

[Insert applicable dimensional requirements. Insert additional provisions if there are sub-districts within the District, and the dimensional requirements vary among the sub-districts.]

*COMMENTS: Without limitation, the Smart Growth Zoning shall set out the dimensional, use, parking, and other standards applicable to Projects within the District (including within any Substantially Developed sub-district) including but not limited to height limits, setbacks, lot areas, lot dimensions, unit to lot ratios, floor area ratios, lot coverage ratios, and open space ratios. (For discussion of parking ratios, parking locations, and roadway design standards, see Sections 8.0 and 13.0.)*

*For large Projects containing multiple buildings and uses, it may preserve greater flexibility for minimum lot size, setback, and yard standards to apply to the Project site as a whole, and not to internal dimensions.*

*The Smart Growth Zoning must provide for any one or more of the following minimum allowable as-of-right density requirements unless the Department has previously approved a density reduction:*

- 1. a density of at least 8 units per acre for Developable Land zoned for single-family residential use;*
- 2. a density of at least 12 units per acre for Developable Land zoned for 2- and/or 3-family residential use; or*
- 3. a density of at least 20 units per acre for Developable Land zoned for multi-family residential use.*

*If the SGOD is anticipated to contain only a single Project, then restricting the total number of residential units developable within the SGOD is permissible, provided that the maximum number will permit the SGOD to achieve the minimum applicable as-of right density required by chapter 40R.*

*A District may contain one or more sub-districts. The allowable residential density and other dimensional requirements may vary within different sub-districts (even for the same permitted residential use), so long as each residential sub-district meets the minimum allowable as-of-right density requirements. For Substantially Developed Sub-districts, see COMMENTS on Section 7.2 below.*

*Under Chapter 40R and the 40R Regulations, a Municipality may adopt Design Standards to ensure that the physical character of Projects within the District will be “complementary to nearby buildings and structures,” and will provide for “high-density quality development consistent with the character of building types, streetscapes, and other community features traditionally found in densely settled areas of the Municipality or in the region of the Municipality.” On the possible inclusion of the Design Standards within the Smart Growth Zoning, see COMMENTS on Section 13. For discussion of the relationship between dimensional requirements and Design Standards in meeting these goals, see the Design Standards guidance document.*

**3.2 Dimensional Waivers in Substantially Developed Sub-district.** The PAA may, in order to encourage the development of infill housing units on undeveloped lots within a Substantially Developed Sub-district, grant a waiver to the dimensional standards of Section 7.1, in accordance with Section 11.3.

*COMMENTS: The Chapter 40R Regulations allow that for some or all of the “substantially developed land” (as defined in the Regulations) within a District, the Smart Growth Zoning need not satisfy the minimum As-of-right residential densities, so long as the allowable residential densities in the Substantially Developed sub-district are no less than those in the Underlying Zoning. Within the sub-district, the Smart Growth Zoning shall modify the dimensional and other applicable standards of the Underlying Zoning when the Smart Growth Zoning provides for a greater residential density than the Underlying Zoning, in order to permit the As-of-right construction of infill housing on existing vacant lots. The Smart Growth Zoning may impose reasonable lot area, frontage, setback and other dimensional requirements within such Substantially Developed sub-districts, consistent with neighborhood building and use patterns, and building, fire, and safety codes.*

**4. PARKING REQUIREMENTS – (DISTRICT-SPECIFIC)**

The parking requirements applicable for Projects within the [NAME]SGOD are as follows.

*COMMENTS: Specify any parking requirements particular to the corresponding SGOD including an exemptions from the general Parking Requirements otherwise applicable to all SGODs in the municipality.*

**5. DESIGN STANDARDS – (DISTRICT-SPECIFIC)**

*COMMENTS: To the extent Design Standards are contained within the SGZ rather than a separate, referenced document, specify any Design Standards particular to the corresponding SGOD including an exemptions from the general Design Standards otherwise applicable to all SGODs in the municipality.*