

ATTACHMENT 5-3
Proposed Zoning Ordinance Language
September 30, 2016

ARTICLE XVIII. - THATCHER STREET SMART GROWTH OVERLAY DISTRICT (TSSGOD)

Sec. 27-140. - Generally.

- (1) *Purposes.* The purposes of the Thatcher Street Smart Growth Overlay district are:
 - a. To provide opportunities for new multi-family residential development, while ensuring high quality site planning, architecture and landscape design that includes both new construction and renovation of existing buildings in close proximity to Massasoit Community College and the Crescent Street commercial corridor..
 - c. To provide for a diversified housing stock within the neighborhood at a variety of costs including affordable housing, and in housing types that meet current and projected future needs of the city's population.
 - d. To generate positive tax revenue, and to benefit from the financial incentives provided by M.G.L.A. c. 40R, while providing new housing options in close proximity to local employers and everyday amenities.
- (2) *Scope and authority.* The TSSGOD is established pursuant to the authority of M.G.L.A. c. 40R and applicable regulations, and is shown on the zoning map of the city, as amended. The district is deemed to overlay the area shown on the zoning map and is superimposed over the underlying district(s). The applicant shall have the option of pursuing approval in accordance with the zoning controls set forth in this article or complying with all applicable zoning controls set forth in the zoning ordinances of the city for the underlying zoning districts. Development projects proceeding under this article shall be governed solely by the provisions of this article and shall be deemed exempt from the standards and/or procedures of the underlying zoning. References to other sections of the Zoning Ordinance are intended to incorporate those specific sections by reference, but only as and to the extent specifically stated in this article.
- (3) *Site Plan Review.* Development within the TSSGOD may require Site Plan Review in accordance with the thresholds and procedures provided in Section 27-148.

Sec. 27-141. - Definitions.

As used in this article, the following terms shall have the meanings set forth below:

Affordable housing restriction— A deed restriction of an affordable unit meeting statutory requirements in M.G.L.A. c. 184 § 31 and the requirements of Section 27-147.

Affordable rental unit—A dwelling unit required to be rented to an eligible household per the requirements of Section 27-147.

Affordable homeownership unit —A dwelling unit required to be sold to an eligible household per the requirements of this article.

Annual update—A list of all approved and currently proposed Smart Growth districts within the city, to be filed on or before July 31 of each year with the Massachusetts Department of Housing and Community Development pursuant to M.G.L.A. c. 40R and applicable regulations.

Applicant—A landowner or other petitioner that files a site plan for a development project subject to the provisions of the Smart Growth district.

Approving authority—The Planning Board of the City of Brockton acting as the authority designated to review projects and issue approvals under this article.

As-of-right development—A development project allowable under this article without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A development project that is subject to the Site plan review requirement of this article shall be considered an as-of-right development.

Curb level—For the purposes of measuring building height, the level of the curb in front of the center of the building or portion thereof under consideration. Where no curb level has been established, the level of the ground at the center of the traveled portion of the street shall be considered the equivalent of the curb level, and where the building does not adjoin the street, the average level of the proposed grade line of the ground immediately adjacent to the building as shown on the building plans shall be considered as the curb level.

Development project—A development undertaken pursuant to this article, including the construction, reconstruction, conversion, alteration, relocation, enlargement or substantial rehabilitation of any structure(s) or building(s) on a lot or lots within the TSSGOD.

Design standards—Standards for the appearance and construction of residential development listed in Section 27-145 that are applicable to all development projects within the TSSGOD subject to site plan review by the Planning Board.

Dwelling unit—One (1) room or rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same building and containing independent cooking and sleeping facilities. The following types of dwelling units are specifically defined:

- (1) *Multifamily*—A residential building containing four (4) or more dwelling units designed for occupancy by the same number of families as the number of dwelling units.
- (2) *Townhouse*—Attached multi-story row housing containing four (4) or more dwelling units in the aggregate.

Eligible household—An individual or household whose annual income is at or below eighty (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.

Family—One (1) or more persons occupying a dwelling unit as a single household provided that domestic employees may be housed on the premises without being counted as a family or families.

Household income, median—The median income, adjusted for household size, as reported by the most recent information from, or calculated from regulations promulgated by, the United States Department of Housing and Urban Development (HUD).

Institutional use—A nonprofit or quasipublic use or institution, such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land, used for public purpose.

Parties in interest—The petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred (300) feet of the property line of the petitioner as they appear on the most recent applicable tax list.

Site plan—A plan depicting a proposed development project for all or a portion of the Smart Growth district and which is submitted to the Approving Authority for its review and approval in accordance with the provisions of Section 27-148.

Site plan approval—The Approving Authority’s authorization for a proposed development project based on a finding of compliance with this article and design standards after the conduct of a site plan review.

Site plan review—The review procedure established by this article and administered by the Planning Board of the City of Brockton Approving Authority.

Smart Growth district—An overlay zoning district adopted pursuant to M.G.L.A. c. 40R, in accordance with the procedures for zoning adoption and amendment as set forth in M.G.L.A. c. 40A and approved by the department of housing and community development pursuant to M.G.L.A. c. 40R and applicable regulations.

Underlying zoning—The zoning requirements adopted pursuant to M.G.L.A. c. 40A that are otherwise applicable to the geographic area in which the TSSGOD is located, as said requirements may be amended from time to time.

Unduly restrict—A provision of a Smart Growth district or a design standard that adds unreasonable costs or unreasonably impairs the economic feasibility of proposed development projects in a Smart Growth district.

Unrestricted unit—A dwelling unit that is not restricted as to rent, price or eligibility of occupants.

Use, accessory—A use subordinate to the principal use on the same lot or in the same structure and serving a purpose customarily incidental to the principal use, and which does not, in effect, constitute conversion of the principal use of the lot, site or structure to a use not otherwise permitted in the Smart Growth district. Accessory uses are permitted or prohibited in the Smart Growth district to the same extent as if such uses were principal uses.

Use, principal—The main or primary purpose for which a structure, building, or lot is designed, arranged, licensed, or intended, or for which it may be used, occupied, or maintained under this article.

Use, secondary— A use located on the same lot as a principal use but which is of equal or lesser scale, impact, and visibility than the principal use. A secondary use is not an accessory use, as it is largely independent from the principal use.

Sec. 27-142. - Allowed and prohibited uses.

The following uses shall be permitted in the TSSGOD as-of-right upon site plan approval pursuant to the provisions of this article.

- (1) Multi-Family homes
- (2) Townhouses
- (3) Accessory uses customarily incidental to any permitted use including, but not limited to, management and social and resident services offices and resident facilities.

Sec. 27-143. - Dimensional and other requirements.

- (1) *Residential density allowance.* Residential density within the TSSGOD shall be allowed up to twenty-two (22) units per acre of land area classified as “developable” or “underutilized” in M.G.L c. 40R.
- (2) *Building height.* The maximum building height within the TSSGOD shall be fifty (50) feet. Building height shall be the vertical distance measured from the curb level to the highest point of the structure or roof, but not including chimneys, spires, towers, elevator penthouses, tanks and similar projections, provided such excluded projection does not exceed the maximum building height by more than ten (10) feet.
- (3) *Setbacks from district boundaries.* All buildings and parking areas shall be set back from district boundaries and the edge of a public right of way by a minimum of ten (10) feet.
- (4) *Number of buildings on a lot.* In the TSSGOD, more than one (1) principal structure may be erected on a lot following a determination by the Approving Authority that the entire lot and all structures are planned and designed as a unified complex and appropriate provisions are made for parking, access, drainage and utilities.
- (5) *Additional dimensional standards and requirements.* There is no minimum requirement for open space and no maximum allowable lot coverage. All aspects of site design, shall comply with the design standards for the TSSGOD as applicable, adopted pursuant to Section 27-145.
- (6) *Contiguous lots.* In the TSSGOD, where two or more lots are contiguous and in common ownership or are separated by a right-of-way, such lots may be considered as one (1) lot for the purpose of calculating parking requirements and dwelling units per acre.

- (7) *Lot Frontage.* All lots in the TSSGOD shall have a minimum frontage of forty (40) feet. Multiple phases on the same lot are allowed and will be deemed to satisfy this requirement so long as the lot meets the minimum frontage requirement.
- (8) *Age-restricted housing units.* An applicant may propose a residential or mixed-use development project in which all dwelling units are designed for or accessible to the elderly or the handicapped under all applicable laws and regulations, provided that not less than twenty-five (25) percent of the housing units in any such development project shall be affordable units.

Sec. 27-144. - Off-street parking.

Notwithstanding anything to the contrary in the TSSGOD, the parking requirements applicable in TSSGOD are as follows:

- (1) *Residential use.* A maximum of 1.25 spaces per dwelling unit.
- (2) *Location of parking.* Surface parking areas shall be located and designed in accordance with the Design Standards in Section 27-145.
- (3) *Shared use of required parking.* Shared use may be made of required parking spaces by intermittent use establishments such as churches, whose peak parking demand is only at night or on weekends and by other uses whose peak demand is only during the day. A formal agreement shall be made in writing by the owners of the uses involved concerning the number of spaces involved, substantiation of the fact that such shared use is not overlapping or in conflict, and the duration of the agreement. Such intermittent use establishments shall be within six hundred (600) feet of the principal buildings served.
- (4) *Cooperative establishment and operation of parking areas.* Required spaces for any number of uses may be provided in a combined lot or lots, provided that the number of spaces in the combined facility shall not be less than the sum of those required of the individual uses, with allowances made, upon formal designation, for night use or for separate and distinct working shifts, and provided also that such lot or lots shall be within six hundred (600) feet of the principal buildings served.
- (5) *Disability access.* Parking shall be designed and constructed to comply with all applicable disability access requirements including, but not limited to, the Americans with Disabilities Act (ADA).
- (6) *Waiver of Parking Requirements:* Notwithstanding anything to the contrary herein, any minimum required amount of parking may be reduced upon a demonstration to the reasonable satisfaction of the Approving Authority 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. Age or other occupancy restrictions which are likely to result in a lower level of auto usage;

- b. Impact of the parking requirement on the physical environment of the affected lot or adjacent lots including reduction in green space, destruction of significant existing trees and other vegetation;
- c. The availability of surplus street parking in the vicinity of the use being served and/or the proximity of a bus station or major transportation route.

Sec. 27-145. - Design standards.

The following design standards shall apply to development within the TSSGOD

(1) Architecture and Buildings

a. Materials

- (1) Structures should convey a sense of quality, durability and permanence. Buildings shall use materials that are durable, economically maintained, and of quality that will retain their appearance over time.
- (2) Building façade materials permitted within the district include but are not limited to brick, wood, cementitious fiber board, manufactured limestone, cast stone, masonry, stone, glass, cellular PVC trim, aluminum, and tile.
- (3) A combination of materials should be used in order to create visual interest.
- (4) Windows may include aluminum, vinyl, or fiberglass for the purposes of achieving energy efficient design.

b. Features

- (1) Building roofs may generally include: dormers, cornices, pitched roofs, and flat roofs
- (2) Windows may include: fixed, single or double-hung, casement, or awning, or planted front setbacks with raised front entrances.
- (3) Residential buildings may be sited to allow for front steps, balconies, and front and/or rear porches.

(1) Landscaping. The following should be taken into account:

- a. Drought tolerant and non-invasive plant species that require minimal irrigation and fertilizer shall be selected.
- b. Preservation of significant existing trees or other native site vegetation should occur as practical.
- c. Potential locations for community garden spaces for residents should be identified on site plans where practical.
- d. Buildings shall have foundation landscaping where practical.
- e. Amenities may include, but not be limited to, bicycle racks, street furniture, fences, stone walls, courtyards, playgrounds, gazebos, water features, and picnic benches.

(2) Site Lighting

- a. Lighting shall not create overspill onto adjacent properties or upwards into the night sky except per 2(b).
- b. Uplighting is permitted when used as follows:
 - (1) To light entrances.

- (2) To light site signage.
- (3) To light architectural features.
- c. Lighting should be provided for sidewalks and paths that link buildings with public spaces and parking areas, wherever practical.
- (3) Stormwater Management
 - a. Systems shall be designed to incorporate “Best Management Practices” (BMP) as prescribed by MA DEP, in addition to employing Low Impact Development (LID) strategies, where practical.
- (4) Parking and Roadways
 - a. Parking may be located on-street within the complex or in parking lots in front, to the side, or to the rear of new or existing buildings. Parking should be appropriately screened from public ways.
 - b. Vehicular circulation shall meet the needs of emergency and public safety vehicles based on reasonable requirements of the Brockton Chief of Police and Fire Chief.
 - c. Roadways shall be designed to encourage to traffic calming and safety for pedestrians and bicyclists.
 - d. Sidewalks, crosswalks, and walkways should be provided as needed for connectivity within the district.
- (5) Dumpsters, Utilities, Service Areas
 - a. All utilities shall be underground, to the extent feasible.
 - b. All dumpster, utility, and service areas shall be screened, to the extent feasible.
- (6) Phasing
 - a. Multiple phases on the same lot are allowed so long as the lot meets the Lot Frontage requirement.

Sec. 27-146. - Open spaces and recreational areas—Design and location.

The site design for development projects may include common open space and facilities. Where proposed, the plans and any necessary supporting documents submitted with an application for site plan approval within the TSSGOD shall show the general location, size, character, and general area within which common open space or facilities will be located. The plans and documentation submitted to the Approving Authority shall include a description of proposed ownership and maintenance of all common open space or facilities.

Sec. 27-147. - Affordable housing.

- (1) *Number of affordable units.* Twenty (20) percent of all dwelling units constructed in a homeownership development project shall be affordable homeownership units. Twenty-five (25) percent of all rental dwelling units in a development project shall be affordable rental units. Provided however, for development projects in which all of the dwelling units are limited to occupancy by elderly persons and/or by persons with disabilities, twenty-five (25) percent of the dwelling units shall be affordable units, whether the dwelling units are rental or ownership units.

- (2) *Fractional units.* When the application of the percentages specified above results in a number that includes a fraction, the fraction shall be rounded up to the next whole number if the fraction is 0.5 or more. If the result includes a fraction below 0.5, the fraction shall be rounded down to the next whole number.
- (3) *Requirements.* Affordable units shall comply with the following requirements:
- a. The monthly rent payment for an affordable rental unit, including utilities and parking, shall not exceed thirty (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 (1), except in the event of an eligible household with a section 8 or equivalent voucher in which case program rent limits shall apply.
 - b. 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, insurance, and parking, shall not exceed thirty (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 (1).
 - c. Affordable units required to be offered for rent or sale shall be rented or sold to and occupied only by eligible households.
- (4) *Design and construction.*
- a. *Design.* Affordable units must be dispersed throughout a development project and be comparable in initial construction quality and exterior design to the unrestricted units. However, nothing in this section is intended to limit a homebuyer's rights to renovate a dwelling unit under applicable law. The affordable units must have access to all on-site amenities. Affordable units shall be finished housing units.
 - b. *Timing.* All affordable units must be constructed and occupied not later than concurrently with construction and occupancy of unrestricted units. In development projects that are constructed in phases, affordable units must be constructed and occupied in proportion to the number of units in each phase of the development project.
- (5) *Unit mix.*
- a. The number of bedrooms per unit in the affordable units shall, so far as practicable, be in the same proportion as the number of bedrooms per unit in the unrestricted units.
 - b. If only one (1) affordable unit is required and the other units in the development project have various numbers of bedrooms, the applicant may select the number of bedrooms for that unit. If affordable units cannot mathematically be exactly proportioned in accordance with the unrestricted units, the unit mix shall be determined by the Approving Authority.
- (6) *Affordable housing restriction.* Each affordable unit shall be subject to an affordable housing restriction which is recorded with the Plymouth County Registry of Deeds or Land

Court Registry District of Plymouth County. The affordable housing restriction shall provide for the implementation of the requirements of this section. All affordable housing restrictions must include, at minimum, the following:

- a. A description of the affordable homeownership unit, if any, by address and number of bedrooms; and a description of the overall quantity 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 without specific unit identification.
- b. The term of the affordable housing restriction which shall be in perpetuity or for the longest period allowed by law if other than in perpetuity, but shall be no less than thirty (30) years.
- c. The name and address of an administering agency with a designation of its power to monitor and enforce the affordable housing restriction.
- d. Reference to a housing marketing and resident selection plan, to which the affordable unit is subject, and which includes an affirmative fair housing marketing program, including public notice and a fair resident selection process. The housing marketing and selection plan may provide for local preferences in resident selection to the extent consistent with applicable law. The plan shall designate the household size appropriate for a unit with respect to bedroom size and provide that preference for such unit shall be given to a household of the appropriate size.
- e. 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.
- f. Reference to the formula pursuant to which rent of a rental unit or the maximum resale price of a homeownership unit will be set.
- g. A requirement that only an eligible household may reside in an affordable unit and that notice of any lease or sublease of any affordable unit shall be given to the administering agency.
- h. Provision for effective monitoring and enforcement of the terms and provisions of the affordable housing restriction by the administering agency.
- i. Provision that the restriction on an affordable homeownership unit shall run in favor of the administering agency and the city, in a form approved by municipal counsel, and shall limit initial sale and resale to and occupancy by an eligible household.
- j. Provision that the owner(s) or manager(s) of affordable rental unit(s) shall file an annual report to the administering agency, in a form specified by that agency certifying compliance with the provisions of this section and containing such other information as may be reasonably requested in order to ensure affordability.

- k. Provision that the restriction 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 administering agency and/or the city, in a form approved by municipal counsel, and shall limit rental and occupancy to an eligible household.
 - l. A requirement that residents in affordable units provide such information as the administering agency may reasonably request in order to ensure affordability.
 - m. Designation of the priority of the affordable housing restriction over other mortgages and restrictions.
- (7) *Administration.* An administering agency for affordable units, which may be the Brockton Housing Authority or other qualified housing entity, shall be designated by the Approving Authority and shall ensure the following:
- a. Prices of affordable homeownership units are properly computed; rental amounts of affordable rental units are properly computed.
 - b. Income eligibility of households applying for affordable units is properly and reliably determined.
 - c. The housing marketing and resident selection plan conforms to all requirements and is properly administered.
 - d. 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.
 - e. Affordable housing restrictions meeting the requirements of this section are recorded with the Plymouth County Registry of Deeds or Land Court Registry District of Plymouth County.

The housing marketing and selection plan may make provision for payment by the owner of reasonable costs to the administering agency to develop, advertise, and maintain the list of eligible households and to monitor and enforce compliance with affordability requirements.

In the case where the administering agency cannot adequately carry out its administrative duties, upon certification of this fact by the Approving Authority or by the department of housing and community development, the administrative duties shall devolve to and thereafter be administered by a qualified housing entity designated by the Approving Authority or, in the absence of such designation, by an entity designated by the department of housing and community development.

Sec. 27-148. – Administration.

(1) *Applicability*

Proposals for residential development in the TSSGOD shall require Site Plan Review by the Approving Authority.

(2) *Pre-application review*

The applicant is encouraged to participate in a pre-application review at the office of the city planner. The purpose of the pre-application review is to obtain the advice and direction of municipal departments typically involved in the regulatory permitting process prior to filing the application. At the pre-application review the applicant shall outline the proposal and seek preliminary feedback from the office of the city planner and other municipal review entities.

(3) *Application procedures*

- a. *Filing.* The applicant and his/her agent is to complete this form and submit site plans in accordance with subsection (4) below. The City Clerk shall stamp the time and date received on this application form, which is the official date of the application per M.G.L. Ch. 40R.
- b. *Review fees.* The Applicant shall be required to pay for reasonable consulting fees to provide peer review of the application for the benefit of the Approving Authority. Such fees shall be held by the city in an interest-bearing escrow account, and shall be used only for expenses associated with the use of outside consultants employed by the Approving Authority in reviewing the site plan application. Such fees may be used only for reasonable, invoiced 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 funds remaining after the completion of such review, including any interest accrued, shall be returned to the applicant forthwith.
- c. *Certification of complete application.* Within thirty (30) days of the applicant filing of an application with the City Clerk, the Planning Department shall evaluate the proposal with regard to its completeness and shall submit an advisory report in writing to the applicant certifying the completeness of the application. Within sixty (60) days of the applicant filing of an application with the City Clerk, the Approving Authority evaluate the proposal with regard to its completeness and shall submit an advisory report in writing to the applicant certifying the completeness of the application.
- d. *Review by other municipal agents.* When the Approving Authority has determined that an application is complete, applications shall be distributed to other municipal boards and departments typically involved in the regulatory permitting process. Reports submitted by other municipal departments or others, which are advisory, shall be submitted to the Approving Authority within sixty (60) days of filing of the application. Failure of any other municipal agent to provide a report within sixty (60) days shall be interpreted as lack of opposition to any element of the proposal. The Approving Authority or its designee shall forward to the applicant, with its report, copies of all recommendations received to date from other boards or departments.
- e. *Notice of Public Hearing.* The Planning Board shall hold a public hearing for the review of any Site plan review application. Notice of the public hearing shall be given by publication in a newspaper of general circulation in the City once in each of two

successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing and by posting such notice in a conspicuous place in City Hall for a period of not less than fourteen (14) days before the day of such hearing. Notice to parties in interest, as defined in this ordinance, shall be sent by mail, postage prepaid. The assessors maintaining any applicable tax list shall certify to the Approving Authority the names and addresses of parties in interest and such certification shall be conclusive for all purposes. The Approving Authority may accept a waiver of notice from, or an affidavit of actual notice to any party in interest or, in his stead, any successor owner of record who may not have received a notice by mail, and may order special notice to any such person, giving not less than five (5) nor more than ten (10) additional days to reply.

- (4) *Application Contents* In order to be considered complete, all applications for TSSGOD Site Plan Approval shall be comprised of the following:
- a. Completed TSSGOD application form.
 - b. Complete list of abutters certified by the City Assessor, including address labels.
 - c. Development Plan Summary (narrative) including:
 - (1) Proposed housing unit count and/or square footage of any accessory uses or structures;
 - (2) Proposed number, location, configuration and design of proposed off-street parking spaces;
 - (3) Information regarding the proposed number, type, location, deed restriction and marketing of proposed Affordable Units; and
 - (4) Proposed off-site improvements (if any).
 - d. Proposed Site Plan drawings at 1"=40' scale or greater stamped by a Massachusetts Registered Professional Engineer or other appropriate professional including one (1) original and fifteen (15) copies at 24" x 36" dimension; and two (2) paper copies at 11" x 17". The Site Plan drawings shall contain the following information:
 - (1) Project name, boundaries, north arrow, date scale.
 - (2) Assessor's parcel numbers of lot(s) subject to the Application.
 - (3) Names and address of Applicant and project engineer.
 - (4) Existing conditions on the lot(s).
 - (5) Proposed names of new street(s), if any.
 - (6) Proposed building footprints, parking areas, pedestrian ways.
 - (7) Grading and stormwater management including location of stormwater management Best Management Practices and construction details.
 - (8) Data to determine location, direction, width and length of every street line, lot line, easement, zoning district and boundary line.
 - (9) Indication of location and purpose for existing and proposed easements, if any.
 - (10) Existing and proposed topography at two-foot contours.
 - (11) Proposed landscaping plan
 - (12) Proposed lighting plan.

- e. A statement detailing any proposed public improvements.
- f. Building elevation drawings at 1"= 4' (including proposed construction materials and colors).
- g. Stormwater calculations demonstrating the adequate sizing of all selected BMPs.
- h. A Stormwater Management Operation and Maintenance Plan.

- (1) The name(s) of the owner(s) for all components of the system.
- (2) A map showing the location of the systems and facilities including, but not limited to, catch basins, manholes/access lids, drain pipes, and stormwater devices.
- (3) Maintenance agreements that specify:
 - a. The names and addresses of the person(s) responsible for operation and maintenance;
 - b. The person(s) responsible for financing maintenance and emergency repairs;
 - c. An Inspection and Maintenance Schedule for all temporary erosion and sediment control practices and permanent stormwater management facilities, including routine and non-routine maintenance tasks to be performed;
 - d. A list of easements with the purpose and location of each; and
 - e. The signature(s) of the owner(s).

(5) *Site plan review decision.*

- a. The Approving Authority shall make a decision on the site plan application filed under Section 27-148(3) above, and within one hundred twenty (120) days of the date that the application was received by the City Clerk provided the application was deemed complete by both the Planning Department and the Approving Authority. The Planning Board decision shall be filed with the City Clerk within fourteen (14) days of said decision. The time limit for public hearings and taking of action by the approving authority may be extended by written agreement between the applicant and the approving authority. A copy of such agreement shall be filed with the City Clerk.
- b. Failure of the Approving Authority to take action within one hundred twenty (120) days or extended time, if applicable, shall be deemed to be an approval.
- c. An applicant who seeks approval because of the Approving Authority's failure to act on an application within the one hundred twenty (120) days or extended time, if applicable, must notify the City Clerk in writing, within fourteen (14) days from the expiration of said time limit for a decision, of such approval and that a copy of that notice has been sent by the applicant to the parties in interest by mail and that each such notice specifies that appeals, if any, shall be made pursuant to M.G.L.A. c. 40R and shall be filed within twenty (20) days after the date the City Clerk received such written notice from the applicant that the Approving Authority failed to act within the time prescribed.

- d. The Approving Authority's findings, including the basis of such findings, shall be stated in a written decision of approval, conditional approval or denial of the site plan approval application. The written decision shall contain the name and address of the applicant, identification of the land affected and its ownership, and reference by date and title to the plans that were the subject of the decision. The written decision shall certify that a copy of the decision has been filed with the City Clerk and that all plans referred to in the decision are on file with the Approving Authority.
 - e. The decision of the Approving Authority, together with the detailed reasons therefore, shall be filed with the City Clerk.
 - f. Effective date. If twenty (20) days have elapsed after the decision or the notice under paragraph (c), above, has been filed in the office of the City Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the City Clerk shall so certify on a copy of the decision. If the application is approved by reason of the failure of the Approving Authority to timely act, the City Clerk shall make such certification on a copy of the application. A copy of the decision or application shall be recorded with the title of the land in question in the Plymouth County Registry of Deeds or the Plymouth Land Registry District, 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 responsibility and the cost of said recording and transmittal shall be borne by the owner of the land in question or the applicant.
- (6) *Criteria for approval.* The Approving Authority shall approve the development project upon the following findings:
- a. The Applicant has submitted the required fees and information as set forth in applicable regulations; and
 - b. The proposed development project as described in the application meets all of the requirements and standards set forth in this article and applicable design standards, or a waiver has been granted there from; and
 - c. Any extraordinary adverse potential impacts of the project on nearby properties have been adequately mitigated.
- (7) *Criteria for conditional approval.* The Approving Authority may impose conditions on a development project as necessary to ensure compliance with this article and applicable design standards, or to mitigate any extraordinary adverse impacts of the development project on nearby properties, insofar as such conditions are compliant with the provisions of M.G.L.A. c. 40R and applicable regulations and do not unduly restrict opportunities for development. The Approving Authority may allow construction of an approved development project to be phased for the purpose of coordinating the development project with:
- a. Anticipated on-site or off-site infrastructure improvements;
 - b. Securing of financial subsidies related affordable housing restrictions;

- c. The review of other related permit applications on the site including but not limited to applications for a subdivision, or applications before the Conservation Commission, Board of Health, or any state agency.

(8) *Criteria for denial.* The Approving Authority may deny an application for site plan approval pursuant to this article only if it finds one or more of the following:

- a. The development project does not meet the conditions and requirements set forth in this article and applicable design standards.
- b. The applicant failed to submit information and fees required by this article and necessary for an adequate and timely review of the design of the development project or potential development project impacts.
- c. It is not possible to adequately mitigate significant adverse development project impacts on nearby properties by means of suitable conditions.

(9) *Time limit.* A site plan approval shall remain valid and shall run with the land indefinitely provided that construction has commenced within three (3) years after the decision issues, which time shall be extended by the time required to adjudicate any appeal from such approval. Said time shall also be extended if the project proponent is actively pursuing other required permits for the project or if there is good cause for the failure to commence construction, or as may be provided in an approval for a multiphase development project.

(10) *Appeals.* Pursuant to M.G.L.A. c. 40R, § 11, any person aggrieved by a decision of the Approving Authority must appeal to the superior court, the land court, or the district court within twenty (20) days after the site plan decision or notice under Section 5(c) above has been filed in the office of the City Clerk.

Sec. 27-149. - Waivers.

Pursuant to M.G.L. c. 40R, the Approving Authority may authorize waivers with respect to the standards set forth in this article in the site plan approval upon a finding that such waiver will allow the development project to achieve the affordability, density of housing units, mix of uses, and/or physical character allowable under this article. However, the Approving Authority may not waive any portion of the affordable housing requirements in Section 27-147 except insofar as such waiver results in the creation of a number of Affordable units in excess of the minimum number of required affordable units.

Sec. 27-150. - Fair housing requirement.

All development projects within the TSSGOD shall comply with applicable federal, state and local fair housing laws.

Sec. 27-151. - Annual update.

On or before July 31 of each year, the city planner for the City of Brockton shall cause to be filed an annual update with the Department of Housing and Community Development (DHCD) in a form to be prescribed by DHCD. The annual update shall contain all information required in

760 CMR 59.07, as may be amended from time to time, and additional information as may be required pursuant to M.G.L.A. c. 40S and accompanying regulations. The City Clerk of the City of Brockton shall maintain a copy of all updates transmitted to DHCD pursuant to this article, with said copies to be made available upon request for public review.

Sec. 27-152. - Notification of issuance of building permits.

Upon issuance of a residential building permit within the TSSGOD, the Building inspector of the city shall cause to be filed an application to the department of housing and community development (DHCD), in a form to be prescribed by DHCD, for authorization of payment of a one-time density bonus payment for each residential building permit issued pursuant to M.G.L.A. c. 40R. The application shall contain all information required in 760 CMR 59.06(2), as may be amended from time to time, and additional information as may be required pursuant to M.G.L.A. c. 40S and accompanying regulations. The City Clerk of the City of Brockton shall maintain a copy of all such applications transmitted to DHCD pursuant to this article, with said copies to be made available upon request for public review.

§ 27-153. Change in plans after approval by Approving Authority.

- (1) Minor change. After Plan Approval, an applicant may apply to make minor changes. Minor changes are those that do not qualify as a major change as defined in subsection (2) below. Such minor changes must be submitted to the Approving Authority on so-called “bubbled” prints of the approved plan, reflecting the proposed changes. The Approving Authority may authorize such changes at any regularly scheduled meeting, without the need to hold a public hearing. The Approving Authority shall set forth any decision to approve or deny such minor change by motion and written decision within thirty (30) days after the applicant has filed the application, and the Approving Authority shall provide a copy of its decision to the applicant for filing with the City Clerk and failure by the Approving Authority to act on a minor change application within thirty (30) days shall result in the deemed approval of the application and proposed change as a minor change.
- (2) Major change. Major changes shall be processed by the Approving Authority as an amendment for Plan Approval pursuant to this article, including a public hearing. Major changes shall include:
 - a. An increase to the proposed number of dwelling units by 10% or greater.
 - b. A decrease to the proposed number of parking spaces by 10% or greater.
 - c. An increase to the proposed number of parking spaces by 10% or greater, or by an amount that would require increases to the proposed design capacity of on-site stormwater management BMPs.
 - d. Increase or decrease to the footprint of any proposed residential structure by more than five thousand (5,000) square feet.

- e. Movement of any automobile access point along the public right of way by more than thirty (30) feet.
- f. Realignment of any interior roads or parking features that would make circulation of emergency response vehicles more difficult.
- g. Any change that, in the opinion of the Approving Authority, could pose a threat to public health, safety, or welfare.

§ 27-154. Enforcement and appeal.

The provisions of the TSSGOD shall be administered by the Building Inspector, except as otherwise provided herein. Any appeal arising out of action by the Approving Authority regarding application for Plan Approval shall be governed by the provisions of MGL c. 40R applicable to as-of-right projects which have been subject only to a nondiscretionary site plan review not involving or requiring any special permit and shall be made to a court of competent jurisdiction as set forth in MGL c. 40A, § 17. Any other request for enforcement or appeal arising under this article shall be governed by the applicable provisions of MGL c. 40R.

§ 27-155. Freeze during process; effectiveness and validity of Plan Approval.

- (1) An application to the Approving Authority for Plan Approval shall be governed by the applicable provisions of this article in effect at the time of the submission of the application, while the plan is being processed, during the pendency of any appeal, and for three years after the resolution of an appeal after Plan Approval. If an application is denied, such provisions in effect at the time of the application shall continue in effect with respect to any further application filed within two years after the date of the denial, except as the Applicant may otherwise choose.
- (2) A Plan Approval, and any and all minor changes thereto sought by an Applicant, shall remain valid and shall run with the land indefinitely, and a Project shall be governed by the applicable provisions of this article in effect at the time of the submission of the original application for such original Plan Approval (without regard to applications for minor changes) indefinitely, provided that construction of the Project covered by such Plan Approval has commenced within three (3) 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 further extended as provided in a Plan Approval for a multiphase Project. Such commencement of construction of the first phase of a Project covered by such Plan Approval within such three-year period, as so extended, shall constitute the timely commencement of construction of all phases of the entire Project for the purposes of this article. No phase of a Project shall be in violation of zoning on account of a violation of zoning solely by one or more other phases of such Project. For purposes of this article, commencement of construction shall

include any material expenditure of funds on utility relocation, site work or environmental remediation, footings or foundation for any portion or phase of the Project.

- (3) The Approving Authority may impose, but shall not be required to impose, such outside time limits for the commencement of the final phase of a phased Project as it sees fit, provided that the earliest date for such required commencement of such final phase shall not be earlier than eight (8) years after the Plan Approval decision is issued, as extended as provided above, nor later than fifteen (15) years after the Plan Approval decision is issued, as extended as provided above, and further provided that any failure to meet such outside time limits shall only affect the right to construct the unbuilt phase(s) and shall not affect the previously constructed phase(s) or the respective rights of the same. In the event of a casualty affecting a building or structure which itself, or the use thereof, would be nonconforming with the provisions of this article but for the grandfathering provided by this section, such structure may be repaired, rebuilt and/or reconstructed, as necessary, provided that any such repair, rebuilding or reconstruction shall be commenced within three years after the date of such casualty, and shall thereafter be diligently and continuously prosecuted to completion. Except as provided in any one or more of the preceding sentences of this subsection, any amendment to this article shall apply to building permits applied for after the first notice of public hearing on such amendment.
- (4) The owner of a Project, or applicable portion thereof, may choose to waive the benefit of the provisions of this section in writing.
- (5) No further Plan Approval, special permit, variance or the like shall ever be required to reconstruct a Project, or portion thereof, following any casualty.

Sec. 27-156. - Date of effect.

The effective date of this article shall be the date on which such adoption is voted upon by the Brockton City Council pursuant to the requirements of M.G.L.A. c. 40A § 5 and M.G.L.A. c. 40R provided, however, that an applicant may not proceed with construction pursuant to this article prior to the receipt of final approval of this article and accompanying zoning map by the department of housing and community development.

Sec. 27-157. - Severability.

The provisions of this article are severable. If any provision of this article is held invalid, the other provisions shall not be affected but shall remain in full force.

Secs. 27-158—27-164. - Reserved.