

## ^ARTICLE 87

### SMART GROWTH OVERLAY DISTRICTS

(^Article inserted on January 9, 2008)

SECTION 87-1. **Purpose.** This article sets forth the procedures and minimum requirements for the creation of Smart Growth Overlay Districts (SGODs) within the City of Boston in accordance with Chapter 40R of the Massachusetts General Laws and Section 3-1A of this Code. The purposes of an SGOD are to (a) promote the public health, safety, and welfare by encouraging diversity of housing opportunities; (b) increase the availability of affordable housing by creating a range of housing choices for households of all incomes, ages, and sizes, and in order to meet existing and anticipated housing needs; (c) promote compact design; (d) emphasize mixing land uses and preserve open space; (e) foster distinctive and attractive neighborhoods; (f) strengthen existing neighborhoods and provide a variety of transportation choices; (g) establish requirement, standards, and guidelines, and ensure predictable, fair and cost effective development review and permitting; and (h) encourage community and developer collaboration in developmental decision-making.

SECTION 87-2. **Definitions.** For purposes of this article only, the following definitions shall apply. To the extent that there is any conflict between the definitions set forth in this section and the 40R Enabling Laws, the terms of the 40R Enabling Laws shall govern.

1. Administering Agency – the Boston Redevelopment Authority (Authority), unless the Authority designates an affordable housing trust or other qualified housing entity, pursuant to Section 87-6.6, to review and implement the Affordability requirements affecting Proposed Projects under Section 87-6.
2. Affordable Homeownership Unit – a unit of Affordable Housing required to be sold to an Eligible Household.
3. Affordable Housing – one or more housing units affordable to and occupied by Eligible Households.
4. Affordable Housing Restriction – a deed restriction affecting one or more units of Affordable Housing that meets the requirements set forth in Massachusetts General Laws, Chapter 184, Section 31 and this article.
5. Affordable Rental Unit – a unit of Affordable Housing required to be rented to an Eligible Household.

6. Applicant – any person or entity having a legal or equitable interest in a Proposed Project subject to the provision of this Code, or the authorized agent of any such person or entity.
7. Authority – the Boston Redevelopment Authority.
8. Developable Land – the area within an SGOD that feasibly can be developed into a residential or mixed use development determined in accordance with regulations of DHCD. Developable Land shall not include: (a) land area that is already substantially developed, including existing parks and dedicated, perpetual open space within such substantially developed portion; (b) open space designated by the City as provided in Section 6 of Chapter 40R; or (c) areas exceeding one half (1/2) acre of contiguous land that is not suitable for development because of topographic features or for environmental reasons, such as wetlands. Developable Land shall include the land area occupied by or associated with underutilized residential, commercial, industrial, or institutional buildings or uses that have the potential to be recycled or converted into residential or mixed use developments as determined in accordance with regulations of DHCD.
9. DHCD – the Massachusetts Department of Housing and Community Development or any successor agency.
10. Eligible Household – an individual or household with an annual income less than eighty percent (80%) of the area-wide median income as determined by HUD, adjusted for household size, with income computed using HUD’s rules for attribution of income to assets.
11. Existing Zoned Units – for a given parcel or area of Developable Land within an SGOD, the maximum number of housing units that could feasibly be developed as-of-right under the Underlying Zoning through new development, the substantial rehabilitation of existing buildings, or the conversion to residential use of existing buildings.
12. 40R Enabling Laws – Massachusetts General Laws (M.G.L.), Chapter 40R and implementing regulations at 760 CMR 59.00.
13. HUD – the United States Department of Housing and Urban Development or any successor agency.
14. Plan Approval – approval of a Smart Growth Development Plan by the Authority as set forth in this article.

15. Plan Review – the standards and procedures by which a Proposed Project within an SGOD is made subject to review by the Authority under the provisions of this article, in accordance with M.G.L., c. 40R, section 11 and 760 CMR 59.04(1)(f).
16. Proposed Project – a residential or mixed use development undertaken within an SGOD in accordance with the requirements of the smart growth zoning and that involves the erection, extension, or substantial demolition of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a building or use permit, and the details of which are set forth in the Smart Growth Development Plan.
17. Smart Growth Development Plan – a plan setting forth the proposed area, location and appearance of structures, open space and landscaping for a Proposed Project(s) within an SGOD, including proposed uses, densities, number and configuration of Affordable Housing units, dimensions, parking, loading, and traffic circulation.
18. Smart Growth Overlay District – SGOD – a zoning district adopted under this article that is superimposed over a part or a whole or one or more district(s) and/or subdistrict(s) within which an Applicant may elect to develop a Proposed Project in accordance with the requirements of this article or in accordance with the requirements of the Underlying Zoning.
19. Underlying Zoning – the zoning regulations that are otherwise applicable to the geographic area in which an SGOD is located.

**SECTION 87-3. Establishment of Smart Growth Overlay District.** An SGOD approved in accordance with this article shall be established through: (a) a text amendment to the Zoning Code which shall set forth, at a minimum, applicable permitted uses, dimensional requirements, design standards and off-street parking requirements; and (b) a map amendment to the Boston zoning maps showing the area of the SGOD and any subdistricts.

**SECTION 87-4. Applicability of SGOD.** An SGOD shall constitute a special purpose overlay district pursuant to Article 3-1A(m) of the Code. The use regulations and other regulations of the Underlying Zoning or any other overlay districts, as they may be amended from time to time, shall remain in full force and effect; provided that when a building permit is issued for any Project approved in accordance with Section 87-11, the provisions of the underlying district(s) shall no longer be applicable to the land shown on the site plan submitted pursuant to Sections 87-9, 87-10, and 87-11, for such Proposed Project. An Applicant may seek to develop a Proposed Project located within an SGOD in accordance with the provisions of the 40R Enabling Laws and this article, including a

request for Plan Approval by the Authority. In such case, notwithstanding anything to the contrary in the Zoning Code, 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 permits or dwelling unit limitations.

SECTION 87-5. **Permitted Uses.** Residential and mixed use projects shall be permitted as-of-right in accordance with the specific provisions established in the SGOD zoning article applicable to a particular SGOD. Business, commercial or other uses compatible with residential uses may also be permitted, and may be subject to discretionary zoning relief, as allowed by the specific provisions established on the SGOD zoning article applicable to a particular SGOD.

SECTION 87-6. **Housing and Housing Affordability.**

1. Housing Marketing and Selection Plan. Prior to obtaining Plan Approval for any Proposed Project within an SGOD, the Applicant shall submit a housing marketing and resident selection plan that complies with the City of Boston's inclusionary housing program and with the 40R Enabling Laws and includes an affirmative fair housing marketing program and a fair resident selection process.
2. Number of Affordable Housing Units. Not less than twenty percent (20%) of the residential units constructed in Proposed Projects shall be affordable. For purposes of calculating the number of units of Affordable Housing required within a Proposed Project, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit.
3. Requirements. Affordable Housing within an SGOD shall comply with the following requirements:
  - (a) For an Affordable Rental Unit, the monthly rent payment, including utilities and parking, shall not exceed thirty percent (30%) of the maximum monthly income permissible for an Eligible Household, assuming 1.5 persons per bedroom, unless other affordable program rent limits approved by DHCD 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 percent (30%) of the maximum monthly income permissible for an Eligible Household, assuming 1.5 persons per bedroom unless other affordable program limits approved by DHCD shall apply.

- (c) Affordable Housing offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.
- 4. Design and Construction. Units of Affordable Housing shall be finished housing units and shall be dispersed throughout the Proposed Project of which they are part. Units of Affordable Housing shall be comparable in construction quality and shall have exteriors that are equivalent in design and materials to the exteriors of other housing units in a Proposed Project. The total number of bedrooms in the Affordable Housing shall be proportionate to the total number of bedrooms in all of the units in a Proposed Project of which the Affordable Housing is part.
- 5. Affordable Housing Restriction. Each Affordable Housing Unit shall be subject to an Affordable Housing Restriction recorded with the Suffolk County Registry of Deeds or Suffolk County Registry District of the Land Court, as applicable, which must include, at a minimum, the following:
  - (a) a specification of the term of the Affordable Housing Restriction which shall be no less than thirty (30) years;
  - (b) the name and address of one or more administering agencies designated with the power to monitor and enforce the Affordable Housing Restriction;
  - (c) a description of the unit of Affordable Housing by address and number of bedrooms and a description of the development project and whether the Affordable Housing unit will be a rental unit or a for-sale unit;
  - (d) a reference to a housing marketing and resident selection plan to which the Affordable Housing 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 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 the preference for such unit shall be given to a household of 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 resident 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) designation of the priority of the Affordable Housing Restriction over mortgages and other restrictions;
- (h) a requirement that only an Eligible Household may reside in the unit and that notice of any lease or sublease of the unit shall be given to the Administering Agency;
- (i) a provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the Administering Agency;
- (j) a provision that the Affordable Housing Restriction on an Affordable Homeownership Unit shall run in favor of the Administering Agency and the City in a form approved by the municipal counsel, and shall limit initial sale and re-sale to and occupancy by an Eligible Household;
- (k) a provision that the Affordable Housing Restriction on an Affordable Rental Unit shall run in favor of the Administering Agency and the City in a form approved by the municipal counsel, and shall limit rental and occupancy to an Eligible Household;
- (l) a provision that any owner or manager of any Affordable Rental Unit shall file an annual report to the Administering Agency, in a form specified by that agency, certifying compliance with the provisions of this article and containing such other information as may be reasonably requested in order to ensure affordability; and
- (m) a requirement that residents in Affordable Housing provide such information as the Administering Agency may reasonably request in order to ensure affordability.

6. Administering Agency. The Administering Agency shall be the Authority, unless an affordable housing trust or other qualified housing entity shall be designated by the Authority. In a case where the Administering Agency cannot adequately carry out its administrative duties, such duties shall devolve to, and thereafter be administered by, a qualified housing entity designated by the Authority or, in the absence of such timely designation, by an entity designated by DHCD. In any event, such agency 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 Housing 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; and
  - (e) each Affordable Housing unit is encumbered by an Affordable Housing Restriction that meets the requirements of this article and is properly recorded.
7. Age Restrictions. An SGOD shall not impose age restrictions upon the entire SGOD, but the development of specific Proposed Projects within an SGOD may be exclusively for the elderly, persons with disabilities, or assisted living, provided that not less than twenty-five percent (25%) of the housing units in such an age-restricted Proposed Project shall be restricted as Affordable Housing Units. Any Proposed Project which includes age-restricted residential units shall comply with the applicable fair housing laws and regulations.
  8. Computation. Prior to the granting of any building permit for any housing component of a Proposed Project, the Applicant must demonstrate, to the satisfaction of the Authority, that the method by which such affordable rents or affordable purchase prices are computed shall be consistent with DHCD and HUD guidelines for affordability applicable to the City of Boston.
  9. No Waiver. Notwithstanding anything to the contrary herein, the affordability provisions in this article shall not be waived.

**SECTION 87-7. Dimensional and Density Requirements.** The provisions of an SGOD shall establish minimum as-of-right density requirements in accordance with the 40R Enabling Laws and shall establish all dimensional, use, and other standards which shall supersede the dimensional, use and density requirements of Underlying Zoning for Proposed Projects electing to proceed under the applicable SGOD.

**SECTION 87-8. Parking Requirements.** The provisions of an SGOD shall establish the parking requirements which shall supersede the parking requirements of Underlying Zoning for Proposed Projects electing to proceed under the applicable SGOD.

**SECTION 87-9. Application for Plan Approval.** A copy of the application for Plan Approval shall be submitted to the Authority as a Project Notification Form and submitted in accordance with Section 87-10 below. The application shall include the information described in Sections I (Applicant Information), II (Project Area), III.A (Project Schematics), items 1 through 17, III.C (Contract Documents), IV.A through H (BRA Project Impact Assessment), V (Relocation Information), VI (Financial Information) of the “BRA Development Review Guidelines,” dated January, 2008. The application shall also be accompanied by other such plans and documents as may be required by the Authority to make the findings required by Section 87-11.3 below. 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 Authority.

**SECTION 87-10. Plan Approval Procedures.**

1. Authority Regulations. The “BRA Development Review Guidelines” (Review Guidelines), dated January, 2008, are administrative rules and regulations which apply to Plan Approval of all Proposed Projects within an SGOD. The Review Guidelines are on file with the Authority’s office. The Authority may revise the Review Guidelines, and promulgate rules and regulations, from time to time as needed to administer this article. Such revisions regarding SGODs shall not take effect until approved by DHCD.
2. Filing. An Applicant shall file an original of the application with the City Clerk for certification of the date and time of filing. A copy of the application, including the date and time of filing certified by the City Clerk, as well as the required number of copies of the application, shall be filed, by the Applicant, on that same day with the Authority’s Executive Secretary’s Office. As part of any application for Plan Approval for a Proposed Project, the Applicant must submit the following documents to the Authority:
  - (a) evidence that the Proposed Project complies with the cost and eligibility requirements of Section 87-6.3 of this article;
  - (b) Proposed Project plans that demonstrate compliance with the design and construction standards of Section 87-6.4 of this article; and



- (c) a form of Affordable Housing Restriction that satisfies the requirements of Section 87-6.5 of this article.
- 3. Circulation of Application. Upon receipt of a complete application, the Authority may provide a copy of the application materials to other municipal officers, agencies or boards designated by the Authority for comment, and any such board, agency or officer shall provide written comments within sixty (60) days of its receipt of the plan and application for approval.
- 4. Hearing. The Authority shall hold a public hearing for which notice has been given as set forth below. The decision of the Authority shall be made, and a written notice of the decision filed with the City Clerk, within one hundred and twenty (120) days of the receipt of the application by the City Clerk. The required time limits for such action may be extended by written agreement between the Applicant and the Authority, with a copy of such agreement being filed, by the Applicant, in the office of the City Clerk. Failure of the Authority to take action within said one hundred and twenty (120) days or extended time, if applicable, shall be deemed to be an approval of the Plan Approval application.
  - (a) Notice of Public Hearing. Notice shall be given by publication in a newspaper of general circulation in the City once 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 in a conspicuous place in the City Hall for a period of not less than fourteen (14) days before the day of such hearing. In all cases, where notice to individuals, municipal officers, agencies or boards is required, notice shall contain the name of the Applicant, a description of the area or premises, street address, if any, or other adequate identification of the location which is the subject of the application, the date, time, and place of the public hearing, the subject matter of the hearing, and the nature of action requested, if any. No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held.
- 5. Peer Review. The Applicant shall be required to pay reasonable consulting fees to provide peer review for the Plan Approval application, pursuant to M.G.L. Chapter 40R, Section 11(a). Such fees shall be held by the Authority 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.

SECTION 87-11. **Decision.**

1. Waivers. Upon the request of the Applicant, the Authority may waive dimensional and other requirements set forth in the applicable SGOD, including Design Standards, in the interests of design and flexibility and overall project quality, and upon a finding that such variation is consistent with the overall purpose and objectives of the SGOD, or if it finds that such waiver will allow the Proposed Project to achieve the density, affordability, mix of uses, and/or physical character allowable under the provisions of the applicable SGOD.
2. Project Phasing. The Authority, as a condition of Plan Approval, may allow a Proposed Project to be phased at the request of the Applicant, or it may require a Proposed Project to be phased for the purpose of coordinating development with the construction of Planned Infrastructure upgrades as identified in the applicable SGOD 40R Application (Attachment 10-1: “Information on Infrastructure Impacts and Planned Infrastructure Upgrades, Certified by Municipal Official”) approved by DHCD or to mitigate any extraordinary adverse project impacts on nearby properties. For Proposed Projects that approved and developed in phases, the total number of Affordable Housing Units in the Proposed Project shall not, at any time, be less than twenty percent (20%).
3. Plan Review and Plan Approval. An application for Plan Approval shall be reviewed by the Authority for consistency with the purpose and intent of this article, and such Plan Review shall be construed as an as-of-right review process as required by the 40R Enabling Laws. Plan Approval shall be granted where the Authority finds that: (i) the Applicant submitted the required fees and information as set forth herein; (ii) the Proposed Project and site plan meet the requirements and standards set forth in this article and in the applicable SGOD, or a waiver has been granted therefrom; and (iii) extraordinary adverse potential impacts of the Proposed Project on nearby properties have been adequately mitigated. The Authority may request additional project impact studies, plans or documents in order to make such findings and may condition Plan Approval on the Applicant entering into one or more mitigation agreements.
4. Plan Disapproval. The Authority may withhold Plan Approval only where the Authority is unable to make each of the findings set forth in Section 87-11.3 above.
5. Form of Decision. The Authority 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 Clerk

and all plans referred to in the decision are on file with the Authority. The Commissioner of Inspectional Services shall not issue any building permit or use permit for a Proposed Project that is subject to the provisions of this article unless s/he has received a copy of the Authority's decision approving the plan. If twenty (20) days have elapsed after the decision 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 plan 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 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 owner or Applicant, the Applicant who seeks approval of a plan by reason of the failure of the Approving Authority to act within such time prescribed, shall notify the City Clerk, in writing within fourteen (14) days from the expiration of said one hundred and twenty (120) days or extended time, if applicable, of such approval and that notice has been sent by the Applicant to parties in interest. The Applicant shall send such notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall be made pursuant to this section 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.

6. Validity of Decision. A Plan Approval shall not lapse, provided that construction has commenced within two (2) 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 Proposed Project proponent is actively pursuing other required permits for the Proposed 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 Proposed Project.

#### **SECTION 87-12. Change In Plans After Approval By Authority.**

1. Minor Change. After Plan Approval, an Applicant may apply to make minor changes in a Proposed Project involving minor utility or building orientation adjustments, or minor adjustments to parking or site details that do not affect the overall buildout or building envelope of the site, or provisions of open space, number of housing units, or housing need or affordability features. Such minor changes must be submitted to the Authority or redlined prints of the approved plan, reflecting the proposed change, and on application forms provided by the Authority. The Authority may authorize such changes without the need to hold a public

hearing and shall set forth any decision in accordance with Section 87-11 above.

2. Major Change. Any Project change deemed by the Authority to constitute a major change to a Proposed Project because 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 Authority as a new application for Plan Approval pursuant to this article.

SECTION 87-13. **Design Standards**. Any Proposed Project undergoing the Plan Approval process shall be subject to design standards as set forth in the SGOD article for a particular SGOD. The purpose of these standards is to ensure that new development shall be of high quality, and shall be compatible with the character of building types, streetscapes, and other community features traditionally found in the area of a particular SGOD.

SECTION 87-14. **Annual Update**. On or before July 31 of each year, the Authority shall cause to be filed an Annual Update with DHCD in a form 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. Chapter 40S and accompanying regulations. The Authority shall maintain a copy of all updates transmitted to DHCD pursuant to this article.

SECTION 87-15. **Enforcement and Appeal**. Enforcement of this article and SGODs shall be administered by the Commissioner of Inspectional Services Department, except as otherwise provided herein. Any appeal arising out of action by the Authority regarding application for Plan Approval shall be governed by the applicable provisions of M.G.L. Chapter 40R, which shall supersede the provisions of the Enabling Act of the Boston Zoning Code for this purpose only. Any other request for enforcement or appeal arising under this article or any SGOD shall be governed by the applicable provisions of the Enabling Act of the City of Boston.

SECTION 87-16. **Enforceability**. If any provision of this article is found to be invalid by a court of competent jurisdiction, the remainder of this article shall not be affected, but shall remain in full force. The invalidity of any provision of this article shall not affect the validity of the remainder of the Zoning Code.