

**SECTION 240-17: SECTION ~~17~~ SMART GROWTH OVERLAY DISTRICTS**  
**(SGODs)**

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

**1. PURPOSE**

The purpose of this Section ~~17~~ is to allow for the creation of one or more Smart Growth Overlay Districts, as may be established under Section B below, to encourage smart growth in accordance with the purposes of G. L. Chapter 40R, and to the extent the following other purposes are not in conflict with the Governing Laws, Section B specifically establishes the Pond Street Smart Growth Overlay District-(PSSGOD), to encourage smart growth in accordance with the purposes of M.G.L. Chapter 40R., and to foster a range of housing opportunities that promotes compact design.

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The objectives are to:

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- Provide a range of housing choices for households of varying size, incomes, and ages, and increase the production of housing to meet existing and anticipated housing needs;
- Generate positive tax revenue for the Town to the extent consistent with Massachusetts General Law Chapter 40R, and to benefit from the financial incentives provided by M.G.L. c40R, while providing the opportunity for new business growth and additional local jobs;
- Establish requirements, standards, and guidelines which will ensure suitable and cost-effective development and a clear, predictable, and efficient review and permitting process;
- To encourage adoption of energy-efficient building practices and sustainable construction methods;
- Enable the Town to receive zoning incentive and density bonus payments under M.G.L. Chapter 40R and Chapter 40S.

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[add other objectives as applicable]

**2. DEFINITIONS**

For purposes of this Section ~~17~~, 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 ~~17~~, 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 ~~17~~, inclusive of any applicable Design Standards, PAA Regulations, or any other

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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 definitions or terms contained in the Governing Laws shall govern.

**Accessory Structure** – A subordinate building located on the same lot with the principal structure(s) or use, the use of which is customarily incidental to that of the principal building(s) or the use of the land.

**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 6.7 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 other than waivers issued hereunder pursuant to Section 11.3. 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 EOHLC 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..

**EOHLC or Secretariat** - the Massachusetts Executive Office of Housing and Livable Communities, or any successor agency.

**Design Standards** – provisions of Section 13 made applicable to Projects within a 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.

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

**Mixed-Use Development Project** – a Project containing a mix of one or more residential uses and one or more non-residential uses, as allowed in Section 5.2, and subject to all applicable provisions of this Section ~~17[\*]~~.

**Monitoring 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 6.3, to review and implement the Affordability requirements affecting Projects under Section 6.0.

**PAA Regulations** – the rules and regulations of the PAA, including but not limited to any additional Design Standards, site plan review requirements, application forms, application fees, or any other forms, requirements, or information beyond exactly what is specified in this Section but must nevertheless be provided or adhered to in conjunction with an application for Plan Approval pursuant to Section 9 and have adopted pursuant to Section 9.3.

**Plan Approval** - standards and procedures which all Projects within the SGOD, including residential, mixed-use, and nonresidential development, as well as any substantial rehabilitation, expansion, or change of use of an existing building or site ~~for certain categories of~~ Projects in a SGOD must meet pursuant to Sections 9.0 through 13.0 and the Governing Laws.

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**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 a SGOD.

**Principal Structure** – the main structure(s) within the SGOD comprising the primary use of the lot(s) for the multi-family residential and/or mixed-use development. Within the SGOD, a single lot may contain multiple principal structures.

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

**Residential Project** - a Project that consists solely of residential use and any parking and accessory uses as may be permitted/required and further defined in Section 5.1.

**SGOD** – a Smart Growth Overlay District established in accordance with this Section ~~17[\*]~~.

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

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

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

**4.1 Applicability of SGODs.** An Applicant may seek development of a Project located within a SGOD in accordance with the provisions of the Governing Laws and this Section [x], including a request for Plan Approval by the PAA, if required. In such case, notwithstanding anything to the contrary in the Zoning [Bylaw/Ordinance], such application shall not be subject to any other provisions of the Zoning [Bylaw/Ordinance], 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 ~~17-[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.

**4.2 Underlying Zoning.** A SGOD is an overlay district superimposed on all underlying zoning districts. The regulations for use, dimensions, and all other provisions of the Zoning ~~[Bylaw/Ordinance]~~ governing the underlying zoning district(s) shall remain in full force, except for those Projects undergoing development pursuant to this Section ~~17-[x]~~. Within the boundaries of a SGOD, an Applicant 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/Ordinance]~~ governing the underlying zoning district(s).

**4.3 Administration, Enforcement, and Appeals.** The provisions of this Section ~~17-[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 ~~17-[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.

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

- a) ~~{Single-family, Two- and three-family townhouses, 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, including but not limited to communal work space, fitness space, gathering space, bicycle storage, pedestrian path and crosswalks around the site, pool, fire pit, grilling area, tot lot, or dog park.

~~[Insert additional text if the SGZ Bylaw/Ordinance will additionally/alternatively establish any standard types of residential sub-districts (e.g., Multi-family Residential, Two and Three-family Residential, Single-family Residential, Substantially Developed Land) that will apply to all SGODs within the municipality as may be established over time within the municipality over time under Section B. Alternatively, any permitted uses particular to different Sub-districts can be established in conjunction with and tailored to one or more Districts as may be established in Section B below.]~~

**5.2 Mixed-use Development Projects.** A Mixed-use Development Project within a SGOD must include at least one residential use and one non-residential use from these respective use categories as permitted below and may further include parking and other accessory uses as additionally provided for:

- a) ~~[Single-family, Two- and three-family, and/or Multi-family]~~ Residential Use(s), provided that the minimum As-of-right density allowances 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: Non-residential uses in a Mixed-Use Development Project shall not exceed 30% of total GFA, and no individual retail or restaurant use shall exceed 5,000 SF {specify permitted commercial, institutional, light industrial, or other compatible 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.

~~[see comment above regarding Sub-districts and insert any permitted uses that will be standard mixed-use Sub-districts that would apply to all SGODs.]~~

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The total gross floor area devoted to residential uses within a Mixed-use Development Project shall be at least ~~[=>51%]~~ of the total gross floor area of the Project.

~~5.3 Other Uses. Any of the following non-residential uses may be permitted As of right, or by Plan Approval, or by special permit~~

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

## 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 the purpose 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 Affordable Housing threshold set forth above. this provision is only necessary if certain Projects (those with 12 or fewer units as may be specified in the SGZ) are exempt from the Affordable Housing requirement.~~ For Projects containing six (6) to twelve (12) Dwelling Units, not less than one (1) Dwelling Unit shall be an Affordable Unit.

**6.2 Number of Housing Units with Three or More Bedrooms.** Except as provided for below and consistent with the Interagency Agreement Regarding Housing Opportunities for Families with Children or any successor agreement, for all Projects containing at least 13 residential units and not otherwise subject to an eligible state or federal housing subsidy program under EOHLC's Subsidized Housing Inventory guidelines, not less than ten percent (10%) of housing units constructed shall contain three or more bedrooms. This requirement shall not apply to Projects designated exclusively for the elderly, assisted living, qualified supportive housing for individuals, single room occupancy or other Projects for which the requirement is not appropriate for the intended residents, as determined by EOHLC.

**6.3 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 EOHLC

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such duties shall devolve to and thereafter be administered by a qualified housing entity determined by the designating official. The Monitoring Agent shall ensure the following, both prior to issuance of a Building Permit for a Project within a 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 EOHLIC specifically with regard to conformance with the Governing Laws, and are properly administered;
4. sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan (a.k.a., Affirmative Fair Housing Marketing Plan (AFHMP)) with appropriate unit size for each household being properly determined and proper preference being given; and
5. An Affordable Housing Restriction (AHR) meeting the requirements of this section is approved by EOHLIC specifically for conformance with M.G.L. c.40R and 760 CMR. 59.00, recorded with the proper registry of deeds.

**6.4 Submission Requirements.** As part of any application for Plan Approval for a Project within a 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 6.5;
- 2) Project plans that demonstrate compliance with the design and construction requirements of Section 6.6; and
- 3) a form of Affordable Housing Restriction that satisfies the requirements of Section 6.7.

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 individuals with disabilities and appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly.

**6.5 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 EOHLC, 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 the maximum monthly housing payment, as approved by EOHLC, applies.

Prior to the granting of any building permit 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 Affordable Housing applicable to ~~the Town of Whitman~~~~{name of community}~~.

**6.6 Design and Construction.** Units of Affordable Housing shall be finished housing units. With respect to the minimum number of units in a given Project that are required to be Affordable Housing under Section ~~17-FX~~ and the Governing Laws, such units ~~shall~~ be equitably integrated and ~~proportionately~~ dispersed throughout the residential portion of the Project of which they are part, across all residential buildings, floors, distinct unit types, and with respect to the gross floor area devoted to residential units, in accordance with the Affordable Housing Restriction and the Affirmative Fair Housing Marketing and Resident Selection Plan, as approved by EOHLC. The Affordable Housing units shall be comparable in initial construction quality, size, amenities, 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.



**6.7 Affordable Housing Restriction.** Each Project shall be subject to an Affordable Housing Restriction which is recorded with the applicable 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 stipulated in the Plan Approval decision but may not be less than a thirty-year period;
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(s), 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 the Monitoring Agent and EOHLC in accordance with, the corresponding Affirmative Fair Housing Marketing Plan (AFHMP) and EOHLC'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 EOHLC guidance and approved by EOHLC. Consistent with EOHLC 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 EOHLC.
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 the maximum 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 compliance report with the Monitoring Agent, in a form specified by that agent certifying compliance with the Affordability provisions of this Bylaw/Ordinance and containing such other information as may be reasonably requested to ensure Affordability; and
12. a requirement that residents in Affordable Housing provide such information as the Monitoring Agent may reasonably request to ensure Affordability.

**6.8 Costs of Affirmative Fair Housing Marketing and Resident Selection**

**Plan.** The Affirmative Fair Housing Marketing and Resident Selection Plan and/or any associated Monitoring Services Agreement may make provision for payment by the Project Applicant of reasonable costs to the Monitoring Agent to monitor and enforce compliance with Affordability requirements consistent with the Affordable Housing Restriction and otherwise fulfill the responsibilities contained in Section 6.3.

**6.9 Age Restrictions.** Nothing in this Section ~~17(x)~~ shall permit the imposition of restrictions on age upon Projects unless proposed voluntarily by the Applicant. However, in its review of a submission under Section 9 within a given SGOD, the PAA may allow a specific Project, designated exclusively for the elderly, persons with disabilities, or for assisted living, provided that any such Project shall be in compliance with all federal and state and fair housing laws and regulations and this section, and not less than twenty-five percent (25%) of the housing units in such a restricted Project shall be restricted as Affordable Housing units.

**6.10 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 or 6.9, as applicable. Where the percentage of Affordable Housing is not uniform across all phases, the unit dispersal and bedroom

proportionality requirements under Section 6.6 shall be applied proportionately to the Affordable Housing provided for in each respective phase.

**6.11 No Waiver.** Notwithstanding anything to the contrary herein, the provisions of this Section 6.0 (Housing and Housing Affordability) shall not be waived unless expressly approved in writing by EOHLC under the 40R Smart Growth Zoning Program pursuant to the Governing Laws, to eliminate conflict with an associated state or federal housing financing program and/or at the request of the Plan Approval Authority.

## 7. DIMENSIONAL AND DENSITY REQUIREMENTS - GENERAL

**7.1 Table of Requirements.** Notwithstanding anything to the contrary in this Zoning Bylaw/Ordinance, the dimensional requirements applicable in any SGOD are as follows: Dimensional and density requirements within an SGOD shall be established in the district-specific provisions.

~~[Insert applicable dimensional requirements to the extent there will be any that apply to ALL SGODs as may be established over time in Section B. Insert additional provisions if there will be any standard types of Sub-districts with standard dimensional and density requirements applicable to ALL Districts, as may be established under Section B.]~~

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

## 8. PARKING REQUIREMENTS - GENERAL

The parking requirements applicable for Projects within SGODs are as follows.

**8.1 Number of parking spaces.** Unless otherwise approved by the PAA and subject to any conditions EOHLC's determination of eligibility and approval of the corresponding SGOD, 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:}~~ Parking requirements within an SGOD shall be established in the district-specific provisions.

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~~[Insert parking requirements applicable to ALL SGODs. Parking requirements that will only apply to certain Districts should be detailed in the corresponding District specific requirements in Section B.]~~

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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 parking required under Sections 8.2 or 8.3.

**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. Any 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).

**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

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the PAA.

**8.4 Location of Parking.** Any surface parking lot shall, to the maximum extent feasible, be located at the rear or, where not feasible or otherwise preferred by the PAA, side of a building, relative to any principal street, public open space, or pedestrian way.

## 9. PLAN APPROVAL OF PROJECTS: GENERAL PROVISIONS

**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 ~~to the extent permitted~~; and
- d) Any Project seeking a waiver.

**9.2 Plan Approval Authority (PAA).** The Zoning Board of Appeals (ZBA) ~~[name of local approval authority]~~, consistent with the Governing Laws, 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 any SGOD as may be established in Section B below.

**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 Executive Office of Housing and Livable Communities.

**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 6.10.

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## 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. If submitted, 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 corresponding SGOD.

**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 EOHLIC, ~~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 6.4. 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~~er~~, or at a scale as approved in advance by the PAA.

**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.

**10.4 Circulation to Other Boards.** Upon receipt of the application, the PAA shall immediately provide a copy of the application materials to the [Select Board / City Council], Board of Appeals, Board of Health, Conservation Commission,

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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.

**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.

**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.

## 11. PLAN APPROVAL DECISIONS

**11.1 Plan Approval.** Plan Approval shall be granted by simple majority vote 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 the requirements and standards set forth in this Section ~~17(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 or otherwise made a condition of the Plan Approval. Any Plan Approval decision for a Project

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subject to the affordability restrictions of Section 6.0 shall specify the term of such affordability, which shall be no less than a thirty-year period. 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.

**11.2 Plan Disapproval.** A Plan Approval application may be disapproved only by simple majority vote 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 the requirements and standards set forth in this Section ~~17[\*]~~ 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.

**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 6.11, the Plan Approval Authority may waive dimensional and other requirements of Section ~~17[\*]~~, 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 Smart Growth Zoning and corresponding 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 ~~17[\*]~~.

**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 EOHLC 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 or 6.9, as applicable.

**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

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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.

**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.

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

**12.1 Minor Change.** After Plan Approval, an Applicant may apply to make minor changes to 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.

**12.2 Major Change.** Those changes deemed by the PAA to constitute a major change to 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.

## **13. DESIGN STANDARDS - GENERAL**

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**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 SGODs:

- 1) will be complementary to nearby buildings and structures that have been identified and documented as desirable and consistent with Smart Growth;
- 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], provided that the specific version of such plan has been expressly approved by EOHLC as consistent with the Smart Growth Zoning and Governing Laws; and
- 3) will provide for high-density, high-quality development consistent with documented, desired characteristics of building types, streetscapes, and other community features, including but not limited to those traditionally found in densely settled areas of the ~~{City / Town}~~ or in the region of the ~~{City / Town}~~.

**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. At its discretion, EOHLC 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. EOHLC Approval.** After adopting Design Standards, the PAA shall submit Design Standards to EOHLC for approval. Design Standards shall not take effect until approved by EOHLC and filed with the ~~{City / Town}~~ Clerk. In submitting proposed Design Standard for EOHLC 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 qualified party indicating that the Design Standards will not add unreasonable costs or unreasonably impair the economic feasibility of a Development Project shall not necessarily constitute

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sufficient documentation. At its discretion, EOHLC 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 ~~{City/Town}~~ Clerk pursuant to this Section ~~17{}~~ shall not be subject to Design Standards that have not been approved by EOHLC and filed with the ~~{City/Town}~~ Clerk.

#### 14. SEVERABILITY.

If any provision of this Section ~~17{}~~ is found to be invalid by a court of competent jurisdiction, the remainder of Section ~~17{}~~ shall not be affected but shall remain in full force. The invalidity of any provision of this Section ~~17{}~~ shall not affect the validity of the remainder of the ~~{Town's/City's}~~ Zoning Bylaw/~~Ordinance~~.

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

#### **1. Pond Street ~~{DISTRICT-NAME}~~ SMART GROWTH OVERLAY DISTRICT**

**1.1 Establishment.** The Pond Street ~~{District-Name}~~ Smart Growth Overlay District, hereinafter referred to as the "PS~~{District-Name-abbreviation}~~SGOD," is an overlay district having a land area of approximately ~~40—~~ 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 "Pond Street~~{Name of District}~~ Smart Growth Overlay District, dated TBD—, prepared by TBD—." This map is hereby made a part of the Zoning By-law/~~Ordinance~~ and is on file in the Office of the ~~{Town/City}~~ Clerk.

~~**1.2 Subdistricts.** The SGOD contains the following Sub-districts: {Single-family Sub-district / Multi-family Sub-district / Mixed-use Sub-district / Non-residential Sub-district / Substantially-Developed Sub-district}.~~

#### **2. PERMITTED USES – (DISTRICT-SPECIFIC)**

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

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

- a) ~~[Single-family,~~ 2 and 3 family Townhomes, 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.
- d) Infill Development: Infill housing on existing vacant residential lots within the SGOD shall be permitted as-of-right, subject to dimensional waivers as provided in Section 7.2.

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

**2.2 Mixed-use Development Projects.** A Mixed-use Development Project within the PS~~[NAME]~~SGOD must include at least one residential use and one non-residential use from these respective use categories as permitted below and may further include parking and other accessory uses as additionally provided for:

- c) ~~[Single-family, Two and Three-family, and/or Multi-family]~~ Residential Use(s), provided that the minimum allowable As-of-right density allowances 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: Non-residential uses in a Mixed-Use Development Project shall be limited to those that are compatible with residential uses, contribute to a walkable neighborhood environment, and do not generate adverse traffic or environmental impacts. Non-residential uses shall not exceed thirty percent (30%) of the total Gross Floor Area (GFA) of a Project, and no individual retail or restaurant use shall exceed 5,000 square feet of GFA.

Permitted non-residential uses may include:

- Retail and Service Uses: Small-scale retail shops (e.g., bookstore, convenience market, florist, pharmacy); Personal service establishments (e.g., barber shop, salon)
- Food and Beverage Uses: Restaurant, café, or bakery; Take-out or prepared food establishment (excluding drive-through service)
- d) ~~[specify permitted commercial, institutional, industrial, or other non-residential uses]~~

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- 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 the Sub-districts.]~~

The total gross floor area devoted to residential uses within a Mixed-use Development Project shall be at least ~~[=>51%]~~ of the total gross floor area of the Project.

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

- ~~Professional or business offices: real estate, insurance, law, architecture, accounting, or similar;~~
- ~~Cultural and Civic Uses: Art gallery, studio, or cultural facility; Civic, non-profit, or community service space~~
- ~~Other compatible uses: Fitness studio, yoga/pilates studio, or small health/fitness center; Co-working space or shared office facility~~
- ~~Open space and recreational uses~~

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

~~b)a)~~ Until such time that EOHLC has confirmed receipt of copies of occupancy permits for ~~[minimum 250#]~~ units corresponding to Zoning Incentive Payment~~]~~ 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 ~~[30—%]~~ of the total gross floor area allowed on Developable or Underutilized Land in the District.

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

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

~~[Insert applicable dimensional and density requirements/As of right allowances. To the extent one or more of the following residential uses are permitted under the Smart Growth Zoning (and at least one must be permitted, though it can be~~

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limited to a Mixed-Use Development Project), such uses must be permitted As-of-right at densities that meet or exceed the following minimum densities:

Use	As-of-right Residential Density (du/acre)
<del>Single-Family</del>	<del>8</del>
Two-Family	12
Three-Family	12
Multi-Family	20
Mixed-Use Development Project	20

TABLE 1

<u>MINIMUM REQUIREMENT</u>	<u>PRINCIPAL STRUCTURES</u>	<u>ACCESSORY STRUCTURES</u>
<u>Front Yard Setback (linear feet)</u>	<u>25'</u>	<u>10'</u>
<u>Side Yard Setback (linear feet)</u>	<u>25'</u>	<u>5'</u>
<u>Rear Yard Setback (linear feet)</u>	<u>25'</u>	<u>10'</u>

TABLE 2

<u>LIMITATION</u>	
<u>Maximum coverage by buildings</u>	<u>20%</u>
<u>Maximum coverage by impervious surface</u>	<u>60%</u>
<u>Building height (principal structure)</u>	<u>45 feet</u>
<u>Building height (accessory structure)</u>	<u>18 feet</u>

TABLE 3

<u>Permitted Use</u>	<u>Minimum Density Permitted (units/acre)*</u>	<u>Maximum Density Permitted (units/acre)**</u>
<u>Units per acre (townhome)</u>	<u>12</u>	<u>16</u>
<u>Units per acre (multi-family)</u>	<u>20</u>	<u>30</u>
<u>Mixed-Use Development Projects</u>	<u>Not to exceed 30% of total GFA</u>	<u>Not to exceed 30% of total GFA</u>

\* Minimum densities are required to ensure compliance with M.G.L. Chapter 40R Smart Growth standards.

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**\*\* Maximum densities are intended to balance housing production with site design, infrastructure capacity, and neighborhood character.**

[As of right Insert additional provisions if there are Sub-districts within the District and the dimensional requirements vary among the Sub-districts.]

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

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

The parking requirements applicable for Projects within the PS[NAME]SGOD are as follows. Parking shall be provided to meet or exceed the following minimum requirements:

<u>Use</u>	<u>Minimum Required Parking</u>
<u>Residential</u>	<u>1.5 spaces per Dwelling Unit with 2 bedrooms or less, 2 spaces per dwelling Unit with 3 bedrooms or more to be located within 300 feet of the Dwelling Unit</u>
<u>Retail</u>	<u>1 space per 250 sq ft of gross leasable floor area</u>
<u>Restaurant</u>	<u>1 space for every 3 seats</u>
<u>Office</u>	<u>1 space per 333 gross floor area</u>

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

The design guidelines for the Pond Street Smart Growth Overlay District aim to create a cohesive, attractive, and walkable neighborhood that combines multifamily housing and townhomes in a way that respects the community's

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traditional character. Multifamily buildings will provide density along main streets and near transit, generally ranging from three to four stories in height, with requirements for façade articulation, setbacks, and active ground-floor frontages. Townhomes, limited to two to three stories, will serve as a transition to surrounding single-family neighborhoods, with individual entries, stoops, and varied facades to avoid monotony.

Across all housing types, the guidelines emphasize the use of traditional New England materials such as brick, clapboard, and stone, complemented by muted color palettes. Streetscapes will be designed for walkability, with continuous sidewalks, street trees, and pedestrian amenities, while parking will be located to the rear or side of buildings and screened with landscaping. Shared open spaces, such as pocket parks and courtyards, will be integrated into larger developments to foster community interaction. Finally, the guidelines require transitions at the district edges through reduced heights, landscaping, and buffers to ensure compatibility with existing single-family areas.

1. Architecture should demonstrate cohesive planning of the entire development and present a clearly identifiable design feature throughout. It is not intended that buildings be uniform in appearance or that designers and developers be restricted in their creativity; rather, architectural design should demonstrate:
  - a. Cohesion and identity on a similar scale or mass;
  - b. Consistent use of façade material; similar to ground-level detailing, color or signage. Blank facades are not permitted. Changes in plane or material shall be used to provide a pedestrian scale in areas where windows and doors are not functionally required.
  - c. Effective framing of outdoor open space.
2. The orientation of multiple buildings on a lot should reinforce the relationships among the buildings. All building façade(s) (front, side, and rear) shall be treated with the same care and attention in terms of entries, fenestrations, and materials. All buildings should have a coordinated color scheme.
3. Building(s) adjacent to a principal access drive shall have a pedestrian entry facing that access drive. Blank walls adjacent to streets, alleys, or areas open to public view are prohibited.
4. Long horizontal facades should be avoided by the incorporation of a clear distinction in materials and colors and/or other means of breaking down such spans. Building forms shall be broken down or subdivided visually to reduce the sense of building mass.
5. Vinyl siding and Exterior Insulation and Finish System are generally prohibited, although these materials may be used on facades not visible from the public way or open space, or adjacent residential uses, provided that these materials are detailed and installed in ways that are consistent with the requirements of these Design Standards.
6. Building entrances shall bring a human scale to the façade through the use of canopies, storefronts, awnings, porches, stoops, or connectivity to sidewalks through landscaping, lighting, or other site design elements.

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7. Rooftop mechanical equipment shall be set back from the facades so that it is not visible from the public way or abutters, or screened from view by architectural elements integrated into the building design. Louvers and other mechanical systems shall be on facades not visible from the public way or abutters, or on the roof. Rooftop mechanical equipment is preferred. If mechanical equipment is located on ground level, it must be screened with plantings or fencing or installed at the inner courtyard.
8. Long continuous roof lines should be avoided. Varying roof lines and forms are encouraged.
9. All trash and recycling containers and any other outside storage shall be screened and enclosed.

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