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10-22-07P03:12 RCVD

October 19, 2007

Attorney Kelli Gunagan, Bylaw Coordinator
Attorney General's Office
436 Dwight Street
Springfield, MA 01103

Dear Attorney Gunagan:

I herewith transmit to you a certified copy of the City of Brockton's Ch 40R Downtown Brockton Smart Growth Overlay District Ordinance which was approved by the Brockton City Council on July 23, 2007.

If you have any questions, please feel free to contact me at 508-580-7113.

Very truly yours,

Nancy Stack Savoie
City Planner

NSS:pg

Cc: Donald Schmidt, DHCD

87

In City Council, March 12, 2007

ORDINANCE:

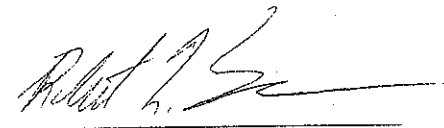
An Ordinance amending Chapter 27 of the Revised Ordinances of the City of Brockton; Be it ordained by the City Council of the City of Brockton as follows. 1. Zoning, Article II Zones and Zoning Map Sec. 27-4 is hereby amended by adding Designation of zones as follows: "DBSGOD" - Downtown Brockton Smart Growth Overlay District, which includes the following subdistricts:

- Downtown Core
- Ralsco
- Corcoran
- Arts/Culture
- Star Market

The subdistricts are depicted in the attached maps, which maps are hereby made a part of this Ordinance.

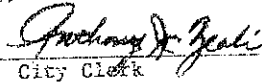
2. Chapter 27, Zoning is hereby amended by adding a new article, Article XVI Downtown Brockton Smart Growth Overlay District (DBSGOD), as shown in the attached Exhibit A.

July 26 2007
James G. DeNapoli
July 30 2007



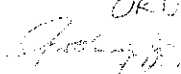
Councillor Robert Sullivan

In City Council July 23, 2007
Ordained as amended by a roll call vote taken by "yeas" and "nays"; ten members present and all voting in the affirmative. Councillor DeNapoli absent.


City Clerk

A TRUE COPY ATTEST


CITY CLERK

March 12 2007
ORD. / Planning


In Ordinance June 13, 2007, Favorable as in City Council June 25, 2007 Amended

Amendment passed by a hand vote. Passed to a third reading by a hand vote.

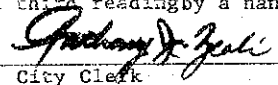

City Clerk

EXHIBIT A- SUBSTITUTE ORDINANCE

**AN ORDINANCE AMENDING APPENDIX C, ZONING, OF THE
REVISED ORDINANCES OF THE CITY OF BROCKTON,
MASSACHUSETTS by adding the following new section:**

**ARTICLE XVI Downtown Brockton Smart Growth Overlay District
(DBSGOD)**

Sec 27-91

A. Purposes. The purposes of the Downtown Brockton Smart Growth Overlay District are:

- (1) To provide an opportunity for residential and mixed-use development, including both new construction and renovation of existing buildings, within a distinctive, attractive and livable environment that supports the commercial revitalization of Downtown Brockton.
- (2) To promote continuing development and redevelopment in Downtown Brockton that is pedestrian friendly and consistent with Brockton history and architecture.
- (3) To ensure high quality site planning, architecture and landscape design that enhances the distinct visual character and identity of Downtown Brockton and provides an environment with safety, convenience and amenity.
- (4) To provide for a diversified housing stock at a variety of costs within walking distance of the Brockton Area Transit Intermodal Center and commuter rail station, including affordable housing, and in housing types that meet the needs of the City's population.
- (5) To generate positive tax revenue, and to benefit from the financial incentives provided by Mass. Gen. Laws Ch.40R, while providing the opportunity for new business growth and additional local jobs.

B. Scope and authority. The DBSGOD is established pursuant to the authority of Mass. Gen. Laws. Ch.40R and applicable regulations, and shall be deemed to overlay the parcels as shown on the Zoning Map of the City of Brockton, as amended. The Applicant shall have the option of applying for Site Plan Approval pursuant to the zoning controls set forth in this article or complying with all applicable zoning controls set forth in the Zoning Ordinances of the City of Brockton for the Underlying Zoning districts. Development Projects proceeding under this 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.

C. Establishment and delineation of Smart Growth District and Sub-Districts. The Downtown Brockton Smart Growth District is an overlay district that is superimposed over the underlying zoning district. Within the Downtown Brockton Smart Growth District, there are five Sub-Districts identified as Arts / Culture; Corcoran; Downtown Core; Ralsco; and Star Market. The boundaries of the DBSGOD and the Sub-Districts are delineated as the "Downtown Brockton Smart Growth Overlay District and Sub-Districts" on the Official Zoning Map of the City of Brockton on file in the office of the City Clerk, said map hereby made a part of the Zoning Ordinance.

Sec 27-92. 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 Mass. Gen. Laws Ch.184 §31 and the requirements of §27-99 of this article

AFFORDABLE RENTAL UNIT – A dwelling unit required to be rented to an Eligible Household per the requirements of §27-99 of this article

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 of Brockton, to be filed on or before July 31st of each year with the Massachusetts Department of Housing and Community Development pursuant to Mass. Gen. Laws Ch.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.

COMMON OWNERSHIP – Two or more contiguous or non-contiguous lots within the DBSGOD shall be deemed to be in Common Ownership if majority control of each is held by a common entity.

DESIGN STANDARDS – The document entitled Design Standards for the Downtown Brockton Smart Growth Overlay District, approved by the Massachusetts Department of Housing and Community Development on July 23, 2007, as amended, pursuant to Mass. Gen. Laws Ch.40R § 10 and applicable regulations. Said Design Standards shall be adopted by the Planning Board of the City of Brockton pursuant to Section 27-97 and are applicable to all Development Projects within the DBSGOD that are subject to Site Plan Review by the Approving Authority.

DEVELOPMENT PROJECT – A Residential, Non-Residential or Mixed-Use Development undertaken pursuant to this article, 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 DBSGOD.

DWELLING UNIT - One 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) **SINGLE-FAMILY DETACHED** - A detached residential dwelling unit, other than a mobile home, designed for occupancy by one family only.
- (2) **TWO-FAMILY** - A detached residential building containing two dwelling units, designed for occupancy by not more than two families.
- (3) **THREE-FAMILY** - A residential building containing three dwelling units, designed for occupancy by not more than three families.
- (4) **MULTI-FAMILY** - A residential building containing four or more dwelling units designed for occupancy by the same number of families as the number of dwelling units.

ELIGIBLE HOUSEHOLD – An individual or household whose annual income is at or below eighty percent (80%) 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 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 non-profit or quasi-public 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.

MIXED-USE DEVELOPMENT PROJECT – A Development Project containing a residential Principal Use and one or more Office, Retail, Restaurant or Institutional Secondary Use, provided that, in newly constructed buildings, separate and distinct building entrances are provided for residential and non-residential uses.

NON-RESIDENTIAL USE – Office, Retail, Restaurant or Institutional Use, inclusive, or some combination of the same, not located within a Mixed-Use Development Project.

OFFICE – A place for the regular performance of business transactions and services, generally intended for administrative, professional and clerical activities, including a medical or dental office or health clinic.

RESTAURANT – Any business establishment principally engaged in serving food, drink, or refreshments, whether prepared on or off the premises provided, however, that drive through windows are not allowed.

RETAIL USE – Business establishments selling goods and/or services to customers on-site, generally for end use personal, business or household consumption. A reasonable amount of storage of said goods shall also be assumed to be an integral part of Retail Use.

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 §27-100 of this article

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 as the Approving Authority.

SMART GROWTH DISTRICT – An overlay zoning district adopted pursuant to Mass. Gen. Laws Ch.40R, in accordance with the procedures for zoning adoption and amendment as set forth in Mass. Gen. Laws Ch.40A and approved by the Department of Housing and Community Development pursuant to Mass. Gen. Laws Ch.40R and applicable regulations.

SUB-DISTRICT – A specific and defined area of land within the DBSGOD that is subject to specific requirements for allowable uses or dimensional requirements that may differ from the requirements for allowable uses or dimensional requirements in other specific and defined areas within the DBSGOD.

UNDERLYING ZONING – The zoning requirements adopted pursuant to Mass. Gen. Laws Ch.40A that are otherwise applicable to the geographic area in which the DBSGOD 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.

27-93. Allowed and Prohibited Uses. The following uses shall be permitted in the DBSGOD As-of-right upon Site Plan Approval pursuant to the provisions of this article.

Allowed Use	Sub-Districts				
	Arts / Culture	Corcoran	Downtown Core	Ralsco	Star Market
Dwelling Units, Single-Family Detached.	P	P	-	P	-
Dwelling Units, Two-Family.	P	P	P	P	-
Dwelling Units, Three-Family.	P	P	P	P	-
Dwelling Units, Multi-Family.	P (1)	P	P	-	-
Mixed-Use Development Projects.	P	P	P	-	P (2)
Non-Residential Uses not located within a Mixed-Use Development Project provided that the development occurs within structures built prior to the year 1940 and pursuant to the requirements of this article.	P	P	P	-	-
Non-Residential Uses not located within a Mixed-Use Development Project.	-	-	-	-	P (2)

(1) Multi-family dwelling units are prohibited on lots within the Arts / Culture Sub-District that have frontage on Legion Parkway unless they are located within Mixed-Use Development Projects.
 (2) Mixed-Use or Non-Residential Development Projects in the Star Market Sub-District must be located entirely within 100 linear feet of the Pleasant Street roadway layout or the Warren Avenue roadway layout, excluding required parking, and may include Multi-Family Dwelling Units.

(1) In addition to the allowed uses in the Table of Allowed Uses, the following uses are permitted As-of-right for Development Projects within the DBSGOD subject to the requirements of this article.

- a. Parking accessory to any of the above permitted uses, including surface, garage-under, and structured parking provided, however, that structured parking is not permitted in the Ralsco or the Star Market Sub-Districts;
- b. Accessory uses customarily incidental to any of the above permitted uses.

(2) Prohibited Uses.

- a. Any use which emits strong odors, or dust particles, or smoke, or poses danger, such as manufacture of acids, gases, fertilizers, and glue, petroleum refining, reduction of animal matter, and manufacture of cement, gypsum, or explosives.
- b. Any other use dangerous to persons within or outside the District by reason of emission of odor, fumes, gases, particulate matter, smoke, noise, vibration, glare, radiation, electrical interference, threat of fire or explosion, or any other reason.
- c. Any use not listed as an Allowed Use is expressly prohibited.

27-94. Dimensional and other requirements.

(1) Table of Residential Density Allowances. The following residential densities shall be allowed on all lots and within all buildings within the designated Sub-Districts within the DBSGOD pursuant to the requirements of this article and applicable Design Standards:

Table of Residential Density Allowances.										
Use	Allowed Res. Density (Dwelling Units/acre)					Minimum Lot Area per Dwelling Unit (sq. ft.)				
	Arts / Culture Sub-District	Corcoran Sub-District	Downtown Core Sub-District	Ralsco Sub-District	Star Market Sub-District	Arts / Culture Sub-District	Corcoran Sub-District	Downtown Core Sub-District	Ralsco Sub-District	Star Market Sub-District
Dwelling Units, Single-Family Detached.	8	8	-	8	-	4,000	4,000	N/A	4,000	N/A
Dwelling Units, Two-Family.	12	12	12	12	-	2,500	2,500	2,500	2,500	N/A
Dwelling Units, Three-Family.	12	12	12	12	-	2,500	2,500	2,500	2,500	N/A
Dwelling Units, Multi-Family. (1)	-	45 (2)	80	-	-	N/A	N/A	N/A	N/A	N/A
Mixed-Use Development Project. (3)	40	45 (2)	80	-	20	N/A	N/A	N/A	N/A	N/A

(1) Buildings built prior to 1940 and existing on the date of adoption of this article may be converted to Multi-Family Residential Development Projects at a density equal to the maximum allowable density in this Table of Residential Density Allowances, or at a density equal to 80% of the gross square footage of the building as the building existed on the date of adoption of this article divided by 900 square feet, whichever is greater.

(2) Multi-family and Mixed-Use Development Projects within the Corcoran Sub-District may be constructed to a residential density of 60 Dwelling Units per acre provided said Development Projects are located on parcels that are both easterly of Montello Street and westerly of the railroad right-of-way, inclusive of Assessors Parcel numbers:
 Map 135 Route 069 Plot 303-2 Crescent St.
 Map 135 Route 070 Plot 303-3 Montello St.
 Map 135 Route 071 Plot 303-1 Montello St.
 Map 135 Route 072 Plot 303 Montello St.
 Map 135 Route 073 Plot 304-1 Montello St.
 Map 135 Route 074 Plot 305 Montello St.
 as may be subdivided or combined over time.

(3) Buildings built prior to 1940 and existing on the date of adoption of this article may be converted to Mixed-Use Development Projects at a density equal to the maximum allowable density in this Table of Residential Density Allowances, or at a density equal to 80% of the gross square footage of the portion of the building proposed for use as residential Dwelling Units, as the building existed on the date of adoption of this article divided by 900 square feet, whichever is greater.

(2) Building height and sub-districts. The height of new structures within the DBSGOD shall be governed by this article in addition to specific requirements for building form in applicable Design Standards adopted pursuant to §27-97. For any structure proposed for renovation or rehabilitation that was erected prior to the effective date of this article, the maximum allowable height shall be either the maximum allowable height permitted by this article, or the height of such structure as of the effective date of this article, whichever is taller. Accessory or appurtenant improvements necessary to the operation of a structure (for example, elevator or stairway enclosures and visual screening as may be appropriate) may exceed the maximum height limit defined herein by not more than fifteen (15) feet provided that they occupy in the aggregate less than ten (10) percent of the area of the roof on which they are located. To ensure an overall site design that complements the existing architectural scale and character within Downtown Brockton, the maximum height for allowable structures located within the DBSGOD shall vary among five distinct Sub-Districts shown on the Zoning Map as follows:

Table of Maximum Allowable Building Height.					
Use	Maximum Allowable Building Height				
	Arts / Culture Sub-District	Corcoran Sub-District	Downtown Core Sub-District	Ralsco Sub-District	Star Market Sub-District
Dwelling Units, Single-Family Detached.	35	35	N/A	35	N/A
Dwelling Units, Two-Family.	45	45	45	35	N/A
Dwelling Units, Three-Family.	45	45 (1)	45	35	N/A
Dwelling Units, Multi-Family.	45	45 (1)	85	N/A	N/A
Mixed-Use Development Project.	45	45	85	N/A	45
Non-Residential Development Project.	N/A	N/A	N/A	N/A	35
<p>(1) Multi-family and Mixed-Use Development Projects within the Corcoran sub-district may be constructed to a height of 65 feet provided said Development Projects are located on parcels that are both easterly of Montello Street and westerly of the railroad right-of-way, inclusive of Assessors Parcel numbers: Map 135 Route 069 Plot 303-2 Crescent St. Map 135 Route 070 Plot 303-3 Montello St. Map 135 Route 071 Plot 303-1 Montello St. Map 135 Route 072 Plot 303 Montello St. Map 135 Route 073 Plot 304-1 Montello St. Map 135 Route 074 Plot 305 Montello St. as may be subdivided or combined over time.</p>					

- (3) Setbacks, the front off new structures within the DBSGOD shall be set back a maximum of ten feet from property lines and from public rights-of-way. Parking for new construction is not permitted to be located within the required front yard setbacks. Where feasible, setbacks for new buildings should match the setbacks of existing buildings located adjacent to the new construction in order to reinforce the existing street line.
- (4) Number of buildings on a lot. In the DBSGOD, more than one 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. Applications for Site Plan Approval will also be governed by the Design Standards for the Downtown Brockton Smart Growth Overlay District, adopted pursuant to §27-97 of this article.
- (6) Contiguous lots. In the DBSGOD, where two or more lots are contiguous or are separated by a right-of-way, such lots may be considered as one lot for the purpose of calculating maximum lot coverage; parking requirements; minimum useable open space; and dwelling units per acre.
- (7) 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 percent (25%) of the housing units in any such Development Project shall be Affordable Units. All such Development Projects shall be governed by the requirements of this article and applicable Design Standards.

27-95. Mixed-Use Development. Development Projects may include a portion not to exceed 50% of the total gross floor area to be used for non-residential uses including Office, Retail, Restaurant or Institutional Uses. Non-residential uses may also be proposed as single-uses provided that the development occurs within the Star Market Sub-District, or within structures built prior to the year 1940 within the building envelope as it existed on the date of adoption of this article, but allowing for alterations ancillary to or required for said non-residential use such as driveways, parking lots, loading docks, patios for outdoor seating, roof deck, kitchen and associated ventilation.

27-96. Off-Street Parking.

- (1) Off-street parking shall be provided in order to meet or exceed the following minimum requirements:

Use	Minimum Required Parking
Retail and Restaurant	3 spaces per 1,000 square feet
Office and Institutional	4 spaces per 1,000 square feet
Dwelling Unit (1 bedroom)	1.0 spaces
Dwelling Unit (2 bedrooms)	1.5 spaces
Dwelling Unit (3 bedrooms)	2.0 spaces
Dwelling Unit (4 bedrooms)	2.5 spaces

- (2) Location of parking. Any surface parking lot shall, to the maximum extent feasible, be located at the side or rear of a building, relative to any public right-of-way, public open space, or pedestrian way. In no case shall surface parking for new construction be permitted within the required setbacks pursuant to §27-94.
- (3) The Approving Authority may grant a Site Plan Approval making such modifications in the standards or prescribe safeguards and conditions as it shall warrant appropriate, provided that it finds that it is impractical to meet the standards and that such modifications are appropriate by reason of the proposed use and will not result in or worsen parking or traffic problems in the DBSGOD. The Approving Authority may impose conditions of use or occupancy appropriate to such modifications.
- (4) Shared use of required parking. Shared use may be made of required parking spaces by intermittent use establishments such as churches, assembly halls, or theaters whose peak parking demand is only at night or on Sundays 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. Required spaces shall be within 600 feet of churches and public assembly halls and 600 feet of other uses.
- (5) 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 600 feet of the principal buildings served.
- (6) The Approving Authority may allow for additional visitor parking beyond the maximum required spaces per unit if deemed appropriate given the design, layout and density of the proposed Development Project.
- (7) 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).

27-97. Design Standards. 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 Downtown Brockton, the Planning Board shall adopt the Design Standards, approved by the Department of Housing and Community Development on July 23, 2007, as amended, relative to the issuance of Site Plan Approvals for Development Projects within the DBSGOD and shall file a copy with the City Clerk. In addition to the standards set forth in this article, Development Projects within the DBSGOD shall comply with such Design Standards.

27-98. 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 DBSGOD 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.

27-99. Affordable Housing.

(1) Number of affordable units - Twenty percent (20%) of all dwelling units constructed in a Development Project shall be Affordable Units. Twenty-five percent (25%) of all rental dwelling units in a Development Project shall be Affordable 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 percent (25%) 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) 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 percent (30%) 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, except in the event of an Eligible Household with a Section 8 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 percent (30%) 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.
- 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 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.

(4) 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 § 27-99. 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 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 of Brockton, in a form approved by municipal counsel, and shall limit initial sale and re-sale 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 § 27-99 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 of Brockton, 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.
- (5) 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.

27-100. Administration. The Approving Authority for Site Plan Approvals in the DBSGOD shall adopt and file with the City Clerk administrative rules relative to the application requirements and contents for Site Plan Review. Such administrative rules and any amendment thereto must be approved by the Department of Housing and Community Development. The Site Plan Review process encompasses the following:

- (1) 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.
- (2) Application procedures.
 - a. The Applicant shall file the required number of copies of the application with the Approving Authority and provide notice of said filing to the City Clerk. As part of any application for Site Plan Approval for a Development Project within the DBSGOD, the Applicant must submit the following documents to the Approving Authority and the Administering Agency:
 - (1) Evidence that the Development Project complies with the cost and eligibility requirements of § 27-99(3);
 - (2) Development Project plans that demonstrate compliance with the requirements § 27-99(4); and
 - (3) A form of Affordable Housing Restriction that satisfies the requirements of § 27-99(6).
 - 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 of Brockton 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 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. Upon receipt by the Approving Authority, applications for permits 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.
 - d. Within thirty (30) days of filing of an application with the Approving Authority, the Approving Authority or its designee 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. 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.
- (3) Public hearing. The Approving Authority shall hold a public hearing and review all applications according to the procedure specified in Mass. Gen. Laws Ch.40A § 11.
- (4) Site Plan Approval decision.

- a. The Approving Authority shall make a decision on the Site Plan application, and shall file said decision with the City Clerk, within 120 days of the date that the application was received by the City Clerk. 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 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 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 Mass. Gen. Laws Ch.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 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.
- (5) 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.
- (6) 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 Mass. Gen. Laws Ch.40R and applicable regulations and do not Unduly

Restrict opportunities for development. The Approving Authority may require construction of an approved Development Project to be phased for the purpose of coordinating the Development Project with any mitigation required to address any extraordinary adverse Development Project impacts on nearby properties.

- (7) **Criteria for denial.** The Approving Authority may deny an application for Site Plan Approval pursuant to this article 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.
- (8) **Time limit.** A Site Plan Approval shall remain valid and shall run with the land indefinitely provided that construction has commenced within two (2) 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 multi-phase Development Project.
- (9) **Appeals.** Pursuant to Mass. Gen. Laws Ch.40R, § 11, any person aggrieved by a decision of the Approving Authority may appeal to the Superior Court, the Land Court, the Southeast Housing Court or the District Court within twenty (20) days after the Site Plan decision has been filed in the office of the City Clerk.

27-101. Waivers. 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, 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 § 27-99 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.

27-102. Fair Housing Requirement. All Development Projects within the DBSGOD shall comply with applicable federal, state and local fair housing laws.

27-103. 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 Mass. Gen. Laws Ch.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.

27-104. Notification of issuance of building permits. Upon issuance of a residential building permit within the DBSGOD, the Building Inspector of the City of Brockton 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 Mass. Gen. Laws Ch.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 Mass. Gen. Laws Ch.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.

27-105. 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 Mass. Gen. Laws Ch.40A § 5 and Mass. Gen. Laws Ch.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.

27-106. 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.

And that the Zoning Ordinance of the City of Brockton is hereby further amended by adding the following text to Sec. 27-4. Designation of Zones.

“DBSGOD Downtown Brockton Smart Growth Overlay District and Sub-Districts”