

SECTION 3.6. SMART GROWTH OVERLAY DISTRICTS

A. Purpose

The purposes of this Section are:

1. To allow for the establishment of Smart Growth Overlay Districts to promote the redevelopment of certain areas and properties in a form that meets the objectives of “smart growth” in accordance with and within the purposes of Mass. Gen. Laws Ch. 40R;
2. To provide for a more diversified housing stock within the Town of Wellesley, including affordable housing and housing types that meet the needs of the Town’s population, all as currently identified in the Wellesley Housing Production Plan;
3. To promote advanced site planning, sustainable design, improved transportation management, and environmental enhancements in the development of projects; and
4. To the extent not in conflict with the purposes of Mass. Gen. Laws Ch. 40S and the provisions for As-of-Right development under the Governing Laws, 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. Definitions

As used in this Section and in sections associated with any district created under this Section, the following terms shall have the meanings set forth below. Additional terms and definitions contained in Section 1.3 that are applicable to the administration of this Section and any sections associated with any district created under this Section shall have the meanings ascribed to them by the definitions established as of the date of adoption of this Section, unless amendments to these definitions are subsequently approved by the Executive Office of Housing and Livable Communities. To the extent that there is any conflict between the definitions set forth below or in Section 1.3 and the Governing Laws, the terms of the Governing Laws shall govern.

Administering Agency - The Affordable Housing Trust or its designee, subject to the approval of the Department, which shall have the power to monitor and to enforce compliance with the provisions of this Bylaw related to Assisted Units, including but not limited to computation of rental and sales prices; income eligibility of households applying for Assisted Units; administration of an approved housing marketing and resident selection plan; and recording and enforcement of an Affordable Housing Restriction for each Assisted Unit in the District.

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

Affordable Housing Restriction - A deed restriction of Affordable Housing meeting statutory requirements in Mass. Gen. Laws Ch. 184 Section 31 and the requirements of subsection K., Housing and Housing Affordability, of this Section.

Affordable Rental Unit - An Affordable Housing Dwelling Unit required to be rented to an Eligible Household in accordance with the requirements of Section 3.6.K.

Affordable Homeownership Unit - An Affordable Housing Dwelling Unit required to be sold to an Eligible Household in accordance with the requirements of Section 3.6.K.

Applicant - A landowner or other petitioner who files a site plan for a Development Project subject to the provisions of this Section.

Application - A petition for Site Plan Approval filed with the Approving Authority by an Applicant and inclusive of all required documentation as specified in administrative rules adopted pursuant to Section 3.6.E.

Approving Authority - The Zoning Board of Appeals of the Town of Wellesley acting as the authority designated to review projects and issue approvals under this Section.

As-of-Right Development - To the extent consistent with and subject to the same meaning as the term As-of-Right in the Governing Laws, a Development Project allowable under this Section without recourse to a special permit, variance, zoning amendment, or other form of zoning relief. A Development Project that is subject only to this Section, including the Site Plan Review requirements, shall be considered an As-of-Right Development.

Assisted Units - shall have the same meaning as defined in Section 2.13 to the extent that such definition means housing that is affordable to and occupied by Eligible Households and that such definition is not materially inconsistent with, and is nonetheless subject to, the definitions of Affordable Housing in the 40R Guidelines and Affordable under the Governing Laws.

Conservation Use - Any woodland, grassland, wetland, agricultural, or horticultural use of land, and/or any use of land for the construction and use of ponds or stormwater management facilities.

Department - The Executive Office of Housing and Livable Communities (“EOHLC”), or any successor agency.

Design Guidelines - To the extent approved by EOHLC and consistent with and subject to the same meaning as the term Design Standards in the Governing Laws, the document entitled Design Guidelines Handbook, as approved by EOHLC pursuant to Mass. Gen. Laws Ch. 40R, Section 10. The Design Guidelines are applicable to all Development Projects within the District that are subject to Site Plan Review by the Approving Authority.

Development Lot - One or more tracts of land defined by metes, bounds or lot lines in a deed or conveyance on a duly recorded plan which are designated as a Development Lot on a site plan for a development proposed within the District and for which Site Plan Approval is required under the provisions of this Section. Where a Development Lot consists of more than a single lot, such lots (i) in combination, shall be treated as the

Development Lot, (ii) may be contiguous or non-contiguous, (iii) need not be in the same ownership, and (iv) shall be considered as one lot for all calculation purposes, including parking requirements and Dwelling Units per acre. Any development undertaken on a Development Lot is subject to the Design Guidelines established under Section 3.6.I. The owner of any such Development Lot shall be entitled to lawfully divide such lot without modifying the approved Site Plan and without the need for other approvals.

Development Project - To the extent consistent with and subject to the same meaning as the term Project as defined in the Governing Laws, a development comprising any permitted uses provided for hereunder undertaken under this Section. A Development Project shall be identified on a Site Plan which is submitted to the Approving Authority for Site Plan Review.

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 Executive Office of Housing and Livable Communities pursuant to Mass. Gen. Laws Ch. 40R and 760 CMR 59.00.

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.

Governing Laws - Mass. Gen. Laws Ch. 40R, 760 CMR 59.00, and EOHLC administrative guidance relating to Mass. Gen. Laws Ch. 40R.

Gross Floor Area - The floor area of space on all floors inclusive of heated basements, hallways, measured from the exterior faces of exterior walls. Gross Floor Area does not include covered walkways, open roofed-over areas, porches, balconies, exterior terraces or steps, chimneys, roof overhangs, parking garages and unheated basements.

Gross Leasable Floor Area - The Gross Floor Area of a building exclusive of hallways, mechanical rooms, storage space and other miscellaneous space not exclusively occupied by a single tenant or occupant.

Multi-Family Dwelling - A residential building containing four or more Dwelling Units.

Office or Office Use - 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.

Office High-Tech or Office High-Tech Use - A place for the regular performance of research and development, high tech, biotechnology, life sciences and/or other related uses, provided that such use does not involve disturbing or offensive noise, vibration, smoke, gas, fumes, odors, dust or other objectionable or hazardous features.

Principal Use - The main or primary purpose for which a structure, building, or Development Lot is designed, arranged, licensed, or intended, or for which it may be

used, occupied, or maintained under this Section. More than one Principal Use is permitted as-of-right on a Development Lot or within a Development Project.

Recreational Accessory Use - A use subordinate to a Principal Residential Use on the same Development Lot or in the same structure and serving a purpose customarily incidental to the Principal Residential Use, and which does not, in effect, constitute conversion of the Principal Use of the Development Lot, site or structure to a use not otherwise permitted in the District. Recreational Accessory Uses may include, but are not limited to greenhouse, tool shed, clubhouse, swimming pool, tennis court, basketball court, and playground.

Recreational Use - The principal use or intended principal use of land or structures for relaxation, entertainment, amusement, sports, or the like, whether on a fee or non-fee basis, including fitness clubs, play areas and dog parks.

Restaurant - Any business establishment principally engaged in serving food, drink, or refreshments, whether prepared on or off the premises.

Small-Scale Retail Establishment - A business establishment, not exceeding 5,000 sq. ft. of Gross Leasable Floor Area, 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 small-scale retail use.

Site Plan - A plan depicting a proposed Development Project for all or a portion of the District and which is submitted to the Approving Authority for its review and approval in accordance with the provisions of Section 3.6.E of this Bylaw.

Site Plan Approval - To the extent consistent with and subject to the same meaning as the term Plan Approval under the Governing Laws, the Approving Authority's authorization for a proposed Development Project based on a finding of compliance with this Section of the Bylaw and Design Guidelines after the conduct of a Site Plan Review.

Site Plan Review - To the extent consistent with and subject to the same meaning as the term Plan Review as defined in the Governing Laws, the review procedure established by this Section and administered by the Approving Authority. While similar to Site Plan Review as established in Section 5.6, Site Plan Review as used and referenced in this Section is a separate and distinct process not subject to the provisions of Section 5.6.

Underlying Zoning - The zoning requirements adopted pursuant to Mass. Gen. Laws Ch. 40A that are otherwise applicable to the geographic area in which the District is located, as said requirements may be amended from time to time.

Unrestricted Unit - A Dwelling Unit that is not restricted as to rent, price or eligibility of occupants.

C. Establishment and Delineation of Districts

1. Generally

The specific districts established under this Section shall serve as overlay districts, to be superimposed over the underlying zoning districts. The boundaries of the districts are delineated on the Zoning Map of the Town of Wellesley, pursuant to Section 1.2.

2. Specific Districts

The following are the specific districts established under this Section:

- a. Wellesley Park Smart Growth Overlay District; as contained in Section 3.6.1.

D. Authority and Applicability

The districts established under this Section are done so pursuant to the authority of Mass. Gen. Laws Ch. 40R and 760 CMR 59.00. At the option of the Applicant, development of land within the districts established pursuant to this Section may be undertaken subject to the zoning controls set forth in this Section, or by complying with all applicable Underlying Zoning controls set forth in the Zoning Bylaw of the Town of Wellesley. Notwithstanding anything to the contrary in the Zoning Bylaw, Development Projects proceeding under this Section shall be governed solely by the provisions of this Section and the standards and/or procedures of the Underlying Zoning shall not apply. Except as otherwise specifically provided for in this Section, Development Projects proposed pursuant to this Section shall not be subject to any other provisions of the Zoning Bylaw, including limitations upon the issuance of building permits for residential uses related to a rate of development or phased growth limitation or to a local moratorium on the issuance of such permits, or to other building permit or Dwelling Unit limitations. Where other provisions of the Zoning Bylaw are specifically referenced as applying to Development Projects, generally under this Section or within the districts established under this Section, such provisions shall be administered as established as of the date of adoption of this Section, unless amendments are subsequently approved the Executive Office of Housing and Livable Communities.

E. Site Plan Review

Development Projects within districts established pursuant to this Section shall be subject to the Site Plan Review process encompassing the following. Development Projects within such districts shall not be subject to the separate and distinct Site Plan Review process established under Section 5.6.

1. Pre-Application Review

The Applicant is encouraged to participate in a pre-Application review at a regular meeting of the Approving Authority. The purpose of the pre-Application review is to minimize the Applicant's cost of engineering and other technical experts, and to obtain the advice and direction of the Approving Authority prior to filing the Application. Should the Applicant choose to participate in the pre-Application review, the Applicant shall outline the proposal and seek preliminary feedback from the Approving Authority, other municipal review entities, and members of the public.

The Applicant is also encouraged to request a site visit by the Approving Authority and/or its designee in order to facilitate pre-Application review.

2. Application Procedures

- a. The Applicant shall file an original of the Application with the Town Clerk for certification of the date and time of filing. Said filing shall include any required forms established by the Approving Authority, provided such forms have been approved by EOHLC and are on file with the Town Clerk. A copy of the Application, including the date and time of filing certified by the Town Clerk, as well as the required number of copies of the Application, shall be filed forthwith by the Applicant with the Approving Authority and Building Inspector. As part of any Application for Site Plan Approval for a Development Project, the Applicant must submit the following documents to the Approving Authority and the Administering Agency:
 - i. Evidence that the Development Project complies with the cost and eligibility requirements of Section 3.6.K.;
 - ii. Development Project plans and reports that, subject to approval by EOHLC, demonstrate compliance with the design and construction standards of Section 3.6.K.; and
 - iii. A form of Affordable Housing Restriction that satisfies the requirements of Section 3.6.K.
 - iv. These documents in combination, to be submitted with an Application for Site Plan Approval shall include details about construction related to the provision, within the development, of units that are accessible to the disabled and appropriate for diverse populations, including households with children, other households, individuals, households including individuals with disabilities, and the elderly.
- b. Upon receipt by the Approving Authority, Applications shall be distributed to the Planning Board, Building Inspector, Fire Chief, Police Chief, Health Department, Wetlands Protection Committee, Design Review Board, the Select Board, and the Department of Public Works. Any reports from these parties shall be submitted to the Approving Authority within thirty (30) days of filing of the Application; and
- c. 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 advise the Applicant whether the Application is complete or whether additional materials are required. If the Application is deemed incomplete, the Approving Authority or its designee will identify with specificity what additional materials are required. The Approving Authority or its designee shall forward to the Applicant, with its report, copies of all recommendations received to date from other boards, commissions 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. 40R Section 11 and 760 CMR 59.04(1)(f).

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 Town Clerk, within one hundred twenty (120) days of the date the Application was received by the Town 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 Town Clerk;
- b. Failure of the Approving Authority to take action within one hundred twenty (120) days or extended time, if applicable, shall be deemed to be an approval of the Application;
- c. 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 Application for Site Plan Approval. 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 Town Clerk and that all plans referred to in the decision are on file with the Approving Authority;
- d. The decision of the Approving Authority, together with the detailed reasons therefor, shall be filed with the Town Clerk, the Planning Board, and the Building Inspector. A certified copy of the decision shall be mailed to the owner and to the Applicant, if other than the owner. A notice of the decision shall be sent to the parties in interest and to persons who requested a notice at the public hearing; and
- e. If twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk without an appeal having been filed or if such appeal, having been filed, is dismissed or denied, the Town 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 Town Clerk shall make such certification on a copy of the notice of Application. A copy of the decision or notice of Application shall be recorded with the title of the land in question in the Norfolk County Registry of Deeds, 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;
- b. The proposed Development Project as described in the Application meets all of the requirements and standards set forth in this Section and applicable Design Guidelines, or a waiver has been granted therefrom; and
- c. Any extraordinary adverse potential impacts of the Development Project on nearby properties can be adequately mitigated.

For a Development Project subject to the Affordability requirements of Section 3.6.K., compliance with condition (b) above shall include written confirmation by the Approving Authority that all requirements of that Section have been satisfied, subject to approval by EOHLC. Prior to the granting of Site Plan Approval for a Project, the Applicant must demonstrate, to the satisfaction of the Administering Agency, that the method by which such affordable rents or affordable purchase prices are computed shall be consistent with state or federal guidelines for affordability applicable to the Town of Wellesley.

6. Criteria for Conditional Approval

The Approving Authority may impose conditions on a Development Project as necessary to ensure compliance with the District requirements of this Section and applicable Design Guidelines, 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 (i.e. by adding unreasonable costs or by unreasonably impairing the economic feasibility of a proposed Development Project) opportunities for residential development.

7. Criteria for Denial

The Approving Authority may deny an Application for Site Plan Approval pursuant to this Section of the Bylaw only if the Approving Authority finds one or more of the following:

- a. The Development Project does not meet the requirements and standards set forth in this Section and applicable Design Guidelines; or
- b. The Applicant failed to submit information and fees required by this Section and necessary for an adequate and timely review of the design of the Development Project or potential Development Project impacts; or
- c. The Development Project would result in extraordinary adverse impacts on nearby properties that cannot be mitigated by means of suitable conditions.

8. Time Limit

A project 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 Section 11, any person aggrieved by a decision of the Approving Authority may appeal to the Superior Court, the Land Court, or other court of competent jurisdiction within twenty (20) days after the Site Plan decision has been filed in the office of the Town Clerk.

10. Rules and Regulations

The Approving Authority shall adopt administrative rules relative to the Application requirements and contents for Site Plan Review; such rules shall be filed with the Town Clerk. Such administrative rules, and any amendment thereto, must be approved by the Executive Office of Housing and Livable Communities.

F. Waivers

The Approving Authority may waive the bulk and dimensional, parking, and other provisions required by any district created pursuant to this Section and may waive specific requirements or recommendations of applicable Design Guidelines upon a finding that such waiver will allow the Development Project to achieve the density, affordability, mix of uses, and/or physical character allowable under this Section or the specific district.

G. Project Phasing

The Approving Authority, as a condition of any Site Plan Approval, may allow a Development Project to be constructed in one or more phases.

H. Change in Plans After Approval by the Approving Authority

1. Minor Change

After Site Plan Approval, an Applicant may apply to make minor changes in a Development Project involving minor utility or building orientation adjustments, or minor adjustments to parking or other site details that do not affect the overall build out or building envelope (i.e., general massing, height and bulk) of the site, or provision of open space, number of housing units, or housing need or affordability features. A change of one percent (1%) or less in the number of housing units in a Development Project shall constitute a minor change. Such minor changes must be

submitted to the Approving Authority on redlined prints of the approved plan, reflecting the proposed change, and on application forms provided by the Approving Authority. The Approving Authority may authorize such changes at any regularly scheduled meeting, without the need to hold a public hearing. The Approving Authority shall set forth any decision to approve or deny such minor change by motion and written decision, and provide a copy to the Applicant for filing with the Town Clerk.

2. Major Change

Those changes deemed by the Approving Authority to constitute a major change in a Development 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 Approving Authority as a new Application for Site Plan Approval pursuant to this Section.

I. Design Guidelines

To ensure that new development shall be of high quality, and shall meet the standards envisioned by the Town of Wellesley in adopting this Section and any districts established under this Section, the Approving Authority shall adopt the Design Guidelines governing the issuance of Site Plan Approvals for Development Projects within the districts established under this Section and shall file a copy with the Town Clerk. Such Design Guidelines and any subsequent amendments to such Design Guidelines must be approved by EOHLC and must be within the scope of Design Standards under the Governing Laws. In addition to the standards set forth in this Bylaw, the physical character of Development Projects within the districts shall comply with such Design Guidelines, unless waived hereunder. In the event of any conflict between this Bylaw and the Design Guidelines, this Bylaw shall govern and prevail.

J. Fair Housing Requirement

All Development Projects within the districts established herein shall comply with applicable federal, state and local fair housing laws.

K. Housing and Housing Affordability

1. Number of Assisted Units

Twenty-five percent (25%) of all Dwelling Units constructed in a Development Project shall be maintained as Assisted Units. When the application of this percentage results in a fractional number of required Dwelling Units, the fractional number shall be rounded up to the next whole number.

2. General Requirements

Assisted 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, unless other affordable program rent limits approved by EOHLC 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; and
 - c. Assisted Units required to be offered for rent or sale shall be rented or sold to and occupied only by Eligible Households.
3. Design and Construction
- a. Design. In compliance with a corresponding marketing plan and Affordable Housing Restriction approved by EOHLC, Assisted Units must be equitably integrated and dispersed throughout any phase of a Development Project containing Dwelling Units such that the Assisted Units are, as practicable, spread proportionately across the overall unit mix and 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 Assisted Units must have access to all on-site amenities available to Unrestricted Units. Assisted Units shall be finished housing units; and
 - b. Timing. All Assisted Units must be constructed and occupied not later than concurrently with construction and occupancy of Unrestricted Units and, for Development Projects that are constructed in phases, Assisted Units must be constructed and occupied during the initial lease-up period, insofar as is practicable, in proportion to the number of Dwelling Units in each residential phase of the Development Project.

4. Unit Mix

The total number of bedrooms in the Assisted Units shall, insofar as practicable and as approved by EOHLC, be in the same proportion to the total number of bedrooms in the Unrestricted Units.

5. Affordable Housing Restriction

All Assisted Units shall be subject to an Affordable Housing Restriction which has been approved by EOHLC and is recorded with the Norfolk County Registry of Deeds or the Land Court. The Affordable Housing Restriction shall provide for the implementation of the requirements of this Section. All Affordable Housing Restrictions must include, at minimum, the following:

- a. Description of the Development Project, including whether the Assisted Unit will be rented or owner-occupied;
- b. 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 Development Project containing Dwelling Units or portion of a Development Project containing Dwelling Units 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 Development Project containing Dwelling Units or the rental portion of a Development Project containing Dwelling Units with the initially designated Affordable Rental Units identified in, and able to float subject to specific approval by EOHLC in accordance with, the corresponding Affirmative Fair Housing Marketing Plan (“AFHMP”) and EOHLC’s AFHMP guidelines.
- c. The term of the Affordable Housing Restriction shall be stated in the Site Plan Approval and shall be the longest period customarily allowed by law but shall be no less than thirty (30) years.
- d. The name and address of an Administering Agency with a designation of its power to monitor and enforce the Affordable Housing Restriction;
- e. Reference to a housing marketing and resident selection plan, to which the Assisted 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 shall provide for local preferences in resident selection to the maximum extent permitted under applicable law and approved by EOHLC. 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;
- f. 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;
- g. Reference to the formula pursuant to which maximum rent of a rental unit or the maximum resale price of a homeownership unit will be set;
- h. A requirement that only an Eligible Household may reside in an Assisted Unit and that notice of any lease or sublease of any Assisted Unit to another Eligible Household shall be given to the Administering Agency;
- i. Provision for effective monitoring and enforcement of the terms and provisions of the Affordable Housing Restriction by the Administering Agency;
- j. Provision that the restriction on an Affordable Homeownership Unit shall run in favor of the Administering Agency and the Town of Wellesley, in a form

approved by town counsel, and shall limit initial sale and re-sale to and occupancy by an Eligible Household;

- k. Provision that the restriction on Affordable Rental Units in a rental Project or rental portion of a Development Project containing Dwelling Units shall run with the rental Development Project containing Dwelling Units or rental portion of a Development Project containing Dwelling Units and shall run in favor of the Administering Agency and/or the municipality, in a form approved by municipal counsel, and shall limit rental and occupancy to an Eligible Household;
- l. 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 Bylaw and containing such other information as may be reasonably requested in order to ensure affordability;
- m. A requirement that residents in Assisted Units provide such information as the Administering Agency may reasonably request in order to ensure affordability; and
- n. Designation of the priority of the Affordable Housing Restriction over other mortgages and restrictions.

6. Administration

- a. Administering Agency. The Administering Agency shall ensure the following:
 - i. Prices of Affordable Homeownership Units are properly computed; rental amounts of Affordable Rental Units are properly computed;
 - ii. Income eligibility of households applying for Assisted Units is properly and reliably determined;
 - iii. The housing marketing and resident selection plan conforms to all requirements, has been approved by EOHLIC, and is properly administered;
 - iv. Sales and rentals are made to Eligible Households chosen in accordance with the housing marketing and resident selection plan with appropriate unit size for each household being properly determined and proper preference being given; and
 - v. Affordable Housing Restrictions meeting the requirements of this section are recorded with the Norfolk County Registry of Deeds or the Land Court.
- b. Housing Marketing and Selection Plan. The housing marketing and selection plan may make provision for payment by the Applicant 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.

- c. Age-Restrictions. Nothing in this Section 3.6 shall permit the imposition of restrictions on age upon Development Projects unless proposed or agreed to voluntarily by the Applicant. However, the Approving Authority may, in its review of a submission under Section 3.6.E allow a specific Development Project within the District designated exclusively for the elderly, persons with disabilities, or for assisted living, provided that any such Development Project shall be in compliance with all applicable federal, state and local fair housing laws and regulations
- d. Failure of the Administering Agency. In the case where the Administering Agency cannot adequately carry out its administrative duties, upon certification of this fact by the Select Board or by the Executive Office of Housing and Livable Communities, the administrative duties shall devolve to and thereafter be administered by a qualified housing entity designated by the Select Board or, in the absence of such designation, by an entity designated by the Executive Office of Housing and Livable Communities.

7. No Waiver

Notwithstanding anything to the contrary herein, without the express written approval of EOHLC, no provisions of Section 3.6.K. shall be waived without the express written approval of EOHLC.

L. Annual Update

On or before July 31 of each year, the Select Board shall cause to be filed an Annual Update with the EOHLC in a form to be prescribed by EOHLC. 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 Town Clerk of the Town of Wellesley shall maintain a copy of all updates transmitted to EOHLC pursuant to this Bylaw, with said copies to be made available upon request for public review.

M. Notification of Issuance of Building Permits

Upon issuance of a residential building permit within the districts established herein, the Building Inspector of the Town of Wellesley shall cause to be filed an application to the EOHLC, in a form to be prescribed by EOHLC, for authorization of payment of a one-time density bonus payment for each Bonus Unit to receive a building permit 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 Town Clerk of the Town of Wellesley shall maintain a copy of all such applications transmitted to EOHLC pursuant to this Bylaw, with said copies to be made available upon request for public review.

N. Date of Effect

The effective date of this Bylaw shall be the date on which such adoption is voted upon by Town Meeting pursuant to the requirements of Mass. Gen. Laws Ch. 40A Section 5 and Mass. Gen. Laws Ch. 40R; provided, however, that an Applicant may not proceed with construction pursuant to this Bylaw prior to the receipt of final approval of this Bylaw and accompanying Zoning Map by both the EOHLC and the Office of the Massachusetts Attorney General.

O. Severability

If any provision of this Section and/or any provision associated with a specific district created under this Section is found to be invalid by a court of competent jurisdiction, the remaining provisions shall not be affected but shall remain in full force, and such invalidity shall not affect the validity of the remainder of the Zoning Bylaws of the Town of Wellesley.

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