

GUIDELINES

Updated December 2014

G.L. C.40B COMPREHENSIVE PERMIT PROJECTS

SUBSIDIZED HOUSING INVENTORY

Regulatory Authority: see 760 CMR 56.00



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I. INTRODUCTION

A. Definitions

As used in these Guidelines for G.L. c.40B Comprehensive Permit Projects and the Subsidized Housing Inventory, the following terms have the meaning set forth below unless otherwise stated. In the event of a conflict between the meaning given to any term in these Guidelines and the meaning given to the same term in the Act or the Regulations thereunder, the meaning given in the Act or the Regulations shall control.

Act – means M.G.L. c.40B, §§ 20 through 23.

Amount – means, as used in the definition of Reasonable Return at 760 CMR 56.02(c) and (d) with respect to profit to the Developer or payment of development fees from the initial construction of the Project, the greater of (i) such profit or fees expressed as a dollar amount; (ii) such profit or fees expressed as a percentage of total development costs, or (iii) with respect to the payment of development fees from the initial construction of the Project only, the maximum total developer fee payable to the Developer pursuant to a formula established by the Subsidizing Agency under its regulations or guidelines for the Project Subsidy, expressed either as a dollar amount or a percentage of total development costs.

Applicable 10-Year U.S. Treasury Rate – means the interest rate for 10-year notes as published by the U.S. Treasury on the later of the date of (a) the Project Eligibility Application, (b) if applicable, a revised pro forma is submitted to the Board, or (c) if applicable, on appeal to the Housing Appeals Committee, the date of the Pre-Hearing Order.

Applicant – means a public agency, a non-profit organization, or a Limited Dividend Organization that proposes a Project for which it has submitted or intends to submit an application for a Comprehensive Permit to a Board.

Area Median Income (AMI) – means area median household income as defined by HUD pursuant to section 3 of the 42 U.S.C. 1437 (the Housing Act of 1937), as amended, adjusted for household size.

Assisted Living Facility (ALF) – means housing certified by the Executive Office of Elderly Affairs as an assisted living residence.

Board – means a local Board of Appeals established by M.G.L. c. 40A, § 12, and acting in its capacity to issue a Comprehensive Permit under the powers granted by M.G.L. c.40B, §§ 20 through 23.

Chief Executive Officer – means the mayor in a city and the board of selectmen in a town, unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.

Committee – means the Housing Appeals Committee, also referred to as “HAC.”

Comprehensive Permit – means a permit for the development of Low or Moderate Income Housing issued by a Board or the Committee pursuant to the M.G.L. c. 40B §§ 20 through 23 and 760 CMR 56.00.

Consistent with Local Needs – means either that (a) one or more of the grounds set forth in 760 CMR 56.03(1) have been met, or (b) Local Requirements and Regulations imposed on a Project are reasonable in view of the regional need for Low and Moderate Income Housing, considered with the number of Low Income Persons in the affected municipality and with Local Concerns, and if such Local Requirements and Regulations are applied as equally as possible to both subsidized and unsubsidized housing.

Department or DHCD – means the Massachusetts Department of Housing and Community Development and its successors, as established and currently existing pursuant to M.G.L. ch. 23B and c. 6A.

Developer – means the Applicant or any successor that owns or controls a Project.

Group Home – A residence licensed by or operated by the Department of Mental Health or the Department of Mental Retardation for adult individuals who are capable, both mentally and physically, to take action to preserve one's own life as defined by the Massachusetts State Building Code, and that, pursuant to the Massachusetts State Building Code, is treated as a single-family residential building for building code purposes.

Housing Need – means the regional need for Low and Moderate Income Housing considered with the number of Low Income Persons in the municipality affected.

Housing Production Plan (HPP) – means an affordable housing plan adopted by a municipality and approved by the Department, defining certain annual increases in its number of SHI Eligible Housing units as described in 760 CMR §56.03(4).

HUD – means the U.S. Department of Housing and Urban Development.

Income Eligible Household – means a household of one or more persons whose maximum income does not exceed 80% of AMI, or as otherwise established by these Guidelines.

Limited Dividend Organization – means any entity which proposes to sponsor a Project under M.G.L. c.40B, §§ 20 through 23; and is not a public agency or a nonprofit; and is eligible to receive a Subsidy from a Subsidizing Agency after a Comprehensive Permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of the Subsidizing Agency relative to a reasonable return for building and operating the Project.

Local Board – means any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council or board of selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed Local Boards if they perform functions usually performed by locally created boards.

Local Concern – means the need to protect the health or safety of the occupants of a proposed Project or of the residents of the municipality, to protect the natural environment, to promote better site and building design in relation to the surroundings and municipal and regional planning, or to preserve Open Spaces. See 760 CMR 56.07(3)(c – g).

Local Initiative Project – means a Project for which the project eligibility application is submitted by the Chief Executive Officer of the municipality under 760 CMR 56.04(2), in accordance with these Guidelines (“LIP”).

Local Requirements and Regulations – mean all local legislative, regulatory, or other actions which are more restrictive than state requirements, if any, including local zoning and wetlands ordinances or by-laws, subdivision and board of health rules, and other local ordinances, by-laws, codes, and regulations, in each case which are in effect on the date of the Project’s application to the Board.

Low Income Persons – means all persons who, according to the latest available United States Census, reside in households whose net income does not exceed the maximum income limits for admission to public housing, as established by the Department. The Department’s calculation shall be presumed conclusive on the Committee unless a party introduces authoritative data to the contrary. Data shall be authoritative only if it is based upon a statistically valid, random sample or survey of household income conducted in the relevant area since the latest available U.S. Census.

Low or Moderate Income Housing – means any units of housing for which a Subsidizing Agency provides a Subsidy under any program to assist the construction or substantial rehabilitation of low or moderate income housing, as defined in the applicable federal or state statute or regulation, whether built or operated by any public agency or non-profit or Limited Dividend Organization. If the applicable statute or regulation of the Subsidizing Agency does not define low or moderate income housing, then it shall be defined as units of housing whose occupancy is restricted to an Income Eligible Household.

Minimum Return on Total Cost – means a Return on Total Cost that is less than the sum of the ROTC Threshold Increment and the Applicable Ten-Year U.S. Treasury Rate, which shall be the minimum return necessary to realize a reasonable return from the operation of a Project for purposes of determining whether a condition imposed by a Zoning Board in its approval of a Comprehensive Permit results in a Project being Uneconomic.

Net Operating Income(NOI) -- means rental income less operating expenses and replacement reserves assuming a vacancy rate determined by the Subsidizing Agency; all rents, vacancy rate, operating expense and replacement reserve estimates shall be based upon the date used to determine the Applicable 10-year U.S. Treasury Rate.

Open Spaces – means land areas, including parks, parkland, and other areas which contain no major structures and are reserved for outdoor recreational, conservation, scenic, or other similar use by the general public through public acquisition, easements, long-term lease, trusteeship, or other title restrictions which run with the land.

Owner – means the Developer or any successor that owns or controls a Project.

Party – means party as defined in M.G.L. c. 30A, § 1.

Project – means a development involving the construction or substantial rehabilitation of units of Low or Moderate Income Housing that is the subject of an application to a Board for a Comprehensive Permit or for an appeal before the Committee, or meets the requirements of the LIP program as established by these Guidelines.

Project Eligibility – means a determination by a Subsidizing Agency that a Project satisfies the jurisdictional requirements of 760 CMR 56.04(1).

Public Housing – means housing owned, operated, or managed by a local housing authority, or leased under the auspices of a local housing authority pursuant to c.121B.

Regulations – the regulations promulgated pursuant to the Act set forth at 760 CMR 56.00.

Related Party – means, for the purposes of these Guidelines,

1. any person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the Developer, as well as any spouse of such person or “significant other” cohabiting with such person, and any parent, grandparent, sibling, child or grandchild (natural, step, half or in-law) of such person;
2. any person that is an officer of, member in, or trustee of, or serves in a similar capacity with respect to the Developer or of which the Developer is an officer, member, or trustee, or with respect to which the Developer serves in a similar capacity, as well as any spouse of such person or “significant other” cohabiting with such person, and any parent, grandparent, sibling, child or grandchild (natural, step, half or in-law) of such person;
3. any person that, directly or indirectly, is the beneficial owner of, or controls, 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in, the Developer, or of which the Developer is directly or indirectly the owner of 10% or more of any class of equity securities, or in which the Developer has a substantial beneficial interest (10% or more) , as well as any spouse of such person or “significant other” cohabiting with such person, and any parent, grandparent, sibling, child or grandchild (natural, step, half or in-law) of such person;
4. any employee of the Developer; and
5. any spouse, parent, grandparent, sibling, child or grandchild (natural, step, half or in-law) of an employee of the Developer or “significant other” cohabiting with an employee of the Developer. The Subsidizing Agency reserves the right to determine whether the related party test should apply in any other case where it appears reasonable under the circumstances.

Return on Total Cost (ROTC) -- means, in calculating Reasonable Return, projected NOI of a Project, divided by the projected total development cost (including development fees and overhead).

ROTC Threshold Increment – means a percentage determined by the Department and confirmed or modified annually based upon an analysis of current real estate market data. See Appendix I-1 of these Guidelines.

Statutory Minima – means the standards set forth in M.G.L. c.40B, §§ 20 through 23 and at 760 CMR 56.03(3).

Subsidized Housing Inventory (SHI) – means the list compiled by the Department containing the count of Low or Moderate Income Housing units by city or town.

Subsidy – means assistance provided by a Subsidizing Agency to assist the construction or substantial rehabilitation of Low or Moderate Income Housing, including direct financial assistance; indirect financial assistance through insurance, guarantees, tax relief, or other means; and non-financial assistance, including in-kind assistance, technical assistance, and other supportive services. A leased housing, tenant-based rental assistance, or housing allowance program shall not be considered a Subsidy for the purposes of 760 CMR 56.00.

Subsidizing Agency – means any agency of state or federal government that provides a Subsidy for the construction or substantial rehabilitation of Low or Moderate Income Housing. If the Subsidizing Agency is not an agency of state government, the Department may appoint a state agency to administer some or all of the responsibilities of the Subsidizing Agency with respect to 760 CMR 56.00; in that case, all applicable references in these Guidelines to the Subsidizing Agency shall be deemed to refer to the appointed project administrator.

Uneconomic – means any condition imposed by a Board in its approval of a Comprehensive Permit, brought about by a single factor or a combination of factors, to the extent that it makes it impossible (a) for a public agency or a nonprofit organization to proceed in building or operating a Project without financial loss, or (b) for a Limited Dividend Organization to proceed and still realize a reasonable return in building or operating such Project within the limitations set by the Subsidizing Agency on the size or character of the Project, or on the amount or nature of the Subsidy or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by the Applicant. See 760 CMR 56.02, 56.05(8)(d) and the definitions above for Amount, Applicable 10-Year U.S. Treasury Rate, Minimum Return on Total Cost, Net Operating Income, Return on Total Cost, and ROTC Threshold Increment.

Use Restriction – means a deed restriction or other legally binding instrument in a form consistent with these Guidelines and, in the case of a Project subject to a Comprehensive Permit, in a form also approved by the Subsidizing Agency, which meets the requirements of these Guidelines.

(May 2013 Update – added definition of Area Median Income and Assisted Living Facility; moved definition of Related Party from cost certification material.)

B. Effective Date

For the most part, these Guidelines are a compilation of guidelines, generally applicable housing program requirements and policy document presently in effect as of February 2008. Substantive revisions since the 2008 publication are noted. With respect to provisions of these Guidelines that were new in the 2008 publication, or since, or that expand the applicability of guidance pre-existing the 2008 publication, the effective date, unless otherwise specifically stated herein or in the Regulations at 760 CMR 56.00, is February 22, 2008 or, with respect to any such provisions that are new since the 2008 publication, the date such provisions were adopted and added to the Guidelines. These Guidelines, as amended from time to time, shall be applicable to Projects in a manner that is consistent with the scheme of the transition rules at 760 CMR 56.08

C. Waiver

Any provision of these guidelines may be waived by the Undersecretary of the Department for good cause, provided that any such waiver shall be consistent with the Act or the Regulations at 760 CMR 56.00.

APPENDIX I.1

ROTC Threshold Increment – As of December, 2014, 450 basis points.

II. MEASURING PROGRESS TOWARDS LOCAL GOALS

A. Subsidized Housing Inventory

1. Project Eligibility Criteria

A Project or other unit(s) of Low or Moderate Income Housing shall be eligible to be included on the SHI consistent with the provisions of 760 CMR 56.03(2) and with the following requirements.

a. Eligible Subsidy Programs

The housing programs listed in Appendix II.1 are considered eligible subsidy low or moderate-income housing programs for purposes of G.L. c.40B, §§ 20-30, 760 CMR 56.00.¹ Such programs are eligible if they are administered through a Subsidizing Agency; in the case of federal or local programs not administered through a Subsidizing Agency, projects must generally receive a Project Eligibility Letter through DHCD's Local Initiative Program ("LIP") or receive LIP Local Action Unit ("LAU") approval.²

Subsidizing Agencies periodically modify existing programs and create new low- or moderate-income housing programs. Please contact DHCD at 617-573-1533 if you are aware of changes that should be reflected on this list.

b. Affordability – Household Income

In order for a household to be eligible to rent or purchase a restricted unit the household's income shall not exceed 80% of the AMI. A Subsidizing Agency may establish lower thresholds for its programs.

c. Affordability - Household Assets

The Subsidizing Agency may establish, for its housing programs, asset limitations for eligible households. In the absence of such provisions, eligible households shall be subject to the following asset limitations:

- (1) For age-restricted homeownership Projects, household assets shall not exceed \$275,000 in value, including equity in a dwelling (to be sold). (Note: For New England Fund, Housing Starts, and the Local Initiative Program, this asset limit applies for projects which applied for a determination of project eligibility on or after February 22, 2008. For such projects which applied for a determination of project eligibility prior to that date, then-existing program asset limits apply.)
- (2) For non-age restricted homeownership units, household assets shall not exceed \$75,000 in value.
- (3) For rental units, the greater of the following will be added to income: the income derived from the assets or an imputation of value calculated in a manner consistent with HUD requirements in place at the time of marketing.

¹ This listing does not provide a conclusive indication as to whether any housing development or housing unit is within the statutory definition of low- or moderate-income housing, though this listing is used by DHCD in making such determinations. Such determinations are subject to review by the Housing Appeals Committee in the context of formal appeals concerning particular housing proposals.

²Exceptions apply for locally administered CDBG and HOME rehabilitated housing units.

- (4) If a potential purchaser divests him/herself of an asset for less than full and fair cash value of the asset within two years prior to application, the full and fair cash value of the asset shall be included for purposes of calculating eligibility.

For a detailed description of assets and the treatment of such in determining eligibility, please refer to HUD's "Occupancy Requirements of Subsidized Multifamily Housing Programs"; Handbook 4350.3, Chapter 5, and Appendix II.2, "Additional Guidance on Income". In the event of any conflict between the Handbook and the explicit requirements of these Guidelines or of a Subsidizing Agency (e.g. rules regarding owning a residence at the time of application), the requirements of the Subsidizing Agency and these Guidelines, in that order, shall take precedence over the Handbook.

(May 2013 Update: Language on assets in connection with rental units; reference to HUD Handbook for description of assets.)

d. Housing Cost

Generally, the housing program, through its statutory basis, regulations, or guidelines establishes the maximum monthly housing cost. In the absence of such a provision, the following provisions shall apply:

- (1) Rental -- monthly housing costs (inclusive of utilities) shall not exceed 30% of monthly income for a household earning 80% of area median income, adjusted for household size. If there is no city trash collection, a trash removal allowance shall be included. If the utilities are separately metered, they may be paid by the tenant and the maximum allowable rent will be reduced to reflect the tenants' payment of utilities, based on the area's utility allowance. Developers should secure the amount of the current Section 8 utility allowance for the specific unit size and type from the local/regional housing authority.
- (2) Assisted Living Facility – ALFs shall be treated as rental housing.
- (3) Homeownership
 - (a) Down payment must be at least 3% of the purchase price, at least half of which must come from the buyer's funds unless the Eligible Subsidy Program permits a smaller down payment.
 - (b) Mortgage loan must be a 30-year fully amortizing mortgage for not more than 97% of the purchase price with a fixed interest rate that is not more than 2 percentage points above the current MassHousing interest rate (www.masshousing.com).
 - (c) Monthly housing costs (inclusive of principal, interest, property taxes, hazard insurance, private mortgage insurance and condominium or homeowner association fees) shall not exceed 38% of monthly income for a household earning 80% of area median income, adjusted for household size.
- (4) Continuing Care Retirement Communities – CCRs shall be treated as homeownership units.
 - (a) Entry Fee -- Any requisite entrance fee policy must be reasonable, taking into account that many otherwise eligible households may not have owned a home previously, and therefore the value of their Household Assets may be limited. A policy that sets a minimum entry fee for such households at a figure that is equivalent to 10% down payment on a homeownership unit for which a household at 80% of area median income, adjusted for household size, would be eligible, shall be deemed to be reasonable.

Note: Resident selection for the Affordable Units must comply with the requirements of a lottery or other fair and equitable procedure approved by the Subsidizing Agency (see Section III, Affirmative Fair Housing Marketing Plan), and without regard to the amount of their assets.

(b) Monthly fees – generally may not exceed 35% of household income plus an allowance for meals, if provided.

(c) Health care reserve fund – to the extent required, such fund must be reasonable and must be held for the benefit of the household for the exclusive purpose of paying for acute and skilled nursing care. The health care reserve fund shall be funded prior to determining whether a household has sufficient resources for the entrance deposit and shall be excluded from calculation of assets for the purposes of determining asset eligibility.

(May 2013 change: insertion of paragraph on Assisted Living.)

e. Use Restriction

All Use Restrictions must meet the following minimum standards:

- (1) Runs with the land and recorded at the appropriate registry of deeds or filed with the appropriate land court registry district for a term that shall be not less than 15 years for rehabilitated housing units and not less than 30 years for newly created units.³
- (2) Identifies the Subsidizing Agency and monitoring agent, if applicable.
- (3) Effectively restricts occupancy of Low and Moderate Income Housing to Income Eligible Households. A Use Restriction may require that an Income Eligible Household must have a lower percentage of area median income than 80%.
- (4) Requires that tenants of rental units and owners of homeownership units shall occupy the units as their domiciles and principal residences.
- (5) Provides for effective administration, monitoring, and enforcement of such restriction.
- (6) Contains terms and conditions for the resale of a homeownership unit, including definition of the maximum permissible resale price, and for the subsequent rental of a rental unit, including definition of the maximum permissible rent.
- (7) Subjects the units to an Affirmative Fair Housing Marketing and Resident Selection Plan for approval by the Subsidizing Agency and consistent with the guidelines in the following Section III, as may be amended from time to time, for the term of the restriction.

f. Affirmative Fair Housing Marketing and Resident Selection Plan

- (1) For Projects that received a determination of Project Eligibility on or after March 1, 2014, the Project is in compliance with the Bedroom Mix Policy as set forth in the "Interagency Agreement Regarding Housing Opportunities for Families with Children"; see, <http://www.mass.gov/hed/docs/dhcd/hd/fair/familyhousinginteragencyagreement.pdf>.

³ Newly created units includes units that were converted from a prior use (e.g., commercial or public use) into housing units

- (2) The affordable housing units shall be subject to an Affirmative Fair Marketing and Resident Selection Plan that, at a minimum, meets the requirements set out in the following Section III, Affirmative Fair Housing Marketing Plan.

(May 2013 Update: insertion of requirement of AFHMP requirement; no change in policy.)

2. Unit Eligibility Criteria

a. General

Regardless of the zoning or permitting mechanism utilized, all affordable housing units that meet the criteria outlined in Section II.A.1 shall be eligible for inclusion on the SHI at the earliest of the following:

- (1) For units that require a Comprehensive Permit under M.G.L. c.40B, §§ 20 through 23, or a zoning approval under c.40A or completion of plan review under M.G.L. c.40R, the date when
 - (a) the permit or approval is filed with the municipal clerk, notwithstanding any appeal by a party other than the Board, but subject to the time limit for counting such units set forth at 760 CMR 56.03(2)(c), or
 - (b) on the date when the last appeal by the Board is fully resolved.
- (2) When the building permit for the unit is issued.
- (3) When the occupancy permit for the unit is issued.
- (4) When the unit is occupied by an Income Eligible Household and all the conditions of 760 CMR 56.03(2)(b) have been met (if no Comprehensive Permit, zoning approval, building permit, or occupancy permit is required.)

b. Rental & Assisted Living Facility

- (1) General - In a rental or ALF development, if at least 25% of units are to be occupied by Income Eligible Households earning 80% or less than the area median income, or alternatively, if at least 20% of units are to be occupied by households earning 50% or less of area median income, and meet all criteria outlined in Section 1, then all of the units in the rental development shall be eligible for inclusion on the SHI. In determining the number of units required to satisfy either percentage threshold, fractional numbers shall be rounded up to the nearest whole number (e.g.: in a 51 unit development, one would restrict 13 units in order to meet the 25% standard).

If fewer than the aforementioned percentages of units in the development are so restricted, then only the units that meet the requirements of Section II.A.1 shall be included.

- (2) Accessory Apartments - shall be eligible for inclusion in the SHI provided they meet the requirements of Section VI, Local Initiative Program.
- (3) Tenants Who Become Over-Income: If, after initial occupancy, the income of a tenant of an affordable unit increases and exceeds the maximum allowable income at the time of annual income determination, such a Update in income shall not affect the treatment of the Project or the unit with respect to the SHI provided that the Owner is in compliance with the related

provisions of the affordability restriction. If the affordability restriction does not address the matter of over-income tenants, then such a change in income shall not affect the treatment of the Project or the unit with respect to the SHI provided that either (i) the tenant's income does not exceed 140% of the maximum allowable income, or (ii) the owner rents the next available unit as an affordable unit to an eligible tenant pursuant to the terms. If, after initial occupancy, the income of a tenant of an affordable unit increases and exceeds 140% of the maximum allowable income at the time of annual income determination, then at the expiration of the tenant's lease term, the rent restrictions will no longer apply to the tenant.

c. Homeownership

Only the units that meet the requirements of Section II.A.1 shall be eligible for inclusion in the SHI.

d. Continuing Care Retirement Communities (CCRCs)

With respect to the independent living units in a CCRC, only those that meet the requirements of Section II.A.1 shall be eligible for inclusion in the SHI.

e. Long-Term Subsidized Housing for Individuals with Developmental or Mental Health Disabilities

All Group Home units in each community as reported every two years to the DHCD by the Department of Mental Health (DMH) and the Department of Development Services (DDS) shall be eligible to be included on the SHI. Please note that Group Home units serving clients of the DMH and DDS are subject to privacy restrictions, but the number of such units in each community which are eligible will be included on the SHI as provided to DHCD by the respective departments.

f. Housing Rehabilitation Units

Housing units that are rehabilitated through a program funded through the Community Development Block Grant (CDBG) or HOME program are eligible to be included on the SHI and that meet the requirements of Section 1 above (*excluding* the mortgage loan standards). Information on individual grant recipients will remain confidential.

(May 2013 Update: insertion of language on over-income tenants.)

3. Household Eligibility Criteria

- a. Rental -- Unless otherwise required or permitted by an Eligible Subsidy Program, if any household member owns a residential property, the property must be sold before the household enters into a lease for a unit. For age-restricted units, the Subsidizing Agency may allow a grace period, to be determined on a case-by case basis in the sole judgment of the Subsidizing Agency, for a household to sell a residential property after entering into a lease for a unit.
- b. Homeownership In addition to meeting the requirements for qualifying a Project or dwelling unit for the SHI under Section II.A, the household shall not have owned a home within three years preceding the application, with the exception of:
 - (1) displaced homemakers, where the displaced homemaker (an adult who has not worked full-time, full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family), while a homemaker, owned a home with his or her partner or resided in a home owned by the partner;
 - (2) single parents, where the individual owned a home with his or her partner or resided in a home owned by the partner and is a single parent (is unmarried or legally separated from a spouse and either has 1 or more children of whom the individual has custody or joint custody, or is pregnant);

- (3) households where at least one household member is 55 or over;
 - (4) households that owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations; and
 - (5) households that owned a property that was not in compliance with State, local or model building codes and that cannot be brought into compliance for less than the cost of constructing a permanent structure.
- c. Individuals who have a financial interest in the development and their families are not eligible for affordable units. Therefore, affordable units leased or sold to individuals who have a financial interest in the development or a Related Party, or to their families, shall not be eligible. For the purposes of this Section II.A.3, "financial interest" shall mean anything that has a monetary value, the amount of which is or will be determined by the outcome of the Project, including but not limited to ownership and equity interests in the Developer or in the subject real estate, and contingent or percentage fee arrangements; but shall not include third party vendors and contractors.

(May 2013 Update: insertion of rules on owning a residence and financial interest to apply to all forms of housing tenure; no change in policy; added definition of "financial interest".)

4. Application to Include Units on the SHI

- a. A community may request units be included on the SHI at any time by submitting a "Requesting New Units Form" with supporting documentation. The "Requesting New Units Form" is available at: <http://www.mass.gov/dhcd/>
- b. With respect to rehabilitation units, only, the party administering the grant locally is responsible for submitting the necessary information. The request form, "Housing Rehab Units Only Form" is available at <http://www.mass.gov/dhcd/>.
- c. Requests to add new units and suggested corrections to the SHI may be submitted with supporting documentation, in writing, by the municipality, a developer, or a member of the public to:
 - Department of Housing & Community Development
 - Office of General Counsel
 - 100 Cambridge Street, Suite 300
 - Boston, MA 02114-2524
 - Attention: Subsidized Housing Inventory.
- d. All submissions will be reviewed and revised SHI percentages will be published online at: <http://www.mass.gov/dhcd/>.

5. Expiration

- a. If a Comprehensive Permit or zoning approval lapses permanently, the units become permanently ineligible for the SHI.
- b. Generally, units shall no longer be eligible for inclusion on the SHI upon expiration or termination of the Use Restriction. However, if the affordability has been preserved by operation of law or other means that effectively meets the standards for a Use Restriction set out above in Section

II.A.1.e, then upon review of the relevant documentation, the Department, in its sole discretion, may determine that the units remain eligible for inclusion in the SHI.

- c. Homeownership Opportunity Program (HOP) resale controls are intended to be in effect in perpetuity. If an eligible purchaser cannot be located for a HOP affordable unit and the resale controls lapse in accordance with the program, the unit shall continue to be counted. Likewise, provided that the requirements relating to the resale of the unit contained in the Use Restriction have been observed, then housing units that are subject to a Use Restriction that survives foreclosure and that is approved by Fannie Mae and DHCD shall count on the SHI for the full term of the restriction, even if the unit is occupied by an ineligible household.

6. Time Lapses

As set forth in 760 CMR 56.03, units shall be removed from the SHI upon any of the following events:

- a. If more than one year elapses between the date of issuance of the Comprehensive Permit or zoning approval under M.G.L. c.40A or completion of plan review under M.G.L. c.40R, as that date is defined in 760 CMR 56.03(2)(b.1), and issuance of the building permit, the units will become ineligible for the SHI until the date that the building permit is issued.
- b. If more than 18 months elapse between issuance of the building permits and issuance of the certificate of occupancy, the units will become ineligible for the SHI until the date that the certificate of occupancy is issued.
- c. Notwithstanding the foregoing, if a Comprehensive Permit or zoning approval permits a project to be constructed in phases, and provided that (i) each phase contains at least 150 units, (ii) each phase contains the same proportion of SHI Eligible Housing units as the overall project, and (iii) the projected average time period between the start of successive phases does not exceed 15 months, then the entire project shall remain eligible for the SHI so long as the phasing schedule set forth in the permit approval continues to be met.
- d. If more than one year elapses between the date of issuance of the Comprehensive Permit or zoning approval under M.G.L. c.40A or completion of plan review under c.40R, as that date is defined in 760 CMR 56.03(2)(b.1), and final resolution of any pending appeal by a party other than the Board, the units will become ineligible for the SHI until the date that the last appeal is fully resolved.

7. Biennial Updates

The SHI shall be updated by the Department once every two years, or more frequently if information is provided by the municipality or otherwise received and verified by the Department. With respect to the continuing eligibility of LIP units (see Section VI, Local Initiative Program), the Department may rely upon the verification and certification by the municipality or its agent.

B. Housing Production Plans

1. Introduction

a. What Is the Plan?

A Housing Production Plan (HPP) in 760 CMR 56.03(4) is a proactive strategy for planning and developing affordable housing. It should be developed with opportunities for community residents to become informed of the planning process and the plan, and to provide input. The HPP will assist communities to plan for low and moderate income residents by providing a diverse housing supply. The community should:

- (1) Develop a strategy which will be used to meet its affordable housing needs in a manner consistent with the Chapter 40B statute and implementation regulations; and
- (2) Produce housing units in accordance with its HPP.

The HPP identifies the housing needs of a community and the strategies it will use to make progress in facilitating the development of affordable housing. The HPP must be consistent with the regulation and these Guidelines. HPPs approved by DHCD are posted at www.mass.gov/dhcd.

b. Why produce a Plan?

By taking a proactive approach in the adoption of a HPP, cities and towns are much more likely to achieve both their affordable housing and community planning goals. HPPs give communities that are under the 10% threshold of Chapter 40B, but are making steady progress in producing affordable housing on an annual basis, more control over comprehensive permit applications for a specified period of time.

2. Elements

a. Comprehensive Housing Needs Assessment

It is important to understand who currently lives in the community, demographic trends affecting future growth, existing housing stock and future housing needs. The HPP must establish a strategic plan for municipal action with regards to housing, based upon a comprehensive housing needs assessment that, at a minimum, examines:

- (1) The most recent available census data of the municipality's demographics and housing stock. Reviewing census data is the starting point for a community's analysis and information may be found at <http://www.census.gov/>. Regional Planning Agencies, realtors and the media are also sources of information that may be used in an HPP.
- (2) A projection of future population and housing needs, taking into account regional growth factors, that covers the entire period of the plan. The projections should address, specifically, the housing needs of the projected population at various income levels including: not more than 30% AMI, more than 30% but not more than 80% AMI, and more than 80% but not more than 120% AMI, taking into account the likely family composition of such households.
- (3) Development constraints and limitations on its current and future needs should be clearly articulated. Maps can be helpful in identifying steep slopes, watershed areas or brownfields.

- (4) The municipality's plans to mitigate such constraints. Can any of the factors be mitigated to support development?
- (5) The capacity of the municipality's infrastructure to accommodate the current population and anticipated future growth, including plans for enlargement or expansion of existing infrastructure systems to ensure that both current and future needs are met. The infrastructure analysis should evaluate the capacity of water and sewer systems, roads, utilities, public transit, schools, and any other public facilities that will impact or be impacted by future housing development.

It may not be necessary for a community to create an entirely new plan to meet these requirements. Many communities have already adopted a plan or a series of plans that contain some or all of the required elements. Current master plans, consolidated plans, or other housing strategies may contain some or all of the elements of a HPP. Municipalities may contact DHCD's Office of Sustainable Communities for assistance in converting such plans to an HPP.

However, municipalities must ensure that the existing plans or data are up-to-date. DHCD will request that a community update its former Affordable Housing Plan/Planned Production Plan, consistent with the requirements of these Guidelines, if the affordable housing plan was approved five or more years ago.

b. Affordable Housing Goals

In addition to its needs assessment, when formulating its affordable housing goals, the community should also consider the types of housing most likely to be needed and, generally, its fair housing obligations. What is the projected population of: working age? new household formation? special needs? elderly? frail elderly? What percentage of these populations is projected to be at not more than 30% AMI? at more than 30% but not more than 80% AMI? At more than 80% but not more than 120% AMI? Does the existing housing supply match the needs of these populations? Does the community expect that there will be a range of housing types which will be affordable to each income group? Therefore, the HPP must address, at a minimum, the following matters:

- (1) A mix of types of housing, consistent with community and regional needs that:
 - (a) Is affordable to households at not more than 30% AMI, more than 30% but not more than 80% AMI, and more than 80% but not more than 120% AMI;
 - (b) Provides for a range of housing , including rental, homeownership, and other occupancy arrangements, if any, for families, individuals, persons with special needs, and the elderly; and,
 - (c) Is feasible within the housing market in which they will be situated.
- (2) A numerical goal for annual housing production, pursuant to which there is an increase in the municipality's number of SHI Eligible Housing units by at least 0.50% of its total units (as determined in accordance with 760 CMR 56.03(3)(a)) during every calendar year included in the HPP, until the overall percentage exceeds the Statutory Minimum set forth in 760 CMR 56.03(3)(a). There should be a direct link between the setting of these goals and the results of the needs assessment. The numerical goal should be based on the total year round number of housing units. The total year round housing units is the total number of units for the community in the latest U.S. Census including any changes due to demolition or new construction.

c. Implementation Strategies

The HPP shall include an explanation of the specific strategies by which the municipality will achieve its housing production goals as well as a time frame/schedule for achieving the housing goals identified. Each goal should include several specific milestones to indicate progress, including all of the following strategies, to the extent applicable:

- (1) The identification of zoning districts or geographic areas in which the municipality proposes to modify current regulations for the purposes of creating SHI Eligible Housing developments to meet its housing production goal. Zoning indicates a community's interest in the types of uses to be encouraged. The zoning strategy should identify points where the zoning needs to be changed to accommodate additional dwelling units: Can density be increased? Can accessory apartments be accommodated? Are upper story residential units allowed in commercial districts? In identifying geographic areas, communities must ensure that any constraints can be overcome in a timely and cost effective manner. Additionally, communities should consider the Commonwealth's Sustainable Development Principles at: <http://www.mass.gov/hed/docs/dhcd/cd/smartgrowth/sdprinciples.pdf>.
- (2) The identification of specific sites for which the municipality will encourage the filing of Comprehensive Permit applications. Identification of specific sites should be consistent, to the greatest extent possible, with Sustainable Development Principles. Strategies should include any proposed zoning changes, advantages to construction on the site, an acknowledgement of site constraints, and the costs to overcome such constraints.
- (3) Characteristics of proposed residential or mixed-use developments that would be preferred by the municipality for example, infill development, cluster developments, adaptive re-use, transit-oriented housing, mixed-use development, and/or inclusionary zoning. Preferred characteristics should take into account the surrounding context of the built and natural environment. Characteristics placing special restrictions on the development of affordable housing, such as limiting size of affordable units, limiting diversity in types of housing, or applying other zoning constraints, will not be approved. In addition, affordable housing plans must be in compliance with all state and federal fair housing laws.
- (4) Identification of municipally owned parcels for which the municipality commits to issue requests for proposals (RFP) to develop SHI Eligible Housing, including information on appropriate use of the site, and a timeline for the issuance of an RFP. DHCD can provide some assistance in the development of such an RFP.
- (5) Participation in regional collaborations addressing housing development. Communities are encouraged to contact the Regional Planning Agencies for insight into establishing regional collaborations.

3. Review and Approval

Communities may submit a HPP developed in accordance with the regulation and these Guidelines to DHCD at any time.

a. Review Standards

HPPs are reviewed to see that they contain all the required elements, in accordance with the regulations and these Guidelines; and that the elements of the HPP are consistent with each other, such as whether the goals address stated needs. Reviewers pay special attention to the analysis of

data, numerical goals, mix of housing proposed, production schedules, deed restrictions, and preferred sites for affordable housing development.

b. Review Process

The Department shall conduct an initial 30-day completeness review, and it will notify the municipality of any deficiency and offer an opportunity to remedy the deficiency. Within 90 days after the Department's finding that the HPP is complete, the Department shall approve the HPP if it meets the requirements specified herein; otherwise, it shall disapprove the HPP. The Department shall notify the municipality of its decision to either approve or disapprove a HPP in writing. If the Department disapproves a HPP, the notification shall include a statement of reasons for the disapproval. If the Department fails to mail notice of approval or disapproval of a HPP within 90 days after its receipt, it shall be deemed to be approved. A municipality that originally submitted a HPP that had been disapproved may submit a new or revised HPP to the Department at any time.

4. Amendments

A community may amend its HPP at any time to reflect changes in local circumstances. DHCD does not require that communities submit amendments when specific projects change, such as in size or location. However, communities are encouraged to submit amendments for DHCD approval, to document the change(s) if the overall goals or strategies are revised. If, in the discretion of DHCD, the amendment is considered to be a major change, such as the incorporation of new census data, the Department may require the full 90 day review process. Amendments shall not change the effective date of an HPP.

5. Term of a Plan; Renewal

The term of an HPP shall be five (5) years from the date of its approval by the Department. All HPPs shall be updated and renewed within five (5) years of the date of its approval by the Department, through the full 90-day review process set forth above, or as the Department may otherwise require. The Department may, at its sole discretion, elect to treat a major amendment as a renewed HPP.

6. Certification of Municipal Compliance with the HPP

- a. Requests for certification will be accepted by DHCD at any time during the calendar year in which the units are produced and up to January 10 of the following year. A community will be certified in compliance with an approved HPP if, during a single calendar year, it has increased its number of low- and moderate-income year round housing units (as counted on the SHI) in an amount equal to or greater than that enumerated in the approved HPP (0.5% or 1.0%). See Appendix II.3, "HPP Certification Thresholds by Municipality" for current certification thresholds.
- b. Units counted for certification must be produced after the effective date of a plan (i.e., the date DHCD approved the plan).
- c. SHI Eligible Housing units shall be counted for the purpose of certification when they are first eligible for inclusion in the SHI in accordance with the provisions set forth in 760 CMR 56.03(2).
- d. If a community issues a permit between December 20th and December 31st (inclusive), of a given year, the request may be submitted prior to the end of the 20-day appeal period.

- e. The Department shall determine whether a municipality is in compliance within 30 days of receipt of the municipality's request and notify the Chief Executive Officer in writing of its decision.

7. Effective Date of a Plan

An HPP shall be effective as of the date that DHCD approved the plan. The effective date of an approved plan shall not change as a result of amendment to the plan.

8. Effective Date of Certification

Regardless of the date of the certification notice, the Certification shall be deemed effective as of the date that the municipality achieved its numerical target for the calendar year in question, in accordance with the rules for counting units on the SHI set forth in 760 CMR 56.03(2).

9. Term of Certification

So long as the units produced are SHI Eligible Housing units (see 760 CMR 56.03), a certification shall be in effect for a period of one year from its effective date if the community has increased its SHI Eligible Housing units 0.5% of the total year round housing units, or two years from its effective date if it has increased its number of SHI Eligible Housing units 1.0% of total year round housing units. If the units by which the municipality achieved its certification become ineligible for the SHI, then the certification shall lapse as of the date that the units became ineligible for the SHI. If such units become eligible for the SHI during the *remaining term of the certification period*, then the certification shall be re-instated for such remaining term.

For example, if a community's HPP is certified by DHCD on June 13, 2013, for affordable units that became eligible for the SHI on February 13, 2013 totaling 0.5% of housing units, the certification period begins on February 13, 2013, and ends on February 12, 2014. If the request was based on an increase of 1.0% of housing units, the certification period would end on February 12, 2015.

10. Relation to "Local Needs"

If a community is certified compliant, decisions made by the Board to deny a comprehensive permit will be deemed Consistent with Local Needs under the Act by the HAC, and the Board's denial of a comprehensive permit application will be upheld as a matter of law, provided that the Board complies with the requirements of 760 CMR 56.03(8).

11. Submission Requirements

a. HPPs

HPPs, amendments and updates must be accompanied by:

- (1) a letter signed by the Chief Executive Officer that states that the document:

- (a) Was adopted by the municipal planning board and select board or city council (the Chief Executive Officer, is the mayor in a city and the chair of the board of selectmen in a town,

- unless some other municipal office is designated to be the chief executive officer by the local charter);
- (b) Constitutes the community's affordable housing plan (for the HPP), or is an amendment or an update; and
 - (c) Requests approval from DHCD.
- (2) A cover letter that includes a municipal contact name, telephone number and email address. They may be submitted in either hard or electronic copy. Following the Department's approval, an electronic copy must be submitted for posting on the agency's website.
- b. Requests for Certification
- (1) Requests for certification must be accompanied by a letter signed by the Chief Executive Officer and contain any required documentation (e.g. comp permits and/or the "Requesting New Units Form for the Subsidized Housing Inventory"). These documents are evidence that the required number of housing units has been produced during a calendar year and:
 - (a) Have been newly produced pursuant to the approved HPP and in the same year for which certification is requested;
 - (b) Are, for the first time, eligible to be counted on the SHI (e.g., are not the subject of a modified or amended permit from a prior year); and
 - (c) Are produced pursuant to the affordable housing plan.
 - (2) The town manager or administrator may submit the certification request if given signatory authority by a local charter.
- c. HPPs, amendments, updates and requests for certification should be sent to:
- Aaron Gornstein, Undersecretary
Department of Housing & Community Development
100 Cambridge Street, Suite 300
Boston, MA 02114
Attn: MaryJane Gandolfo/Phil DeMartino
- Electronic copies can be submitted by e-mail or on disk to: MaryJane.Gandolfo@state.ma.us

12. Technical Assistance

Department staff are available to answer questions on any matter related to HPPs. Please call 617-573-1357. The Department's website at www.mass.gov/dhcd also contains information that may be useful to municipalities in creating an HPP.

APPENDIX II.1

Eligible Subsidy Programs

State Programs

Affordable Housing Trust Fund
 Chapter 167 (Special Needs Housing)
 Chapter 200 (Veterans' Housing)
 Chapter 667 (Elderly Low Income Housing)
 Chapter 689 (Special Needs Housing)
 Chapter 705 (Family Low Income Housing)
 DHCD Capital Improvement and Preservation Fund (CIPF)
 DHCD Commercial Area Transit Node Housing Program (CATNHP)
 DHCD Community Based Housing Program (CBH)
 DHCD Community Development Block Grant (CDBG) including:
 Homeowner Rehab, HDSP (some uses), and CDF (some uses)
 DHCD Facilities Consolidation Fund (FCF)
 DHCD Homeownership Opportunity Program (HOP) ⁴
 DHCD Housing Innovations Fund (HIF)
 DHCD Housing Stabilization Fund (HSF)
 DHCD Local Initiative Program (LIP)
 DHCD Mass Rental Voucher Program (MRVP) Project Based Vouchers Only
 DHCD Tax Exempt Local Loans to Encourage Rental Housing (TELLER)
 DMH Community Based Housing (Group Homes)
 DMR Community Based Housing (Group Homes)
 MGL Chapter 40R (Smart Growth Zoning Act)
 Massachusetts Low Income Housing Tax Credits (LIHTC)
 Massachusetts Housing Partnership Fund (MHP) MATCH Program
 Massachusetts Housing Partnership Fund (MHP) Permanent Rental Financing Program
 EOT Transit Oriented Development (TOD) Infrastructure & Housing Support Program
 MassDevelopment Tax-Exempt Bond Programs
 MassHousing Chapter 13A Interest Reduction Subsidy Program
 MassHousing Chapter 236 Program
 MassHousing Elder Choice
 MassHousing Elder Mixed Income Program
 MassHousing Housing Starts
 MassHousing Mixed-Income (Taxable/Tax-Exempt) Financing Program
 MassHousing Multi-Family Rental
 MassHousing Options for Independence
 MassHousing Rental Development Action Loan (RDAL)
 MassHousing State Housing Assistance for Rental Production (SHARP)

Federal Programs⁵

FHLBB Affordable Housing Program (AHP)
 FHLBB New England Fund (NEF)
 Federal Low Income Housing Tax Credit Program (LIHTC)
 HUD CDBG (Homeowner Rehabilitation in some cases)⁶

⁴ Private HOP projects are eligible to count towards the SHI.

⁵ HUD is the U.S. Dept. of Housing and Urban Development; FHLBB is the Federal Home Loan Bank; USDA Rural Housing Service was the Farmers' Home Administration.

HUD Federal Public Housing
 HUD HOME Program (Rental Production, Project-Based Homeownership, Homeowner Rehab)⁷
 HUD Section 202 (Supportive Housing for the Elderly)
 HUD Section 221(d)(3)
 HUD Section 231
 HUD Section 236
 HUD Section 8 Demo Dispo (administered by MassHousing)
 HUD Section 8 Mark-to-Market (administered by MassHousing)
 HUD Section 8 Moderate Rehabilitation Program (some units administered through DHCD)
 HUD Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program
 HUD Section 8 New Construction
 HUD Section 8 Project Based Assistance
 HUD Section 8 Project-Based Rental Certificate Program
 HUD Section 8 Substantial Program
 HUD Section 811 (Supportive Housing for Persons with Disabilities)
 HUD Shelter Plus Care (Project-Based Rental Assistance and SRO-Based Assistance only)
 USDA Rural Housing Service (RHS) Rural Rental Housing 515 Program

Ineligible Subsidy Programs

The following programs, as well as programs not appearing anywhere on this listing are not usually deemed low- or moderate-income housing programs for purposes of G.L. c. 40B§ 20-23, 760 CMR 56.00.⁸

DHCD Alternative Housing Voucher Program (AHVP)
 DHCD Community Development Action Grant (CDAG)
 DHCD Massachusetts Rental Voucher Program (formerly Chapter 707 Program)
 DHCD Soft Second Loan Program (also administered through MHP)
 Hospitals
 HUD Shelter Plus Care (Tenant-Based Rental Assistance, Sponsor-Based Rental Assistance)
 HUD Emergency Shelter Grants Program
 HUD HoDAG (Housing Development Action Grant)
 HUD HOME Program (Tenant Based Rental Assistance, Homeownership Purchaser Based)
 HUD HOPE (Home Ownership for People Everywhere)
 HUD Section 8 Housing Choice Voucher Program (HCVP)
 HUD Section 8 Loan Management Set-Aside Program
 HUD Section 8 Property Disposition Set-Aside Program
 HUD Section 8 Rental Certificate Program
 HUD Section 221(d)(2) & 221(d)(4)
 HUD Urban Development Action Grant (UDAG)
 Military Housing
 Prisons
 Special Needs Schools
 USDA Rural Development Section 502 Program

⁶ In the case of newly created units, units are eligible if administered through DHCD or if locally administered and approved by the Department under the Local Initiative Program.

⁷ Id.

⁸ This listing does not attempt to be all-inclusive because of the large number of housing related programs and programs that have a housing component. This list provides examples of programs that are frequently mistaken as an eligible housing program.

APPENDIX II.2

Additional Guidance on Income

1. Medical Expense Income Exclusions

- a. Medical expenses, including insurance costs, do not qualify as an excludable expense, e.g., an expense that may be used to reduce income.
- b. If another family member is providing regular monthly payments to help with medical expenses, including insurance costs, that payment is a qualified medical reimbursement and does qualify for income exclusion. Child support designated for medical expenses shall be treated in the same manner; it shall be excluded from income.

2. Self-Employment Income

- a. When self-employment income is sporadic or based upon commission, the projection of household income currently shall be based upon historical data unless:
 - (1) The household can demonstrate and verify that it has experienced a change in circumstances that is a reliable indicator that its income has decreased and that the historical data is not a reasonable basis for projecting household income; or
 - (2) Documentation indicates that the household has experienced a change in circumstance that is a reliable indicator that its income has increased and that the historical data is not a reasonable basis for projecting household income.
- b. When self-employment income is sporadic or based upon commission and there is no record of self-employment from the last year in which tax returns were filed, the projection of household income will be based solely upon the reliable year-to-date documentation.

3. Sporadic Child Support Payments

Child support income shall be determined based upon the prior 12 month history. Lump sum payments for prior periods shall not be included in calculating the child support payments for the prior 12 months.

APPENDIX II.3

HPP Certification Thresholds by Municipality

Community	2010 Census Year Round Units	0.5% of 2010 Census Year Round Housing Units	1.0% of 2010 Census Year Round Housing Units
Abington	5,332	27	53
Acton	7,645	38	76
Acushnet	3,879	19	39
Adams	4,352	22	44
Agawam	11,588	58	116
Alford	173	1	2
Amesbury	6,570	33	66
Amherst	9,020	45	90
Andover	11,513	58	115
Aquinnah	155	1	2
Arlington	19,358	97	194
Ashburnham	1,997	10	20
Ashby	1,000	5	10
Ashfield	770	4	8
Ashland	5,781	29	58
Athol	4,775	24	48
Attleboro	16,519	83	165
Auburn	6,551	33	66
Avon	1,737	9	17
Ayer	3,141	16	31
Barnstable	20,266	101	203
Barre	1,981	10	20
Becket	739	4	7
Bedford	4,692	23	47
Belchertown	5,002	25	50
Bellingham	5,632	28	56

Belmont	9,936	50	99
Berkley	1,870	9	19
Berlin*	891	4	9
Bernardston	862	4	9
Beverly	16,150	81	162
Billerica	13,055	65	131
Blackstone	3,321	17	33
Blandford	472	2	5
Bolton	1,472	7	15
Boston	250,367	1252	2504
Bourne	7,787	39	78
Boxborough	1,900	10	19
Boxford	2,602	13	26
Boylston	1,602	8	16
Braintree	12,924	65	129
Brewster	4,379	22	44
Bridgewater	7,639	38	76
Brimfield	1,287	6	13
Brockton	34,794	174	348
Brookfield	1,259	6	13
Brookline	26,224	131	262
Buckland	812	4	8
Burlington	8,395	42	84
Cambridge	44,138	221	441
Canton	8,129	41	81
Carlisle	1,647	8	16
Carver	4,063	20	41
Charlemont	576	3	6
Charlton	3,868	19	39
Chatham	3,596	18	36
Chelmsford	12,981	65	130
Chelsea	12,317	62	123
Cheshire	1,458	7	15

Chester	528	3	5
Chesterfield	462	2	5
Chicopee	24,337	122	243
Chilmark	406	2	4
Clarksburg	683	3	7
Clinton	5,817	29	58
Cohasset	2,752	14	28
Colrain	749	4	7
Concord	6,095	30	61
Conway	716	4	7
Cumington	401	2	4
Dalton	2,831	14	28
Danvers	9,712	49	97
Dartmouth	10,839	54	108
Dedham	8,893	44	89
Deerfield	2,045	10	20
Dennis	8,079	40	81
Dighton	2,261	11	23
Douglas	2,510	13	25
Dover	1,874	9	19
Dracut	10,597	53	106
Dudley	3,877	19	39
Dunstable	933	5	9
Duxbury	5,103	26	51
East Bridgewater	4,423	22	44
East Brookfield	797	4	8
East Longmeadow	5,350	27	54
Eastham	2,642	13	26
Easthampton	7,058	35	71
Easton	7,596	38	76
Edgartown	1,718	9	17
Egremont	624	3	6
Erving	625	3	6

Essex	1,357	7	14
Everett	15,886	79	159
Fairhaven	6,853	34	69
Fall River	41,757	209	418
Falmouth	14,440	72	144
Fitchburg	15,963	80	160
Florida	279	1	3
Foxborough	6,260	31	63
Framingham	26,588	133	266
Franklin	10,296	51	103
Freetown	2,991	15	30
Gardner	8,804	44	88
Georgetown	2,601	13	26
Gill	550	3	6
Gloucester	12,997	65	130
Goshen	380	2	4
Gosnold	49	0	0
Grafton	5,820	29	58
Granby	2,288	11	23
Granville	578	3	6
Great Barrington	3,116	16	31
Greenfield	8,274	41	83
Groton	3,339	17	33
Groveland	2,090	10	21
Hadley	1,943	10	19
Halifax	2,804	14	28
Hamilton	2,717	14	27
Hampden	1,843	9	18
Hancock	341	2	3
Hanover	4,440	22	44
Hanson	3,167	16	32
Hardwick	1,054	5	11
Harvard	2,156	11	22

Harwich	5,862	29	59
Hatfield	1,420	7	14
Haverhill	23,675	118	237
Hawley	165	1	2
Heath	416	2	4
Hingham	7,307	37	73
Hinsdale	775	4	8
Holbrook	4,145	21	41
Holden	5,806	29	58
Holland	947	5	9
Holliston	4,861	24	49
Holyoke	16,180	81	162
Hopedale	2,284	11	23
Hopkinton	4,521	23	45
Hubbardston	1,348	7	13
Hudson	7,144	36	71
Hull	4,679	23	47
Huntington	847	4	8
Ipswich	5,414	27	54
Kingston	4,370	22	44
Lakeville	3,385	17	34
Lancaster	2,103	11	21
Lanesborough	1,299	6	13
Lawrence	25,540	128	255
Lee	2,542	13	25
Leicester	3,790	19	38
Lenox	2,354	12	24
Leominster	16,937	85	169
Leverett	642	3	6
Lexington	11,274	56	113
Leyden	288	1	3
Lincoln	2,076	10	21
Littleton	3,018	15	30

Longmeadow	5,832	29	58
Lowell	39,381	197	394
Ludlow	7,815	39	78
Lunenburg	3,605	18	36
Lynn	34,569	173	346
Lynnfield	4,249	21	42
Malden	23,561	118	236
Manchester	2,219	11	22
Mansfield	8,083	40	81
Marblehead	8,746	44	87
Marion	2,095	10	21
Marlborough	14,846	74	148
Marshfield	9,117	46	91
Mashpee	5,578	28	56
Mattapoisett	2,634	13	26
Maynard	4,398	22	44
Medfield	4,038	20	40
Medford	22,631	113	226
Medway	4,243	21	42
Melrose	11,200	56	112
Mendon	1,870	9	19
Merrimac	2,281	11	23
Methuen	16,848	84	168
Middleborough	7,195	36	72
Middlefield	229	1	2
Middleton	2,337	12	23
Milford	10,682	53	107
Millbury	5,086	25	51
Millis	3,060	15	31
Millville	956	5	10
Milton	9,142	46	91
Monroe	66	0	1
Monson	3,184	16	32

Montague	3,826	19	38
Monterey	417	2	4
Montgomery	254	1	3
Mount Washington	69	0	1
Nahant	1,676	8	17
Nantucket	4,040	20	40
Natick	13,337	67	133
Needham	10,793	54	108
New Ashford	107	1	1
New Bedford	41,403	207	414
New Braintree	325	2	3
New Marlborough	630	3	6
New Salem	399	2	4
Newbury	2,614	13	26
Newburyport	7,717	39	77
Newton	31,857	159	319
Norfolk	2,851	14	29
North Adams	7,061	35	71
North Andover	9,896	49	99
North Attleborough	10,600	53	106
North Brookfield	1,889	9	19
North Reading	4,839	24	48
Northampton	12,282	61	123
Northborough	4,983	25	50
Northbridge	4,930	25	49
Northfield	1,194	6	12
Norton	5,942	30	59
Norwell	3,299	16	33
Norwood	11,911	60	119
Oak Bluffs	1,677	8	17
Oakham	583	3	6
Orange	3,236	16	32
Orleans	3,317	17	33

Otis	600	3	6
Oxford	5,209	26	52
Palmer	5,371	27	54
Paxton	1,455	7	15
Peabody	18,838	94	188
Pelham	551	3	6
Pembroke	5,834	29	58
Pepperell	3,905	20	39
Peru	334	2	3
Petersham	453	2	5
Phillipston	598	3	6
Pittsfield	21,000	105	210
Plainfield	262	1	3
Plainville	3,088	15	31
Plymouth	19,008	95	190
Plympton	865	4	9
Princeton	1,185	6	12
Provincetown	2,062	10	21
Quincy	39,912	200	399
Randolph	11,497	57	115
Raynham	4,197	21	42
Reading	8,811	44	88
Rehoboth	3,588	18	36
Revere	20,102	101	201
Richmond	718	4	7
Rochester	1,619	8	16
Rockland	6,632	33	66
Rockport	3,652	18	37
Rowe	183	1	2
Rowley	1,985	10	20
Royalston	470	2	5
Russell	634	3	6
Rutland	2,316	12	23

Salem	18,103	91	181
Salisbury	3,456	17	35
Sandisfield	351	2	4
Sandwich	7,574	38	76
Saugus	10,111	51	101
Savoy	313	2	3
Scituate	6,869	34	69
Seekonk	4,927	25	49
Sharon	6,006	30	60
Sheffield	1,422	7	14
Shelburne	873	4	9
Sherborn	1,449	7	14
Shirley	2,140	11	21
Shrewsbury	12,606	63	126
Shutesbury	680	3	7
Somerset	7,124	36	71
Somerville	32,389	162	324
South Hadley	6,757	34	68
Southampton	2,003	10	20
Southborough	2,988	15	30
Southbridge	7,486	37	75
Southwick	3,488	17	35
Spencer	4,816	24	48
Springfield	61,001	305	610
Sterling	2,611	13	26
Stockbridge	1,066	5	11
Stoneham	9,231	46	92
Stoughton	10,429	52	104
Stow	2,108	11	21
Sturbridge	3,141	16	31
Sudbury	5,582	28	56
Sunderland	1,658	8	17
Sutton	2,869	14	29

Swampscott	5,804	29	58
Swansea	6,032	30	60
Taunton	22,874	114	229
Templeton	2,492	12	25
Tewksbury	10,125	51	101
Tisbury	1,755	9	18
Tolland	183	1	2
Topsfield	2,126	11	21
Townsend	3,162	16	32
Truro	999	5	10
Tyngsborough	3,784	19	38
Tyringham	146	1	1
Upton	2,083	10	21
Uxbridge	4,080	20	41
Wakefield	9,914	50	99
Wales	690	3	7
Walpole	8,202	41	82
Waltham	23,749	119	237
Ware	4,285	21	43
Wareham	8,650	43	87
Warren	2,004	10	20
Warwick	314	2	3
Washington	210	1	2
Watertown	14,959	75	150
Wayland	4,703	24	47
Webster	7,343	37	73
Wellesley	8,789	44	88
Wellfleet	1,430	7	14
Wendell	405	2	4
Wenham	1,310	7	13
West Boylston	2,454	12	25
West Bridgewater	2,507	13	25
West Brookfield	1,436	7	14

West Newbury	1,414	7	14
West Springfield	12,196	61	122
West Stockbridge	632	3	6
West Tisbury	1,081	5	11
Westborough	6,729	34	67
Westfield	15,362	77	154
Westford	6,877	34	69
Westhampton	557	3	6
Westminster	2,609	13	26
Weston	3,796	19	38
Westport	5,545	28	55
Westwood	5,218	26	52
Weymouth	22,471	112	225
Whately	647	3	6
Whitman	5,100	26	51
Wilbraham	5,021	25	50
Williamsburg	1,057	5	11
Williamstown	2,926	15	29
Wilmington	7,141	36	71
Winchendon	3,563	18	36
Winchester	7,860	39	79
Windsor	378	2	4
Winthrop	8,009	40	80
Woburn	15,312	77	153
Worcester	70,408	352	704
Worthington	522	3	5
Wrentham	3,477	17	35
Yarmouth	12,056	60	121

III. Affirmative Fair Housing Marketing and Resident Selection Plan

A. Introduction

The Commonwealth of Massachusetts has a compelling interest in creating fair and open access to affordable housing and promoting compliance with state and federal civil rights obligations. Therefore, all housing with state subsidy or housing for inclusion on the Subsidized Housing Inventory (SHI) shall have an Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP). With respect to rental housing and Assisted Living Facilities, *the affordable Use Restriction documents of said housing must require that the AFHMP, subject to the approval of the subsidizing or funding agency, shall be implemented for the term of the affordability restriction.*

Affirmative Fair Housing requirements apply to the full spectrum of activities that culminate with occupancy, including but not limited to means and methods of outreach and marketing through to the qualification and selection of residents. All AFHMP plans must, at a minimum, meet the standards set forth by the Department of Housing and Community Development (DHCD), as may be amended from time to time. In the case of M.G.L. c.40B projects and other projects subsidized by a Subsidizing Agency, the AFHMP must be approved by the Subsidizing Agency.

The developer (Developer) is responsible for resident selection, including but not limited to drafting the resident selection plan, marketing, administering the initial lottery process, and determining the qualification of potential buyers and/or tenants. The Developer is responsible for paying for all of the costs of affirmative fair marketing and administering the lottery and may use in-house staff, provided that such staff meets the qualifications described below. The Developer may contract for such services provided that any such contractor must be experienced and qualified under the following standards.

Note: As used in these AFHMP Guidelines, "Developer" refers to the Project Owner and/or the entity with which the Developer has contracted to carry out any or all of the tasks associated with an AFHMP.

B. Developer Staff and Contractor Qualifications

The entity as well as the individual with primary responsibility for resident selection, whether in-house staff or a third-party contractor, must have substantial, successful prior experience in each component of the AFHMP for which the party will be responsible, e.g. drafting the plan, marketing and outreach activities, administering the lottery process and/or determining eligibility under applicable subsidy programs and/or qualifying buyers with mortgage lenders.

Subsidizing Agencies reserve the right to reject the qualifications of any Developer or contractor. However, generally, Developers or contractors that meet the following criteria *for each component*, as applicable, will be considered to be qualified to carry out the component(s) for which they are responsible:

1. The entity has successfully carried out similar AFHMP responsibilities for a minimum of three (3) projects in Massachusetts *or* the individual with primary responsibility for the resident selection process has successfully carried out similar AFHMP responsibilities for a minimum of five (5) projects in Massachusetts.
2. The entity has the capacity to address matters relating to limited English language proficiency. This shall include language access planning and providing reasonable language assistance, at no cost to the applicant, so that applicants with Limited English Proficiency ("LEP") may meaningfully apply and access

the housing opportunity.⁹ Marketing informational materials must therefore provide notice of free language assistance to applicants, translated into the languages of LEP populations anticipated to apply.

3. "Successfully" for the purposes of these Guidelines means that, with respect to both the entity and the relevant staff, (a) the prior experience has not required intervention by a Subsidizing Agency to address fair housing complaints or concerns; and (b) that within the past five (5) years, there has not been a finding or final determination against the entity or staff for violation of any state or federal fair housing law.

C. Affirmative Fair Housing Marketing Plan

1. Duration

The Developer and contractor, if any, or other delegated entity, shall review and update the AFHMP at least every five years, or more frequently if relevant demographics change, or as otherwise needed in order to ensure compliance with applicable law and DHCD's AFHMP guidelines, as may be amended from time to time (or any successor guidelines or directives).

(May 2013 Update: Addition of language on duration; no change in policy.)

2. Contents

The Developer shall prepare the following materials which shall comprise an AFHMP:

- a. Informational materials for applicants including a general description of the overall project that provides key information such as the number of market/affordable units, amenities, number of parking/garage spaces per unit, distribution of bedrooms by market and affordable units, accessibility, etc.
- b. A description of the eligibility requirements.
- c. A description of the rules for applying and the order in which applications will be processed.
- d. Lottery and resident selection procedures.
- e. A clear description of the preference system being used (if applicable).
- f. A description of the measures that will be used to ensure affirmative fair marketing will be achieved including a description of the affirmative fair marketing and outreach methods that will be used, sample advertisements to be used, and a list of publications where ads will be placed.
- g. Application materials including:
 - (1) The application form.

⁹ See DHCD's Language Access Plan at <http://www.mass.gov/hed/docs/dhcd/hd/fair/languageaccessplan.pdf> for information about language access planning obligations and requirements.

- (2) A statement regarding the housing provider's¹⁰ obligation not to discriminate in the selection of applicants on the basis of race, color, national origin, disability, age, ancestry, children, familial status, genetic information, marital status, public assistance reciprocity, religion, sex, sexual orientation, gender identity, veteran/military status, or any other basis prohibited by law, and such a statement must also be included in the application materials.
 - (3) Information indicating that persons with disabilities are entitled to request a reasonable accommodation in rules, policies, practices, or services, or to request a reasonable modification in the housing, when such accommodations or modifications may be necessary to afford persons with disabilities an equal opportunity to use and enjoy the housing.¹¹
 - (4) An authorization for consent to release information.
- h. For homeownership transactions, a description of the use restriction and/or deed rider.
 - i. The Developer and contractor, if any, shall sign the AFHMP document as follows:

"As authorized representatives of [Developer] and [contractor], respectively, each of us has reviewed this plan and agrees to implement this AFHMP, which shall be made effective as of the approval date. Further, by signing this form, [Developer] agrees to review and update its AFHMP as necessary in order to comply with all applicable statutes, regulations, executive orders and other binding DHCD requirements pertaining to affirmative fair housing marketing and resident selection plans reasonably related to such statutes, regulations, executive orders, as same may be amended from time to time. We hereby certify that all the information stated herein, as well as any information provided herewith, is true and accurate.

Note: The Developer shall *not* utilize the HUD AFHMP form unless required to submit an AFHMP to HUD for review and approval.

3. Approval

The Subsidizing Agency must approve the AFHMP before the marketing and application process commences.

4. Applicability

Aside from the advertising component of the AFHMP, which applies to all units, the AFHMP shall be applied to affordable units upon availability for the term of affordability and must consist of actions that provide information, maximum opportunity, and otherwise attract eligible persons protected under state and federal civil rights laws that are *less likely to apply*.

¹⁰ Note: housing providers include owners of accessory apartments and their agents.

¹¹ It is important to remember that legal obligations with respect to accessibility and modifications in housing extend beyond the Massachusetts Architectural Access Board requirements, including federal requirements imposed by the Fair Housing Act, the Americans with Disabilities Act, and the Rehabilitation Act. Under state law, in the case of publicly assisted housing, multiple dwelling housing consisting of ten or more units, or contiguously located housing consisting of ten or more units (see M.G.L. c. 151B, § 1 for definitions), reasonable modification of existing premises shall *be at the expense of the owner* or other person having the right of ownership if necessary for the person with a disability to fully enjoy the premises. M.G.L. c. 151B, § 4(7A). See also 24 C.F.R. part 8 for Rehabilitation Act requirements of housing providers that receive federal financial assistance.

5. Criminal Background Checks

Criminal background checks are not required under these AFMHP guidelines. However, if criminal background inquiries and checks will be utilized during the application process, the use of such inquiries and checks are subject to the approval of the Subsidizing Agency. Criminal background screening shall not be conducted as a precondition for applicant participation in the lottery. For further guidance on criminal background screening, see the Model Policy Regarding Applicant Screening on the Basis of Criminal Records, available at <http://www.mass.gov/hed/economic/eohed/dhcd/legal/fair-housing-and-civil-rights-information.html>


(May 2013 Update: New requirement for signature/certification of AFHMP submissions; advice on use of HUD form; and new language on CORIs but no change in policy.)

6. Outreach and Marketing

Marketing should attract residents outside the community by extending to the regional statistical area as well as the state and must meet the following requirements:

- a. Advertisements should be placed in local and regional newspapers, and newspapers that serve minority groups and other groups protected under fair housing laws. Notices should also be sent to local fair housing commissions, area churches, local and regional housing agencies, local housing authorities, civic groups, lending institutions, social service agencies, and other non-profit organizations.
- b. Affordable units in the Boston Metropolitan Statistical Area (MSA) must be reported to the Boston Fair Housing Commission's Metrolist (Metropolitan Housing Opportunity Clearing House). Such units shall be reported whenever they become available (including upon turnover).
- c. Accessible¹² units must be listed with MassAccess (see <http://www.chapa.org> or <http://www.massaccesshousingregistry.org>) whenever they become available (including upon turnover).
- d. Affordable rental and affordable ownership units, whether or not they are accessible, must also be listed with MassAccess whenever they become available (including upon turnover). Where applicable, all MassAccess data input fields relating to accessible and adaptable status and accessibility features must be completed. Available affordable ownership units must also be listed with the Massachusetts Affordable Housing Alliance website (see <http://www.mahahome.org> or <http://www.massaffordablehomes.org>).
- e. Marketing should also be included in non-English publications based on the prevalence of particular language groups in the regional area. To determine the prevalence of a particular language by geographical area, see for example http://www.lep.gov/demog_data/demog_data.html.

¹² Note: The owner or other person having the right of ownership shall, in accordance with M.G.L. c. 151B, §4(7A), give at least fifteen days' notice of the vacancy of a wheelchair accessible unit to the Massachusetts Rehabilitation Commission. Said statute also requires the owner or other person having the right of ownership to give timely notice that a wheelchair accessible unit is vacant or will become vacant to a person who has, within the past 12 months, notified the owner or person or person having the right of ownership that such person is in need of a wheelchair accessible unit.

- f. All marketing should be comparable in terms of the description of the opportunity available, regardless of the marketing type (e.g., local newspaper vs. minority newspaper). The size of the advertisements, including the content of the advertisement, as well as the dates of the advertising unless affirmative advertising occurs first, should be comparable across regional, local, and minority newspapers.
- g. All advertising and marketing materials should indicate resident selection by lottery or other random selection procedure, where applicable.
- h. All advertising should offer reasonable accommodations in the application process.
- i. Advertisements should run a minimum of two times over a sixty day period and be designed to attract attention. Marketing of ownership units should begin approximately six months before the expected date of project occupancy.
- j. Pursuant to fair housing laws,¹³ advertising/marketing must not indicate any preference or limitation, or otherwise discriminate based on race, color, disability, religion, sex, familial status, sexual orientation, gender identity, national origin, genetic information, ancestry, children, marital status, or public assistance reciprocity. This prohibition includes phrases such as "active adult community" and "empty nesters". Exceptions may apply if the preference or limitation is pursuant to a lawful eligibility requirement.
- k. All advertising and marketing materials portraying persons should depict members of classes of persons protected under fair housing laws, including majority and minority groups as well as persons with disabilities.
- l. The Fair Housing logo () and slogan ("Equal Housing Opportunity") should be included in all marketing materials. The logo may be obtained at HUD's website at: <http://www.hud.gov/library/bookshelf11/hudgraphics/fheologo.cfm> .

(May 2013 Update: Clarification on MassAccess requirements; the specific references to examples of prohibited phrases in 6.j; no change in policy.)

7. Availability of Applications

Advertising and outreach efforts shall identify locations where the application can be obtained. **Applications shall be available at public, wheelchair accessible locations, including one that has some night hours; usually, a public library will meet this need.** The advertisements and other marketing materials shall include a telephone number, as well as the TTY/TTD telephone number, that persons can call to request an application by mail. Advertisements and other marketing materials cannot indicate that applicants must appear in person in order to receive or submit applications or that they will have an advantage over applicants who do not appear in person.

8. Informational Meeting

At the time of initial marketing, the lottery administrator must offer one or more informational meetings for potential applicants to educate them about the lottery process and the housing development. These meetings may include local officials, developers, and local bankers. The date, time, and location of these meetings shall be published in ads and flyers that publicize the availability of lottery applications. The

¹³ 42 U.S.C. § 3604(c); M.G.L. c. 151B, § 4(7B).

workshops shall be held in a municipal building, school, library, public meeting room or other accessible space. Meetings shall be held in the evening or on weekend days in order to reach as many potential applicants as possible. However, attendance at a meeting shall not be mandatory for participation in a lottery.

The purpose of the meeting is to answer questions that are commonly asked by lottery applicants. Usually a municipal official will welcome the participants and describe the municipality's role in the affordable housing development. The lottery administrator will then explain the information requested on the application and answer questions about the lottery drawing process. The Developer should be present to describe the development and to answer specific questions about the affordable units. It is helpful to have representatives of local banks present to answer questions about qualifications for the financing of affordable units. At the meeting, the lottery administrator should provide complete application materials to potential applicants.

9. Homeownership – Establishing Sales Prices

Sale prices shall be established at the time of the initial marketing of the affordable units. Thereafter, the prices of homes cannot be increased for lottery winners, even if interest rates and HUD income guidelines change.

For large, phased developments maximum sale prices of units sold in subsequent phases will be calculated prior to the start of marketing for each phase, or approximately 6 months prior to expected occupancy of the units. In such cases, each phase will require its own affirmative fair marketing efforts and lottery.

D. Local Preferences

1. Threshold Requirements

a. Required Supporting Documentation

If a municipality wishes to implement a local selection preference, it must:

- (1) Demonstrate in the AFHMP the need for the local preference. For instance, a community that has a subsidized rental housing or public housing waiting list with local applicants likely to apply for the project (whether or not the project provides rental assistance will be considered) *may* support a local preference for a rental development.
- (2) Justify the extent of the local preference (the percentage of units proposed to be set aside for local preference). That is, how does the documented local need, in the context of the size of the community, the size of the project and the regional need, justify the proposed size of the local preference for a given project? *Note, however, that in no event may a local preference exceed 70% of the (affordable) units in a Project.*
- (3) Demonstrate that the proposed local preference will not have a disparate impact on protected classes (see e.g., the "Avoiding Potential Discriminatory Effects" section below).

b. Failure to Provide Supporting Documentation

A municipality must provide to the Developer the documentation required to support a local preference within 3 months of final issuance of the Comprehensive Permit. Failure to comply with

this requirement shall be deemed to demonstrate that there is not a need for a local preference and a local preference shall not be approved as part of any AFHMP or use restriction.

2. Approval

The Subsidizing Agency, and in the case of LAUs, DHCD as well as the municipality, must approve a local preference scheme as part of the AFHMP. Therefore, the nature and extent of local preferences should be approved by the Subsidizing Agency (or DHCD in the case of LAUs) prior to including such language in any zoning mechanism. Furthermore, a comprehensive permit shall only contain requirements or conditions relating to local preferences to the extent permitted by applicable law and this AFHMP policy.

(May 2013 Update: Clarification on what is required to establish the local preference set-aside.)

3. Local Preferences

a. Allowable Preference Categories

- (1) Current residents: A household in which one or more members is living in the city or town at the time of application. Documentation of residency should be provided, such as rent receipts, utility bills, street listing or voter registration listing.
- (2) Municipal Employees: Employees of the municipality, such as teachers, janitors, firefighters, police officers, librarians, or town hall employees.
- (3) Employees of Local Businesses: Employees of businesses located in the municipality.
- (4) Households with children attending the locality's schools, such as METCO students.

b. When determining the preference categories, the geographic boundaries of the local resident preference area may not be smaller than municipal boundaries.

c. Durational requirements related to local preferences, that is, how long an applicant has lived in or worked in the residency preference area, are not permitted in any case.

d. Preferences extended to local residents should also be made available not only to applicants who work in the preference area, but also to applicants who have been hired to work in the preference area, applicants who demonstrate that they expect to live in the preference area because of a bona fide offer of employment, and applicant households with children attending the locality's schools, such as METCO students.

e. A preference for households that work in the community must not discriminate (including have a disproportionate effect of exclusion) against persons with disabilities and elderly households in violation of fair housing laws.

f. Advertising should not have a discouraging effect on eligible applicants. As such, local residency preferences must not be advertised as they may discourage non-local potential applicants.

4. Avoiding Potential Discriminatory Effects

a. General.

The local selection preferences must not disproportionately delay or otherwise deny admission of non-local residents that are protected under state and federal civil rights laws. The AFHMP should demonstrate what efforts will be taken to prevent a disparate impact or discriminatory effect. For example, the community may move minority applicants into the local selection pool to ensure it reflects the racial/ethnic balance of the HUD defined Metropolitan Statistical Area ("MSA") as described below.¹⁴ However, such a protective measure may not be sufficient as it is race/ethnicity specific; the AFHMP must address other classes of persons protected under fair housing laws who may be negatively affected by the local preference. For instance, a preference solely based on employment in the municipality may have a disparate impact on the elderly or some persons with disabilities. In such instance, an applicant residing in the community who is age 62 or older or is a person with a disability must be given the benefit of the employment preference.

b. Lottery Process

- (1) To avoid discriminatory effects in violation of applicable fair housing laws, the following procedure should be followed unless an alternative method for avoiding disparate impact (such as lowering the original percentage for local preference as needed to reflect demographic statistics of the MSA) is approved by the Subsidizing Agency. If the project receives HUD financing, HUD standards must be followed.
- (2) A lottery for projects including a local preference should have two applicant pools: a local preference pool and an open pool. After the application deadline has passed, the Developer should determine the number of local resident minority households there are in the municipality and the percentage of minorities in the local preference pool. If the percentage of minority local resident households in the local preference pool is less than the percentage of minorities in the surrounding HUD-defined area, the Developer should make the following adjustments to the local preference pool:
 - (a) The Developer should hold a preliminary lottery comprised of all minority applicants who did not qualify for the local preference pool, and rank the applicants in order of drawing.
 - (b) Minority applicants should then be added to the local preference pool in order of their rankings until the percentage of minority applicants in the local preference pool is equal to the percentage of minorities in the surrounding HUD-defined area.
 - (c) Applicants should be entered into all pools for which they qualify. For example, a local resident should be included in the local preference pool and the open pool.
 - (d) Minorities should be identified in accordance with the classifications established by HUD and the U.S. Census Bureau, which are the racial classifications: Black or African American; Asian; Native American or Alaska Native; Native Hawaiian or Pacific Islander; or other (not White); and the ethnic classification Hispanic or Latino.

¹⁴ Note: This protective measure may not be dispositive with respect to discriminatory effects. For example, the non-local applicant pool may contain a disproportionately large percentage of minorities, and therefore adjusting the local preference pool to reflect demographics of the regional area may not sufficiently address the discriminatory effect that the local preference has on minority applicants. Therefore, characteristics of the non-local applicant pool should continually be evaluated.

E. Household Size Requirements

In order to make the best use of limited affordable housing resources, household size should be appropriate for the number of bedrooms in the home. Minimum household standards shall be established and shall conform with the following requirements. A "household" shall mean two or more persons who will live regularly in the unit as their principal residence and who are related by blood, marriage, law or who have otherwise evidenced a stable inter-dependent relationship, or an individual.

1. Preferences.

Lottery drawings shall result in each applicant being given a ranking among other applicants with households receiving preference for units based on the above criteria below.

a. First Preference

Within an applicant pool first preference shall be given to households requiring the total number of bedrooms in the unit based on the following criteria:

- (1) There is at least one occupant per bedroom.¹⁵
- (2) A husband and wife, or those in a similar living arrangement, shall be required to share a bedroom. Other household members may share but shall not be required to share a bedroom.
- (3) A person described in the first sentence of (b) shall not be required to share a bedroom if a consequence of sharing would be a severe adverse impact on his or her mental or physical health and the lottery agent receives reliable medical documentation as to such impact of sharing.
- (4) A household may count an unborn child as a household member. The household must submit proof of pregnancy with the application.
- (5) If the applicant is in the process of a divorce or separation, the applicant must provide proof that the divorce or separation has begun or has been finalized, as set forth in the application.

b. Second Preference

Within an applicant pool second preference shall be given to households requiring the number of bedrooms in the unit minus one, based on the above criteria.

c. Third Preference

Within an applicant pool third preference shall be given to households requiring the number of bedrooms in the unit minus two, based on the above criteria.

2. Maximum Household Size

Household size shall not exceed, nor may maximum allowable household size be more restrictive than, State Sanitary Code requirements for occupancy of a unit (See 105 CMR 400).¹⁶

¹⁵ Households with disabilities must not be excluded from a preference for a larger unit based on household size if such larger unit is needed as a reasonable accommodation.

F. Lotteries and Application Process

1. Lottery Application

a. "First Come, First Served"

Resident selection for affordable units must generally be based on a lottery, although in some cases it may be based on another fair and equitable procedure approved by the Subsidizing Agency.¹⁷ A "first-come, first-serve procedure," generally is not permissible as it is likely to disadvantage non-local applicants or may otherwise present an impediment to equal housing opportunity for some applicants, including some applicants with disabilities. However, first-come, first-serve may be permissible in circumstances for which a lottery or other random selection procedure would be unduly burdensome or impracticable, including for individual homeownership units after the initial lottery.

b. Application Period.

The application period should be at least 60 days. To ensure the fairness of the application process, applicants must not be required to deliver application materials and instead must be permitted to mail them or submit by alternative means such as fax or e-mail.

c. Application Contents and Verification

- (1) The lottery application must address a household's income, assets, size and composition, minority status (optional disclosure by the household), eligibility as a first-time buyer (for ownership units), and eligibility for local preference
- (2) The lottery administrator shall request verification to verify eligibility; e.g., for homeownership units, three prior year tax returns with the W2 form and for rental housing, one year prior tax return with the W2 form; 5 most recent pay stubs for all members of the household who are working, three most recent bank statements and other materials necessary to verify income or assets. **Only applicants who meet the applicable eligibility requirements shall be entered into a lottery.**

(May 2013 update: clarification that "first come, first serve" generally is not permitted as a selection process.)

2. Lottery Procedure

a. General

- (1) Once all required information has been received, qualified applicants should be assigned a registration number. **Only applicants who meet the applicable eligibility requirements shall be entered into a lottery.**¹⁸ **The lottery shall be conducted after**

¹⁶ Note, however, that fair housing exceptions may apply: see HUD Fair Housing Enforcement—Occupancy Standards Notice of Statement of Policy, Docket No. FR-4405-N-01 (1998).

¹⁷ In the case of project based Section 8 properties where resident selection is to be performed by the housing authority pursuant to a Section 8 waiting list, a lottery procedure is not required.

¹⁸ Only applicants who are eligible for a local preference, where applicable, shall be entered into a local preference lottery pool.

any appeals related to the project have been completed and all permits or approvals related to the project have received final action.

(2) Ballots with the registration number for applicant households are placed in **all** lottery pools for which they qualify. The ballots are randomly drawn and listed in the order drawn, by pool. If a project has units with different numbers of bedrooms, units are then awarded (largest units first) by proceeding down the list to the first household on the list that is of appropriate size for the largest unit available according to the appropriate-unit-size criteria established for the lottery. Once all larger units have been assigned to appropriately sized households in this manner, the lottery administrator returns to the top of the list and selects appropriately sized households for smaller units. This process continues until all available units have been assigned to appropriately sized applicant households.

(3) The lottery should ordinarily be held at a public, wheelchair accessible location.

b. Deposits/Fees

(1) Prohibited - Successful lottery participants cannot be required to pay any fee or deposit to hold a unit pending construction completion nor can applicants be required to pay any form of fee or deposit to be placed on a wait list.

(2) Permitted – The foregoing language shall not prevent an Owner from requiring a deposit from a home buyer upon signing an offer and/or purchase and sales agreement, nor at the time that the Owner is offering to lease a specific rental unit to the applicant household. In the latter instance, the deposit shall not exceed the amount that the Owner would otherwise be permitted to require as a security deposit.

c. Accessible Units/Units with Adaptive Features; Reasonable Accommodations

(1) If the project includes units that are fully accessible, or units that have adaptive features (also commonly referred to as “adaptable” units), for occupancy by persons with mobility impairments or hearing, vision or other sensory impairments, first preference (regardless of applicant pool) for those units shall be given to persons with disabilities who need such units, including single person households, in conformity with state and federal civil rights laws. This preference applies to fully accessible units (e.g., in projects in which 5% of the total units are to be wheelchair accessible and 2% are to be communications accessible in accordance with applicable accessibility standards).¹⁹ In projects that do not have such units but that have units with adaptive features²⁰ for persons with mobility impairments and/or hearing, vision or other sensory impairments, this preference also applies to the units with adaptive features; however, such a preference is not required to exceed 5% (mobility) or 2% (sensory) of the total units under these guidelines.

(2) Fulfilling the obligation for a providing a first preference, as described above, does not limit an owner’s fair housing obligations with respect to persons with disabilities. When a person with a disability is the next eligible applicant and the development contains available units with adaptive features, the applicant must be made aware of such availability and of the owner’s obligation to adapt the unit as needed.

¹⁹ e.g., Massachusetts Architectural Access Board (MAAB) (“Group 2 units”), Uniform Federal Accessibility Standards (UFAS), and 2010 ADA Standards.

²⁰ e.g., in accordance with the Fair Housing Act Guidelines and MAAB (“Group 1 units”) standards.

- (3) The owner also has obligations to make reasonable accommodations such as granting the request for an appropriately sized first floor unit.

d. Wait Lists

- (1) General - The lottery administrator should retain a list of households who are not awarded a unit, in the order that they were drawn from the general (non-local) pool. If any of the initial renters/buyers do not rent/purchase a unit, the unit shall be offered to the highest ranked household on that retained list.
- (2) Units with Adaptive Features - Where a person with a disability is awaiting an accessible unit and a unit with adaptive features becomes available, the owner/management agent must offer to adapt the unit.
- (3) Term of Wait List - The wait list generally may be retained and used to fill units for up to one year. However, other factors such as the number of households remaining on the list, the likelihood of the continuing eligibility of such households, and the demographic diversity of such households may inform the retention time of the list, subject to the approval of the Subsidizing Agency.
- (4) Updating - After the initial lottery, waiting lists should be analyzed, maintained, and updated (through additional marketing) so that they remain consistent with the objectives of the housing program and are adequately representative of the racial, ethnic, and other characteristics of potential applicants in the housing market region.

(May 2013 Update: Clarification on deposit policy and fair housing requirements with respect to accessible and/or adaptive units; no change in policy.)

3. Lottery Example

This theoretical lottery has an OPEN pool that includes all applicants and a LOCAL PREFERENCE pool with only applicants from the local area.

- Total applicants in lottery: 100
 - Total minority applicants: 20
 - The community in which the lottery takes place falls within the HUD Boston-Cambridge-Quincy Metropolitan Statistical Area which has a minority population of 27.0%.
- a. Determine the number of applicants who claim a LOCAL preference according to approved criteria.
 - b. Determine the number of minority applicants in the LOCAL preference pool.
 - c. Determine the percentage of minority applicants in the LOCAL preference pool.

Total Applicants in Local Preference Pool	Total Minority Applicants in Local Preference Pool	% Minority Applicants in Local Preference Pool
60	10	16.7%

Since the percentage of minority applicants in the LOCAL preference pool is below the percentage of minority residents in the HUD defined metropolitan statistical area (16.7% as opposed to 27.0%), a preliminary lottery is required.

d. The 10 minority applicants who do not have LOCAL preference are entered into a preliminary drawing and assigned a rank based on the order of their draw. Minority applicants are added to the LOCAL preference pool in order of their rank until the LOCAL preference pool has at least as great a percentage of minority applicants as the larger statistical area. In this example, 9 applicants will be added to the LOCAL preference pool to bring the percentage of minority applicants up to 21.827.5%.

Total Applicants in Supplemented Local Preference Pool	Total Minority Applicants in Supplemented Local Preference Pool	% Minority Applicants in Supplemented Local Preference Pool
69	19	27.5%

e. Draw all ballots from the adjusted LOCAL pool and assign rankings to each household. Preference for appropriately sized households will still apply and all efforts should be made to match the size of the affordable units to the legitimate need for bedrooms of each household.

f. Once all units for LOCAL residents have been allocated, the OPEN pool should proceed in a similar manner. All LOCAL residents should have ballots in both pools, and all minority applicants that were put in the LOCAL pool should remain in the OPEN pool as well.

4. Rental: Opening Waiting Lists, Re-Marketing or Continuous Marketing

Although owner/management agent standards for opening waiting lists or re-marketing to generate sufficient applications after the initial rent-up stage may vary, the following are generally applicable: the waiting list is re-opened when it contains less than the number of applicants anticipated to be placed in the next 12 months, or, if the waiting list has not closed, additional marketing is ~~needed~~ undertaken to generate at least enough applicants as was needed to fill the previous year’s vacancies.

a. Minimum Application Period

At such or similar points in time, consistent with a Developer or management agent’s policies and practices with respect to marketing and wait lists, when a wait list (whether for a project or a particular unit type) is re-opened or units are remarketed, a minimum application period during which applicants may receive and submit applications is required. The appropriate length of the application period may vary depending on the number of units that are or will become available. In some instances 20 or more business days will be appropriate, but in no event shall the application period be less than 10 business days.

b. “First Come, First Served”

A “first-come, first-serve” method of generating the waiting list order of new applicants that apply during said application period shall not be permitted as it may present an impediment to equal housing opportunity for some applicants, including some applicants with disabilities. Therefore, a random selection or other fair and equitable procedure for purposes of adding persons to a wait list upon opening the wait list or remarketing the units must be utilized, subject to the approval of the

Subsidizing Agency.²¹ This does not require any changes to the wait list as it exists prior to adding the new applicants.

c. Continuous Marketing/Persons with Disabilities

If the wait list is not closed and marketing is ongoing continuously in order to generate sufficient applicants, then, so as to avoid a disparate impact on persons with disabilities who require a reasonable accommodation with the application process, including additional time to receive, complete and/or submit an application, and who therefore may be disadvantaged by wait list placement based upon the date/time of receipt of the application, the application will be date/time stamped prior to being mailed or otherwise provided to such applicants and upon submission of a complete application the household shall be placed on the wait list based upon such date/time stamp, *provided that* the application is returned or postmarked not more than 30 days of such date/time stamp. The ongoing affirmative and general marketing/outreach materials will contain language that explicitly gives notice of the availability of reasonable accommodations with respect to the application process and a telephone number for applicants who may want to request a reasonable accommodation and/or assistance with the application process.

For marketing requirements, see "Outreach and Marketing" and "Availability of Applications" under Sections B.6 and B.7, above.

(May 2013 Update: Explicit standards for re-opening rental housing waiting lists or re-marketing rental units.)

G. Homeownership

1. Household Eligibility

A Subsidizing Agency housing program may establish eligibility requirements for homebuyers. In the absence of such provisions, the following requirements shall apply.

In addition to meeting the requirements for qualifying a Project or dwelling unit for the SHI (see Section II.A), the household shall not have owned a home within three years preceding the application, with the exception of:

- a. displaced homemakers, where the displaced homemaker (an adult who has not worked full-time, full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family), while a homemaker, owned a home with his or her partner or resided in a home owned by the partner;
- b. single parents, where the individual owned a home with his or her partner or resided in a home owned by the partner and is a single parent (is unmarried or legally separated from a spouse and either has 1 or more children of whom the individual has custody or joint custody, or is pregnant);
- c. households where at least one household member is 55 or over;
- d. households that owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations; and

²¹ Note: the random selection procedure requirement does not preclude the application of the larger household size and accessible/adaptable preferences described herein.

- e. households that owned a property that was not in compliance with State, local or model building codes and that cannot be brought into compliance for less than the cost of constructing a permanent structure.

2. Final Qualification and Closing

a. Securing Financing.

- (1) Once the lottery has been completed, applicants selected to purchase units must be given a reasonable pre-specified time period in which they must secure financing.
- (2) The Developer should invite the lottery winners to a loan application workshop.
- (3) The Developer should make prior arrangements with local financial institutions with respect to financing qualified purchasers. Often such institutions will give preliminary approvals of loans, which make the remainder of the process more efficient for all parties. However, **applicants cannot be required to use a specific lender for their pre-approval letter or their mortgage.**
- (4) Applicants should be made aware that they should confirm that their lender accepts the "Universal Deed Rider" employed by the Subsidizing Agencies.
- (5) Non-household members should not be permitted as co-signers of the mortgage.

b. Approval by Subsidizing Agency

Before a Purchase and Sale Agreement is signed, the lottery agent should submit income and asset documentation of the applicant to the Subsidizing Agency. Income verification should include tax returns and W-2s from the past three years, five most recent pay stubs, three months recent bank statements and 401 K reports, reliable documentation as to other sources of income and assets. The Subsidizing Agency will then verify that the household's annual income does not exceed 80% of the area median income, or such lower income limit as may have been established for the particular project. The Subsidizing Agency also will verify that household assets do not exceed the maximum allowed. **Closing of the sale will also be contingent on the Subsidizing Agency's approval of the buyer's financing.**

3. Resales

a. Ongoing AFHMP Requirements

AFHMP requirements apply to the housing for its duration. The AFHMP must include a plan, satisfactory to the Subsidizing Agency, to address AFHMP requirements upon resale. The proposal must, at a minimum, require that units for re-sale to eligible purchasers be listed with CHAPA's MassAccess site and MAHA's homeownership lottery sites as described above and establish minimum public advertising requirements. The proposal cannot impose the AFHMP requirements upon a homeowner other than requiring compliance with requirements of a Use Restriction, reasonable public advertising, and listing with CHAPA and MAHA.

b. "Ready-Buyer" List

A "ready-buyer" list of eligible buyers maintained by the municipality or other local entity is encouraged. This list may be created through local, regional, and statewide lists and resources. As stated above, the list should continually be analyzed, maintained, and updated (through additional marketing) so that it remains consistent with the objectives of the housing program and is adequately representative of the racial, ethnic, and other characteristics of potential applicants in the housing market region.

IV. RESPONSIBILITIES OF THE SUBSIDIZING AGENCY

A. Project Eligibility

1. Threshold Requirements

In order to be eligible to submit an application to the Board for a Comprehensive Permit, the Developer must meet the following threshold requirements. The Subsidizing Agency's finding with respect to these requirements shall be based upon a review of a complete Project Eligibility submission and a site visit. The Subsidizing Agency also shall take into account information received from written comments submitted by the municipality and others.

a. Nature of Developer

- (1) Nonprofit Entities – The Subsidizing Agency shall review: (i) the articles of organization of the organization to ensure that the project is consistent with its stated charitable mission and purpose; (ii) a copy of the organization's conflict of interest policy that requires all related party transactions to be disclosed to and approved by independent directors or trustees; (iii) a disclosure of all related party contracts, arrangements or transactions, current and anticipated, related to the projects; and (iv) a disclosure of all entities that are related to or affiliated with the organization by reason of common control, financial interdependence or other means; and shall confirm with the Non-Profit Organizations/Public Charities Division of the Office of the Attorney General that the organization is in compliance with the registration and filing requirements of M.G.L. c. 12, 22 8E and 8F.
- (2) Non-profit or Government Entity Sponsor Affiliates -- For the purposes of this Section IV, in the case of Projects or other units of Low and Moderate Income Housing sponsored by non-profits or government entities, if the project owner is wholly-owned by a non-profit or government entity, the project may be treated as a project owned by a non-profit or government entity. If the project owner has multiple members or partners, it shall be treated as a project owned by a limited dividend organization. The Subsidizing Agency shall make the determination whether a Project owner should be treated as a non-profit or government entity.
- (3) Limited Dividend Status -- Developers seeking a Comprehensive Permit, other than public agencies and nonprofit entities, must agree to requirements related to a reasonable return for building and operating the Project as established by the Subsidizing Agency and these Guidelines (see Section IV.B). The Developer's status as a limited dividend entity shall be determined by the Subsidizing Agency based upon the Developer's certification that it agrees to comply with the Subsidizing Agency's limits on profits and distributions, and to incorporate such requirements into regulatory documents, as required by the Subsidizing Agency.

b. Fundable

A determination that a Project is "fundable" is not a financing commitment. It is a determination that the Project generally would be considered eligible for the particular housing program under which the Developer seeks Project Eligibility.

c. Site Control

In the absence of other requirements established by a Subsidizing Agency for its housing programs, site control shall mean that the Developer or a related entity holds title or holds a ground lease, an option, or a contract for purchase.

2. Project Application

At a minimum, the Developer shall submit the materials required by 760 CMR 56.04(2). Subsidizing Agencies may require additional materials.

3. Findings

The regulations at 760 CMR 56.04(4) set out the findings that are necessary for a determination of Project Eligibility by a Subsidizing Agency. These guidelines elaborate on some of these findings.

a. Previous Municipal Actions (760 CMR 56.04(4)(b))

The purpose of the Act is to provide relief from local exclusionary zoning and regulatory requirements; it is not intended to remove all local control related to regulating patterns of land use and development. In determining whether a Project site is appropriate, Subsidizing Agencies must take into account information provided by a municipality as to whether it has met the purpose of the Act by creating zoning districts and/or requirements that provide the opportunity for affordable housing, including affordable housing that is available to families with children and for which at least 10% of such housing contains units with 3 or more bedrooms, and whether the Project complies with such measures. Such actions could include the creation of multi-family districts or compact neighborhoods under G.L. c.40A; overlay districts adopted under G.L. c.40R; and/or the adoption of an inclusionary zoning by-law. If the previous municipal action is of a character and scale to create significant opportunities as-of-right to meet the municipality's need for affordable housing as measured by the Statutory Minima, the municipality's action will be given weight in the eligibility findings. The fact that the development of affordable housing has yet to occur may be taken into account, but will not be deemed to be determinative.

b. Design (760 CMR 56.04(4)(c))

Given that the purpose of the Act is to overcome local zoning and regulatory barriers to affordable housing, by its very nature the Act introduces into localities a site plan, and likely building typologies, that differ from the surrounding context. Therefore, the Subsidizing Agency must give particular attention in reviewing the Project to the matters that relate to how the Project site plan and design relates to the existing development pattern(s) of the immediately surrounding area.

These guidelines are not intended to be exhaustive and/or supplant the more detailed design review that a Subsidizing Agency undertakes in determining Project Eligibility. Rather, they are intended to draw attention to factors that are of particular importance when introducing a Project into existing surroundings, to encourage a uniform perspective among Subsidizing Agencies, and to create a more transparent review process.

- (1) Relationship to Adjacent Building Typology – Generally, a Project is developed in the context of single family dwellings and introduces a different form of housing into the neighborhood. Assuming that this is the case, it is important to mitigate the height and scale of the buildings

- to adjoining sites. In this context, it is particularly important to consider the predominant building types, setbacks, and roof lines of the existing context.
- (a) The massing of the Project should be modulated and/or stepped in perceived height, bulk and scale to create an appropriate transition to adjoining sites.
 - (b) Where possible, the site plan should take advantage of the natural topography and site features, or the addition of landscaping, to help buffer massing.
 - (c) Design may use architectural details, color and materials taken from the existing context as a means of addressing the perception of mass and height
- (2) Relationship to Adjacent Streets – The manner in which the buildings relate to adjacent streets is critically important. Massing should take into account the pattern of the existing street frontage as well as maintain a human scale by reasonably relating the height of buildings to the width of the public way.
- (3) Density – Appropriate density of residential dwellings depends upon a myriad of interconnected factors and must be determined case by case. There is not any “rule of thumb” that can substitute for a review and analysis of the relevant aspects of a given design and site plan.

For additional design resources, see Chapter 40B Design Principals Handbook at <http://www.mass.gov/hed/community/40b-plan/handbook-approach-to-ch-40b-design-reviews.html> or at http://www.mhp.net/uploads/resources/handbook_approach_to_chapter_40b_design_reviews.final.11mar15.pdf, and Design Advisor at <http://www.designadvisor.org>.

4. Project Eligibility Letter

The Subsidizing Agency shall provide a copy of its Project Eligibility determination to the Chief Executive Officer of the municipality.

(May 2013 Update: inserted language addressing treatment of projects sponsored by nonprofits or government entities; also deleted numerical density ranges and added references to design resources.)

B. Allowable Development Costs

The requirements and rules of this Section IV.B relate to cost certifications undertaken for the purposes of the Act, only.

1. Land Valuation

The allowable land value of a site for purposes of the Act is the fair market value of the site under current zoning (As-Is Market Value) at the time of submission of a request for Project Eligibility, plus reasonable and verifiable carrying costs (Reasonable Carrying Costs) from that date forward. The acquisition value set forth in the final cost certification of the Project shall not exceed the sum of the As-Is Market Value and Reasonable Carrying Costs. The As-Is Market Value of a site shall be determined by an appraisal.

a. Methodology for Conducting Appraisals

While paid for by the Developer, an appraisal under the Act shall be commissioned by (and name as the client) the Subsidizing Agency. An appraisal shall be required for every Project, except as noted below. Appraisers shall be prequalified by the Department and randomly assigned to the Project by the Subsidizing Agency. All prequalified appraisers shall, at a minimum, be a General Real Estate Appraiser licensed by and in good standing with the Massachusetts Board of Registration of Real Estate Appraisers.

Appraisers shall submit Self-Contained Appraisal Reports to the Subsidizing Agency in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal may, in accordance with USPAP, take into account the probability of obtaining a variance, special permit, or other zoning relief but it must *exclude* any value relating to the possible issuance of a Comprehensive Permit. In order for any appraisal to be deemed valid, the Subsidizing Agency must review the appraisal, and, after the resolution of any outstanding issues, if any, accept the contents of the appraisal.

Note that any transfers of ownership occurring between the time of Project Eligibility and cost certification shall not affect allowable land value, and any amount paid in excess of such value shall be allowable only to the extent that there is documented evidence that the services performed by the Seller would otherwise be includable in an allowable line item.

b. Exceptions

- (1) Upon written request of the Chief Executive Officer, the Subsidizing Agency may waive the appraisal requirement for proposed Projects of 20 units or less provided that the Developer submits satisfactory evidence, such as local tax assessment, limited appraisal, or opinion of value from a licensed real estate broker, that reasonably supports the acquisition cost. The purpose of such a waiver is to relieve the cost burden for smaller developments that are sponsored or supported by the local community where the reasonableness of the acquisition cost is not at issue.
- (2) In addition, if the full value of the land is assumed to be zero and the profit level is below that allowed by the applicable subsidy program, an appraisal is not required.

c. Determining Reasonable Carrying Costs

- (1) Reasonable Carrying Costs may not exceed 20% of the As-Is Market Value of the site unless the carrying period exceeds 24 months from the date of application for Project Eligibility. If the carrying period exceeds 24 months, the Subsidizing Agency shall have the discretion to determine what constitutes reasonable carrying costs. This carrying period shall terminate on the date that the documents for the construction loan are executed or when actual construction commences, whichever

is sooner. Developers must at all times after issuance of Project Eligibility use diligent effort in pursuing the Project.

- (2) If the Developer has site control through an option or contract for purchase, Reasonable Carrying Costs may include, but are not limited to, non-refundable option fees and extension fees paid to the seller in addition to the purchase price. If the Developer owns the property, Reasonable Carrying Costs may include, but are not limited to, property taxes, property insurance, and interest payments on acquisition financing.
- (3) All Reasonable Carrying Costs must be verified by the submission of materials not within the exclusive control of the Developer such as cancelled checks, real estate tax bills, etcetera.

d. Calculation of Return

A reasonable rate of return on a Project must be determined from the As-Is Market Value of the site even though the amount paid for the site may be more or less than the As-Is Market Value. This is the approach that must be used in the calculation of total development costs set forth in the final cost certification for the Project.

2. Related Party Transactions

a. General

Fees for services by related parties should not exceed amounts that would otherwise be reasonably paid for such services in on arm's length basis in the ordinary course of business.

b. Limitations on Compensation

- (1) The Developer ordinarily performs the following development tasks, for which the related parties may not receive compensation beyond the maximum allowable Developer's fee and overhead: investigating the site/property; setting the design criteria or design program; hiring engineers, cost estimators, surveyors, designers; establishing cost limitations; determining the project size, use and ownership; coordinating legal review; awarding contracts; team coordination; construction monitoring; and obtaining project approvals.
- (2) If a related party performs any services that would normally be provided by third parties (such as an in-house construction manager instead of a clerk of the works paid through an architect), costs for such services are only allowable, in addition to Developer's fee and overhead, to the extent that such costs do not exceed what would otherwise be paid to a third party to perform those services in the ordinary course of business.

c. Related Party General Contractor

- (1) In the case of a related party general contractor, the contractor must disclose relationships with any related party subcontractors and any fees paid to related party subcontractors must be ordinary and reasonable.
- (2) The maximum Builder's Profit, Builder's Overhead, and General Requirements where related party construction managers or general contractors are as follows:
 - (a) Builder's Profit — 6% of construction costs
 - (b) Builder's Overhead — 2% of construction costs

(c) General Requirements — 6% of construction costs

- (3) It is acceptable for a particular line item to exceed the limit set forth above so long as the total of the three line items does not exceed 14%. The 14% allowance for Builder's Profit, Builder's Overhead and General Requirements for related party general contractors requires certification that the general contractor performed all of the following tasks that are typically required of general contractors: construction of building; supervision and coordination of work; job site safety; project scheduling; submission of shop drawings; preparation of payment requests; and warranty of work.

If another entity was paid to perform any one of these functions the cost may be disallowed and adjustments shall be made to account for the greater profit.

d. Related Party Loan

If a Developer or related entity makes a loan to the project, interest may only be recognized on Developer contributions that exceed 20% of total development costs. Any such loans should be evidenced by a note or mortgage and receive interest no higher than the rate established by the primary construction lender on the project.

3. Hard Costs

Hard costs shall be fully documented and shall be limited to the hard cost line item categories set forth in the Schedule of Total Chapter 40B Project Costs (see IV.D.4 for availability instructions and forms related to Cost Examination). Note that, because of contingencies during construction, it is likely that many line item amounts listed in the pre-construction pro-forma budget last reviewed by the Subsidizing Agency will change, or that some cost items may not have been originally included.

a. Specific Cost Restrictions.

The Developer should follow specific restrictions in relation to the following line items:

- (1) Hard construction costs -- including the Contractor's General Requirements, Builder's Overhead, Builder's Profit, all as defined below, as well as bond cost, should be carried on a square foot basis. The square footage cost should not exceed the reasonable square footage cost for construction of market rate housing consisting of the same building characteristics and unit type. As a "safe harbor" rule, this standard shall be presumed to have been satisfied if the square footage cost does not exceed 110% of the applicable square footage construction cost listed in the RS Means Residential Construction Cost Data (most recent edition published after Substantial Completion), adjusted for building characteristics and unit type (which may vary for particular units within the same development), and adjusted for geographic location. The Developer/Architect shall certify as to the accuracy and appropriateness of the RS Means data used for the project.
- (2) General Requirements -- are project-specific expenses (such as on-site supervision, field offices, temporary utilities and waste removal), that support the job as a whole rather than specific work items.
- (3) Builder's Overhead -- is a portion of the costs incurred by the builder or general contractor to operate their business (such as office and administrative expenses), that is not attributable to any one job.
- (4) Builder's Profit -- is the difference between the total cost of construction (including Builder's Overhead and General Requirements), and the amount paid to the builder/contractor.

b. Safe Harbor Standard

In the case of a competitively selected general contractor, no detailed review of line items is necessary during cost certification if the overall construction cost is within industry norms (e.g. within 110% of RS Means data) and the Developer and Contractor both certify that the contract was executed at arm’s length and no work was performed by related parties.

c. Costs Exceed Safe Harbor

If construction costs exceed 110% of the applicable RS Means standard, a facts and circumstances test shall be employed to determine reasonableness of the excess costs. In such cases, the Developer shall be required to provide documentation of excess costs together with a detailed explanation of the necessity for incurring such costs. Such explanation may include, for example, a comparison of features of comparable market rate units in the area, the use of green building technologies or the incurrence of extraordinary construction obligations. This explanation shall be included in the notes to the cost certification and the Subsidizing Agency shall determine to what extent such excess costs are approved.

4. Site Development Costs

This category includes roads (including utilities in the roads), on-site septic system, on-site water system, blasting allowance, rough grading/site preparation, landscaping and utility connections. Because these costs are site-specific, they shall be documented in the Developer’s records and accompanied by an explanation of the necessity of such costs, including, where appropriate, mitigation obligations imposed by the comprehensive permit. This explanation shall be included in the notes to the cost certification and the Subsidizing Agency shall determine to what extent such excess costs are approved.

5. Soft Costs

Soft costs shall also be fully documented in the Developer’s records. Developers should adhere to the standards for the following soft cost line items for homeownership projects and for rental projects in the absence of applicable standards established by the Subsidizing Agency. Otherwise, soft cost standards for rental projects are subject to the particular subsidy program under which the project is being assisted.

a. Developer Overhead

- (1) Allowable Costs -- Developer Overhead reflects the expenses of the applicant administering and managing the project during the permitting, financing, construction, marketing and cost certification phases and is not a component of allowable Developer fee/profit. The allowable Developer overhead costs for cost certification purposes should not exceed the following limitations (without need of supporting documentation):

TOTAL PROJECT SIZE	ALLOWABLE DEVELOPER OVERHEAD
Up to 4 units	\$ 20,000 (fixed amount)
5 - 20 units	\$ 4,000/unit for units 1-20
21 - 100 units	\$ 80,000 plus \$2,000/unit for units 21-100
101 - 150 units	\$ 240,000 plus \$1,000/unit for units 101-150
151+ units	\$ 290,000 plus \$500/unit for units above 150

- (2) Tasks included in Overhead - The Developer ordinarily performs the following development tasks, for which the Developer may not receive compensation beyond the maximum allowable Developer’s fee

and overhead: investigating the site/property; setting the design criteria or design program; hiring engineers, cost estimators, surveyors; hiring designer; establishing cost limitations; determining the project size, use and ownership; coordinating legal review; awarding contracts; team coordination; construction monitoring; and obtaining project approvals.

If third parties (e.g., development consultants or lawyers), perform any of these standard "owner's" tasks, those costs must be included within the maximum Developer's fee and overhead.

- (3) Allowable Additional Compensation -- If the Developer performs any services that would normally be provided by third parties (such as an in-house construction manager instead of a clerk of the works paid through an architect), costs for such services are only allowable, in addition to Developer's fee and overhead, to the extent that such costs do not exceed what would otherwise be paid to a third party to perform those services in the ordinary course of business.

b. Commissions

- (1) Market Units - Commissions on the sales of the market units should not exceed 6% of the sales price. In cases in which the development entity is a related party to the brokerage agency, commissions are limited to 5% of the sales price. All advertising costs must be included within the commissions. The cost of model homes may be treated as a separate marketing cost.
- (2) Commissions/Marketing/Lottery Costs - Affordable Ownership Units -- The maximum allowable brokerage or similar fee, including lottery costs, should be the greater of \$20,000 or 3% of the sum of actual affordable unit sales prices. Note that for the purposes of Cost Examination, brokerage commissions on units sold to related parties shall not be recognized as a cost.

c. Total Soft Costs

Soft Costs should not exceed 28% of the residential construction line item on the Schedule of Total Chapter 40B Costs (see IV.D.4 for availability instructions and forms related to Cost Examination), as approved by the Subsidizing Agency. If total soft costs exceed the 28% limit, a facts and circumstances test shall be employed to determine reasonableness of the excess costs. In such cases, the Developer shall be required to provide documentation of excess costs together with a detailed explanation of the necessity for incurring such costs. Such explanation may include, for example, reasons for a particularly complex legal structure resulting in high legal fees. This explanation shall be included in the notes to the cost certification and the Subsidizing Agency shall determine to what extent such excess costs are approved.

C. Limitations on Profits and Distributions

The requirements and rules of this Section IV.C relate to cost certifications undertaken for the purposes of the Act, only.

1. General

a. Review by Subsidizing Agency

Developer fees, profit, overhead, dividends and any other amounts paid to the owner will be reviewed by the Subsidizing Agency and any limitations on such amount(s) shall be as determined by the Subsidizing Agency.

b. Phased Projects - "Look- Back"

If a Developer undertakes separate cost examinations for phases of a project and the developer profit or fee made in any phase is either less than or more than the maximum permitted hereunder, then any amount owing to the Subsidizing Agency or municipality may be determined at the completion of the final phase as follows:

- (1) Accruing Deficiency -- the Developer may accrue the deficiency from any phase and cumulative deficiencies may be paid as fee out of later phases in accordance with the provisions herein.
- (2) Reserved Excess – the Developer may retain funds that exceed the maximum permitted for profit and fee until the cost certifications for every phase are complete, and carry forward such funds to pay any deficiencies in developer profit or fee that may occur in later phases provided that:
 - (a) The surety for the phase from which funds are reserved remains in force; and
 - (b) The comprehensive permit does not lapse.

2. Homeownership and CCRCs

Profit to Limited Dividend Organizations, including all partners, shall be limited to no more than 20% of total allowable development costs, and such other sums as the Subsidizing Agency may determine constitute a Developer's contribution to the project, provided that calculation of total allowable development costs shall not include any fee paid to the Developer. Profits accrued in excess of 20%, as defined herein, shall be distributed to the municipality for the purpose of developing and/or preserving Affordable Housing.

3. Rental Projects and ALPs

Developer fees, overhead, profits, dividends and any other distributions to Developers, including development consultants, partners or legal or beneficial owners, shall be subject to limitation as follows:

a. Distributions from Capital Sources

In the absence of applicable standards established by the Subsidizing Agency, payment of fees and profits to Limited Dividend Organizations will be limited to no more than 10% of total development costs net of (i) such fees and profits; and (ii) any working capital or reserves intended for property operations.

Developer fees and overhead, and any other amounts paid to the Developer will be reviewed by the Subsidizing Agency and any limitations on such amount(s) shall be as determined by the Subsidizing Agency.

b. Distributions from Operations

- (1) For Limited Dividend Organizations, commencing upon the Project's initial occupancy and each year thereafter, annual dividend distributions will be limited to 10% of the Owner's equity in the project. Owner's equity, which may be revised from time to time pursuant to terms of the Subsidizing Agency's regulatory documents, shall consist of the difference between the appraised as-built value of the Project and the sum of any public funds and secured debt on the property. Public funds includes HOME, CDBG, linkage, or other public funds, whether structured as a grant or soft loan and exclude state and federal tax credit capital. Alternately, the Subsidizing Agency may allow Owners to opt to have Owner's Equity calculated based on actual project costs as determined by the Subsidizing Agency.

- (2) Distributions shall be permitted with respect to each fiscal year of the project commencing on the date of initial occupancy only after all current and owed-to-date project expenses have been paid and reserves, then due and owing, have been funded. A determination of the amounts available for distribution shall further be subject to the terms of the Subsidizing Agency's regulatory documents provided that, in any event, cash available for distribution in any year in excess of 20% of owner's equity, subject to payment of cumulative deficiencies as provided below, shall be distributed to the municipality for the purpose of developing and/or preserving Affordable Housing, except as may be otherwise required by law.
- (3) In the event that distributions made in any year are less than the maximum percentage of equity permitted with respect to any such year, subject to the provisions governing contributions to the Distribution Account set forth in the regulatory documents, the Developer may accrue the deficiency with interest at the rate of 5% per annum, and cumulative deficiencies may be distributed in accordance with the provisions herein up to the maximum distribution allowed by law.

D. Cost Examination

The requirements and rules of this Section IV.D relate to cost certifications undertaken for the purposes of the Act, only.

1. Requirement

- a. Limited Dividend Organizations are required to submit cost examinations to the Subsidizing Agency that issued Final Approval or has otherwise assumed the role of Subsidizing Agency at the point in time that the cost examination is undertaken. Such cost examinations shall conform to requirements of IV.B of these Guidelines as well as the materials and forms referenced below.
- b. Non-profit or government entity owners are required to submit cost examinations satisfactory to the Subsidizing Agency.

2. Municipal Review

Prior to approving any cost examination, Subsidizing Agencies shall require that ~~send~~ a copy of the cost examination is sent to the affected municipality, accompanied by the Subsidizing Agency's report on the cost examination, for review by the municipality, and shall consider any written, responsive comments from the municipality.

3. Noncompliance

Subsidizing Agencies shall notify DHCD in the event of noncompliance with 760 CMR 56.04(8) and requirements of this section IV. In consultation with the Subsidizing Agencies, DHCD will determine the appropriate recourse, which may include suspending or disqualifying a developer from participation in programs administered by Subsidizing Agencies.

4. Procedures and Forms

See the guidance and forms posted at <http://www.mass.gov/hed/economic/eohed/dhcd/legal/comprehensive-permit-guidelines.html>.

NOTE: Owners should confirm with the appropriate Subsidizing Agency that they are using the most up-to-date instructions and forms.

5. Mixed Tenure Projects

Projects comprised of a mix of tenure types shall undertake separate cost examinations for each tenure component. The method for allocating of projects costs among the components shall be approved by the Subsidizing Agency prior to the cost examination.

6. Financial Surety

Effective for all Projects that have not received Final Project Approval as of April 1, 2008 AND for projects developed in phases, to all such phases commenced after January 1, 2012.

a. General

Limited Dividend Organizations shall provide financial surety to ensure completion of the cost examination to the satisfaction of the Subsidizing Agency and the distribution of excess fees and profits as required at 760 CMR 56.04(8)(e). The Final Approval issued by a Subsidizing Agency shall establish the timing for delivery of the financial surety, which shall not be later than construction closing. The surety shall be provided through a letter of credit, bond, or cash account, in a form satisfactory to the Subsidizing Agency, or in the case of a project involving low income housing tax credits, the authority of the Subsidizing Agency to withhold IRS Form 8609 shall satisfy the requirement of financial surety. The amount of the surety shall be as follows:

For Projects:	Up to and including 25 units:	\$ 25,000
	Up to and including 50 units:	\$ 50,000
	Up to and including 100 units:	\$ 75,000
	More than 100 units:	\$ 100,000

b. Mixed Tenure Projects

In the case of Projects that are comprised of components of differing tenure, a surety shall be provided for each such component as if it were an independent project.

7. Prequalification of Certified Public Accountants

Effective for all Projects that have not achieved substantial completion by May 1, 2008 and for projects developed in phases and for which the cost examination is undertaken separately for one or more phases, for all phases of such projects that commenced construction later than January 1, 2012.

a. Prequalification Criteria

DHCD requires the prequalification of certified public accountants (CPAs) hired by a Developer to carry out cost certifications in connection with Comprehensive Permit projects. In order to be prequalified by DHCD, CPAs must:

- (1) Be licensed by, and in good standing with, the Commonwealth of Massachusetts Board of Public Accountancy;
- (2) Meet the independence standards of the AICPA;
- (3) Have been subjected to a quality control (peer) review, within the most recent time period as required by the AICPA and received an unqualified report; and
- (4) Have current insurance policies that cover errors and omissions.

b. Submission Requirements

- (1) CPAs interested in being prequalified by DHCD should submit the following information to DHCD:
 - (a) A Letter of Interest providing the name, firm name (if applicable), address, telephone and fax numbers, and license number for the CPA;

(b) An original Certificate of Good Standing issued by the Massachusetts Division of Licensure within thirty (30) days of the submission to DHCD;;

(c) A copy of the relevant quality control (peer review) report; and

(d) A copy of the relevant insurance policy.

(2) Submit required letter and documentation to:

Office of General Counsel
DHCD
100 Cambridge Street, Room 300
Boston, MA 02114

c. Term

Prequalification by DHCD will be good for a period of two (2) years from the date that DHCD notifies a CPA that it has met the standards set forth below, provided that the CPA maintains compliance with such standards.

V. HOUSING PROGRAMS IN WHICH FUNDING IS PROVIDED BY OTHER THAN A STATE AGENCY

A. Introduction

These Guidelines apply to Projects for which the Subsidy will be provided by other than a state agency (for instance, HUD), including funding provided by a non-governmental entity such as a Federal Home Loan Bank. For such projects, the Department shall authorize a public or quasi-public entity to act as the Subsidizing Agency (formerly, "Project Administrator") including but not limited to review and approval of Project Eligibility and Final Project Approval.

B. General Requirements

In order to qualify for a comprehensive permit where funding is provided through other than a state agency, the Developer must comply with the requirements of 760 CMR 56.00, et. seq., and the designated Subsidizing Agency. In the absence of alternative requirements established by the Subsidizing Agency, only as explicitly permitted by these Guidelines, the Developer shall also comply with the requirements of Section II. A, "Subsidized Housing Inventory", Section III, "Affirmative Fair Housing Marketing and Resident Selection Plan", Sections IV, B – D.6, VI.A, "Sustainable Development Principles", and Sections VI.B.6 and 7, "Maximum Sales Prices and Rents" and "Lease Provisions", respectively, in their entirety.

C. Project Eligibility

In issuing Project Eligibility, in addition to the requirements established at 760 CMR 56.04 and these Guidelines in Section IV, the Subsidizing Agency also shall state the name of the subsidy program under which it has made its determination of Project Eligibility.

D. Minimum Design and Construction Standards

In the absence of minimum design and construction standards established by the Subsidizing Agency for its housing subsidy programs, these Guidelines shall apply to the Project. Developers should refer to Section IV, Section A.3.b to understand the manner in which the Subsidizing Agency will review the design of the proposed Project.

Low or moderate income housing units in a project should not be readily identifiable as such. Such units should be blended into a Project, so that they are an integral part of the overall design and relate to market units on a substantially equal footing. In the event that the development is built in phases, each phase shall contain a proportionate number of affordable and market units. In the case of a Project with detached single-family units, as a general rule, the affordable units should have the same external appearance as various types of market units and should be reasonably interspersed through the project. Where units are clustered, the external appearances should have a uniform quality for both affordable and market units, and the affordable units should be reasonably interspersed with the market units.

Each low and moderate income unit shall contain complete living facilities, including at a minimum, a bathroom, living area, bedroom (excepting studio units), and dedicated space for cooking. The space for cooking shall, at a minimum, contain a stove, sink, kitchen cabinets and counters, and space for a refrigerator. Typically, in units with two or more bedrooms, there should be space and plumbing hookups for a washer and dryer unless common facilities are available in the development or nearby. All

units shall meet all applicable requirements of the State Sanitary Code for occupancy by two persons per bedroom and of the State Building Code.

While the low and moderate income units need not be given the same interior finishes and amenities as the market rate units, the interiors shall be of good quality. Interiors shall be completely finished prior to occupancy. All low and moderate income units shall have two or more bedrooms provided; those units for the elderly and accessible units may be one-bedroom units. Studio units or one-bedroom units may be approved for good cause. It is recommended that at least fifty percent (50%) of the low and moderate income units be for families or large households and have three or more bedrooms.

Housing developed through the program must comply not only with the State Sanitary and Building Codes, but also with other state building and environmental regulations and (to the degree not exempted by a comprehensive permit) with all applicable local codes, ordinances, and bylaws.

E. Environmental Standards

In the absence of minimum environmental standards established by the Subsidizing Agency for its housing subsidy programs, these Guidelines shall apply to the Project.

For new construction projects, the Subsidizing Agency will take into consideration whether a proposed project is supported by local or regional growth management plans. Insofar as reasonable, proposals should seek to minimize loss of environmental quality and resources that might result from the proposed development.

It is important for developers to bear in mind that there is consistency between G.L. c. 40B and meeting environmental concerns. (G.L. c. 40B § 20). Consistency with local needs requires a balancing between the regional need for affordable housing and, among other factors, the environment and open space. 760 CMR 56.07(3).

Creative land use designs which minimize infrastructure costs and adverse environmental impacts and/or maximize resident recreational areas and meaningful open space shall be pursued whenever reasonably possible.

F. Access to Records

The Subsidizing Agency shall impose, as a condition in the Use Restriction and/or regulatory agreement for each approved Project, the right of reasonable access to the developer/owner/manager's records necessary to monitor compliance with, or to permit enforcement of, these Guidelines. The Developer shall be responsible for maintaining such records.

VI. Local Initiative Program (LIP)

A. Introduction

The Local Initiative Program (LIP) is a state housing program that was established to give cities and towns more flexibility in their efforts to provide low and moderate-income housing. It is administered by the Department of Housing and Community Development (DHCD or "the Department"). These guidelines provide a basis for the operation of the LIP and guidance to local public officials, housing developers, and other interested parties.

M.G.L. Chapter 40B, sections 20-23 (also known as Chapter 774 of the Acts of 1969 or as the Comprehensive Permit Law) created a process for granting "comprehensive permits" for the construction of subsidized low or moderate income housing. These permits streamline the development process by consolidating local permitting. They may supersede various local requirements and regulations, including zoning, and are granted on a case-by-case basis by local zoning boards of appeal following a public hearing. In cities and towns where less than ten percent of the housing units is low or moderate income housing, the denial of a comprehensive permit application or the imposition of conditions that render a proposed development uneconomic may generally be appealed to the state Housing Appeals Committee.

In April 1989, the Report of the Special [Legislative] Commission Relative to the Implementation of Low or Moderate Income Housing Provisions recommended that additional housing subsidy programs be implemented, including programs providing for subsidies through program services and technical assistance. Pursuant to this recommendation and the Department's mandate as the Commonwealth's principal agency "to provide ...open housing opportunity" and "to fund and advance the programs of open and adequate housing for all citizens of the Commonwealth..." (M.G.L. c. 23B §3), the Department established the LIP in which the Commonwealth works with municipalities and developers to create Low or Moderate Income Housing. The Commonwealth provides services and technical assistance as a subsidy for creation, maintenance and preservation of this Low and Moderate Income Housing. The program provides a Subsidy through extensive technical assistance and other services in the development, operation, and management of housing supported by local government that will serve households below 80 percent of the area median income. Any project that expects to seek financing from DHCD or another Subsidizing Agency, **must apply to the funding program for a Determination of Project Eligibility** and not to LIP.

Two types of housing are supported by the program: Local Initiative Projects, which are developed through the *comprehensive permit process* authorized by M.G.L. Chapter 40B, and Local Action Units, *which are developed through a city or town's zoning or permit issuance process*. All low- and moderate-income units developed through LIP and meeting all regulatory requirements are eligible for inclusion on the Subsidized Housing Inventory (SHI).

1. Sustainable Development Principles

The Commonwealth has established ten Sustainable Development Principles. Each Comprehensive Permit Project application shall be evaluated for consistency with these principles. The Department also encourages Developers to incorporate "green building" elements into its Project. See the *Commonwealth's Sustainable Development Principles*, at <http://www.mass.gov/hed/community/planning/smart-growth.html>.

If DHCD determines that a proposed project does not adequately address sustainable principles, the developer and community will be notified and they may submit necessary revisions or withdraw the application.

2. Consistency with Local Housing Needs

The purpose of low- or moderate-income housing development programs is the creation of housing. There is a critical need in the Commonwealth for all types of housing, particularly family and special needs housing for low- and moderate-income households. LIP encourages the development of such housing. LIP approval may be granted for age-restricted housing upon a showing of actual need and marketability within the municipality. At the discretion of DHCD, such approval may be withheld (i) if other age-restricted housing units in the community, which have been issued a Determination of Project Eligibility or which have been otherwise approved by the community remain unbuilt or unsold, or (ii) if the proposed age-restricted units, in context with the municipality's other recent housing efforts, are unresponsive to needs for family housing.

B. Comprehensive Permit Projects

1. Description

Comprehensive Permit Projects must meet the requirements set out in G.L. c. 40B and in the regulations at 760 CMR 56.00. In addition, the Project must have the written support of the Chief Executive Officer. The Department also encourages Developers and municipalities to consult with the local housing partnership, if any, and provide evidence of the partnership's support.

2. Application Fee

Fees will be charged for Comprehensive Permit Projects to cover part of the administrative costs incurred by DHCD, as set forth in the application. These fees will be reduced for non-profit developers and for housing developed by public agencies and municipalities. Checks must be made payable to the Department of Housing and Community Development.

DHCD reserves the right to reject LIP applications from those applicants who have failed to meet material conditions of a Regulatory Agreement for a prior project related to any Project for which DHCD is the Subsidizing Agency, or have made material misrepresentations to DHCD in prior project eligibility applications.

In addition, LIP applicants must be current with respect to obligations for all other state housing programs. DHCD has agreed to promptly notify the other 40B Subsidizing Agencies if any development entity for which DHCD has made a determination of Project Eligibility is not, after reasonable notice and an opportunity to cure, in compliance with its Chapter 40B regulatory agreement or other Chapter 40B reporting or other obligations under the applicable housing subsidy program.

Such development entities and any affiliates of such development entities (including, without limitation, entities with a common principal) shall be suspended from further participation in the Chapter 40B approval process of all of the Subsidizing Agencies.

3. Application Process

a. Application Content

An application for approval of a Comprehensive Permit Project must be submitted on a DHCD form. LIP applications are available on the agency website at www.mass.gov/dhcd; type in "LIP comprehensive permit application" in the search field. Applications shall include the materials required by 760 CMR 56.04 as well as:

- (1) A letter of support signed by the Chief Executive Officer of the municipality. DHCD expects local public officials to act in good faith and expects local support for housing proposed under the LIP not to be unreasonably withheld. The purpose of LIP is premised on the fact that a municipality and a developer are working in concert on a project that meets the community's needs. If a project changes substantially during the course of the permitting process, such that it is no longer consistent with that which was approved by the chief executive officer and DHCD, DHCD reserves the right to request a letter from the chief executive officer stating that the project remains locally supported as a condition of final approval.
- (2) A signed letter of interest from a construction lender.
- (3) A site plan showing the contours of the site and the footprint of all proposed buildings, roads, parking and other improvements.
- (4) Front and rear elevations for each building and sample floor plans for each unit type.
- (5) A description of the proposed units by size, type, number of bedrooms, location within the project, and proposed rents or sales prices.
- (6) A financial pro forma based on a per square foot price. Rental developments should use the State's OneStop Application (Sections 3 and 4). Links to information on OneStop and downloadable forms, including the Application, can be found at www.mhlc.com.
- (7) A brief description of existing site conditions, and any permits that will be required.
- (8) The summary section of a Phase 1 21E report and proposed efforts to mitigate any environmental impacts, if applicable.
- (9) An Affirmative Fair Housing Marketing Plan consistent with the requirements of these Guidelines (see Part III).
- (10) If the Developer is other than a nonprofit corporation or public agency, certification that it shall comply with the requirements related to Limited Dividend entities as set forth in 760 CMR 56.00 and these Guidelines (see Section IV.A).
- (11) For age-restricted housing, generally, a marketing study that demonstrates both an understanding of the region's demographics and particular strategies necessary to attract buyers to both market and affordable units, including:
 - (a) the need for this type of housing in the applicable HUD region;
 - (b) the availability of buyers for both the market and affordable units in the development; and

- (c) the status of similar projects serving the 55 and Over market in the area (e.g. number proposed and/or under construction, rate of vacancy/occupancy, etc.).
- (12) An agreement to execute DHCD model documents (see section 9 below).
- (13) Applicants for rental developments of more than 10 units must complete portions of the OneStop Application also; refer to the LIP Comprehensive Permit Application for additional information. Links to information on OneStop and downloadable forms, including the Application, can be found at www.mhic.com.
- b. Consultation with Local Housing Partnership
- The Department also encourages the Developer to consult with the local housing partnership, if any, and submit a letter of support from that entity.
- c. Site Visit
- Upon receipt of an application, and determination that it adequately addresses Sustainable Development Principles, DHCD will schedule a site visit. The purpose of this visit is to determine whether the project seems consistent with the basic requirements of the LIP and to identify, for the community's benefit, any unusual problems with the site or proposed development.
- d. Project Eligibility Letter

If the proposed Project meets the requirements of LIP, DHCD will issue a Determination of Project Eligibility, which is a prerequisite to an application to a zoning board of appeals for a comprehensive permit. DHCD will endeavor to process routine applications with 60 days of receipt of a complete application.

4. Design and Construction Standards

a. Exterior Appearance

All low and moderate income housing units developed through the LIP shall be indistinguishable from market-rate units as viewed from the exterior unless the project has an approved alternative development plan (see discussion below). Units shall contain complete living facilities including a stove, kitchen cabinets, plumbing fixtures, a refrigerator, microwaves, and access to laundry facilities.

b. Units

- (1) With respect to units for the elderly and/or within an age-restricted Project, Developers are encouraged to consider unit designs in which master bedrooms and bathrooms are located on the first floor.
- (2) All bedrooms must meet state sanitary code requirements for the accommodation of two or more persons (100 square feet minimum).
- (3) In addition, all low- and moderate-income units shall meet the following minimum square footage requirements and bathroom requirements:
 - 1 bedroom - 700 square feet\ 1 bath
 - 2 bedrooms - 900 square feet\ 1 bath

- 3 bedrooms - 1200 square feet\ 1 & 1/2 baths
- 4 bedrooms - 1400 square feet\ 2 baths

c. Code Compliance

Housing developed through the program must comply with the State Building Code, the State Sanitary Code, with other state building and environmental regulations, and (to the degree not exempted by a comprehensive permit) with all applicable local codes, ordinances and bylaws.

d. Distribution of Affordable Units

Affordable units must be proportionately distributed throughout a Project, in terms of both location and unit size/type. The following are two examples of acceptable unit mix scenarios for hypothetical projects:

	Total Units	Affordable Units	Market Rate Units
Project A	16	Two 2BRs @ 950 s.f. Two 3BRs @ 1200 s.f. Total Affordable Units: 4	Six 2BRs @ 950 s.f. Six 3BRs @ 1200 s.f. Total market Rate Units: 12
Project B	50	Five 1BRs @ 750 s.f. Five 2BRs @ 900 s.f. Three 2BRs @ 1100 s.f. Total Affordable Units: 13	Fifteen 1BRs @ 750 s.f. Fifteen 2BRs @ 900 s.f. Seven 2BRs @ 1100 s.f. Total Market Rate Units: 37

e. Alternative Development Plans

In exceptional circumstances, the Associate Director for Housing Development may allow a waiver if there is a good reason (other than finances) for failure to meet the design criteria of the LIP. An "Alternative Development Plan" approval would be based on DHCD's evaluation of the reason for variation from the LIP Guidelines.

DHCD will evaluate the project as a whole before approving an "alternative development plan." The developer considering an "alternative development plan" designation should notify LIP staff and the municipality as soon as possible. DHCD may provide recommendations on possible modifications to the project design if DHCD does not grant an "alternative development plan" designation.

5. Income and Asset Limits

Tenants and homebuyers must be Income Eligible Households.

a. Timeliness of Documentation of Household Eligibility

- (1) For rental units, documents required to determine that a household is an Income Eligible Household and to determine continuing eligibility upon lease renewal, should be current within 60 days of the request for such documentation, and need not be current within 60 days of lease date or lease renewal date.

- (2) For homeownership units, documents required to determine that a household is an Income Eligible Household and therefore qualified to participate in a lottery should be current within 60 days of the lottery deadline and shall be updated to be current within 60 days of the purchase closing date.

b. Income

With respect to income, LIP follows HUD requirements and guidance established pursuant to 24 CFR 5.609. See, also, Appendix II.2 for additional information.

c. Assets

With respect to assets in connection with homeownership developments, see Section II.A of these Guidelines.

For additional assistance, call LIP staff at 617-573-1300.

6. Maximum Sale Prices and Rents

a. General

In addition to the requirements set forth in Section II.A, Subsidized Housing Inventory, LIP applies the following standards.

- (1) LIP establishes rents and purchase prices that enable a range of eligible households to obtain housing without spending an excessive percentage of their income on housing costs. Area median incomes are based on annual HUD determinations for Metropolitan Statistical areas (MSAs) and non-metropolitan counties based on household size. Charts showing limits for adjusted family income by applicable region and household size are available at the Department's website: www.mass.gov/dhcd.
- (2) **Applicants for affordable units must meet the program income limits in effect at the time they apply for a unit and must continue to meet the program income limits in effect at the time when they actually purchase a unit.**
- (3) DHCD sets maximum sale prices and rents based on certain assumptions about the size of the family most likely to occupy the unit. As a result, the initial maximum sale price or rent is calculated as affordable to a household with a number of household members equal to the number of bedrooms in a unit plus one. For instance, a two-bedroom unit would be priced to be affordable to a household of three, and a three-bedroom unit to be affordable to a household of four.

b. Homeownership

- (1) Sales Prices - Sale prices of LIP units are set so that a household earning 70% of area median income would not expend more than 30% of income for the cost of purchasing the housing. By setting sale prices at what is affordable to a household earning **70%** of the median family income adjusted for household size, the resulting "window of opportunity" enables more households to qualify for a LIP unit. See, also, the limitation on the total housing cost at VI.E.1(a)(5).

The following chart is an example of how the maximum sales price is calculated:

Example - Determining the Maximum Sale Price		
Housing Cost		
Sales Price		\$156,600
5% Down Payment		\$7,830
Mortgage		\$148,770
Interest Rate*		5.00%
Amortization		30 years
Monthly P&I Payments		\$798.63
Tax Rate		\$13.04
Monthly Property Tax		\$170
Monthly Hazard Insurance		\$52
Monthly PMI		\$97
Monthly HOA Fees (if applicable)		\$125
Monthly Housing Costs:		\$1,243
Household Income		
# of Bedrooms		2
Sample Household Size		3
80% of Area Median Income for a 3-person household		\$58,500/year
Target Housing Cost (80% AMI)		\$17,556/year \$1,463/month
10% Window		\$51,188
Target Housing Cost (70% AMI)		\$15,360/year \$1,280/month

Comments: Sample affordable sale price for a 2-bedroom condo using the applicable (Boston-CA-Quincy MSA/HMFA) regional 2012 income limit adjusted to the appropriate target household size (i.e., 3-person) and assuming the local 2012 tax rate of \$13.04 and a time-sensitive interest rate of 5% (minimum of a quarter percent above the latest prevailing fixed 30-year rate as listed on Freddie Mac’s interest rate survey). For sample purposes only, the price assumes an initial affordable condo fee of \$125/month. Please be aware that this is only an estimate being provided for planning/feasibility purposes and that actual affordable sales price limits must be reviewed and approved by the applicable subsidy program/subsidizing agency.

(2) Homeownership Association/Condominium Association Fees

- (a) DHCD will review condominium fee estimates as submitted by the applicant and establish a maximum initial condominium fee as part of the calculation of maximum sale price.
- (b) For condominium units, the percentage interests assigned to the LIP units must conform to the approved condominium fees, which may require a lower percentage interest being assigned to those units as compared with market-rate units. DHCD will review the Schedule of Beneficial Interests in the Master Deed to confirm that LIP units have been assigned percentage interests in the condominium that correspond to the approved condominium fees.
- (c) Condominium projects with extraordinary on-going costs (such as the cost of on-site wastewater treatment plants, elevators, parking garages, etc.) must reflect the cost of operating and maintaining such facilities in their condominium budgets (including replacement reserves).

c. Rental

- (1) Rents - are calculated at what is affordable to a household earning 80% of the area median family income adjusted for household size. The LIP application must specify whether the proposed rent has been determined with some or all utilities or with a utility allowance for some or all utilities.

The following chart demonstrates LIP maximum rent calculations for a project located in the Barnstable Town MSA in 2012:

Calculation of Maximum Rent (all utilities included in rent)				
Barnstable Town MSA	Household Size (# of BR +1)	80% of Adjusted Median Family Income	Monthly Income	Maximum Rent (30% of monthly income)
2BR Unit	3	58,500	\$4,875	\$1,462
3BR Unit	4	\$65,000	\$5,417	\$1,625

- (2) Tenants Who Become Over-Income – Generally, see Section II.A.2.b(3). For developments with “fixed” rather than “floating” LIP units: If, after initial occupancy, the income of a tenant of a LIP unit increases and exceeds the maximum allowable income at the time of annual income determination, the unit will be deemed a LIP unit so long as the unit continues to be rent-restricted and the tenant’s income does not exceed 140% of the maximum allowable income. If the tenant’s income exceeds 140% of the maximum income at the time of annual income determination, the unit will be deemed a LIP unit until the tenant’s one-year lease term expires. When the over-income tenant voluntarily vacates the unit and when the unit is again rented to an eligible tenant, the unit will be deemed a LIP unit and included in the Subsidized Housing Inventory upon the municipality’s application to DHCD.

7. Lease Provisions

The owner shall enter into a lease with each tenant for a minimum term of one year. The lease shall provide that the tenant shall not be evicted for any reason other than a substantial violation of a material provision of the lease. The lease shall be subject to DHCD approval and should include the following:

- a. Tenant shall be given a minimum of 60 days’ written notice that a lease will not be renewed.
- b. Tenant shall furnish annual information sufficient to determine and document continued compliance with income eligibility requirements.
- c. Tenant shall furnish the names and the number of people in the household and their relationship to one another annually and whenever a change of household occurs.

8. Determination of Project Eligibility

a. Requirement

The Determination of Project Eligibility is a prerequisite to application for a Comprehensive Permit for the Project from the municipality’s Zoning Board of Appeals. After review of the LIP Comprehensive Permit Application, DHCD may issue a Determination of Project Eligibility.

b. DHCD Findings

DHCD must make the following findings in order to issue such a determination:

- (1) The application meets the requirements specified in 760 CMR 56.04(4).
- (2) The proposed project appears generally eligible under the requirements of the LIP, subject to final program review and approval.
- (3) The proposed site plan is appropriate in the context of the surrounding area and taking into account previous municipal action to meet affordable housing needs, and the housing design is appropriate for the site.
- (4) The proposed project appears financially feasible in the context of the local housing market.

- (5) The initial pro forma for the project appears financially feasible on the basis of estimated development costs and revenues.
- (6) The Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization.
- (7) The Applicant controls the site.
- (8) For age-restricted housing, that the market study demonstrates need and marketability within the municipality.

c. Term

A Determination of Project Eligibility will be effective for two years from date of issuance unless otherwise stated therein.

d. Amending the Determination of Project Eligibility

- (1) Material Change - Any material changes in any of the conditions of a Determination of Project Eligibility (e.g., a change in the development team, the number of units, unit mix, size, design, location, extension of the term of the Determination of Project Eligibility, proposed sale of the project, etc.) REQUIRE that the Determination be amended. DHCD shall be notified immediately if either the Developer or the municipality anticipates any material change in the terms of the initial Determination of Project Eligibility.
- (2) Local Approval - The Developer must secure concurrence of the chief executive officer for the proposed change. DHCD will not issue an amended Determination without such local approval, unless it is unreasonably withheld, and without compliance with these requirements.
- (3) DHCD Review - DHCD may perform an additional site visit, meet with representatives of the municipality and the Developer, and/or request additional financial information, revised site plans, etc., prior to acting on a requested amendment.
- (4) Final Approval Withheld - Final approval may be withheld if the Project is not consistent with the Determination of Project Eligibility.

9. Regulatory Agreement and Use Restrictions

a. Purpose

The purpose of the Regulatory Agreement is to memorialize the rights and responsibilities of the parties, including the provisions that qualify a Developer as a limited dividend entity under c.40B, if applicable. The Regulatory Agreement also provides for monitoring of the project throughout the term of affordability.

b. Preparation/Execution/Recording

Once a Comprehensive Permit is final, a developer shall forward a copy to LIP staff at DHCD. DHCD will then begin the process of preparation of a Regulatory Agreement, which also shall serve as final written approval for the Project. A Regulatory Agreement for each project will be executed by DHCD, the municipality, and the Developer and recorded at the Registry of Deeds or filed with the Registry District of the Land Court.

c. Model Form

DHCD has model regulatory agreements for ownership and rental projects. The model agreement must be executed in the absence of exceptional circumstances. DHCD has adopted the deed rider endorsed by Fannie Mae for use in all LIP homeownership projects. Except for changes in these documents approved by DHCD for the LIP as a whole, these legal documents should not be substantially modified for specific projects.

Any modifications to the model documents proposed by a developer or municipality must be shown in redlining against the model documents when submitted to DHCD for review. Any modifications to the LIP model documents require approval by DHCD.

d. Term of Affordability

The term of affordability for the Project generally should be the longest period permitted by law. The model LIP Regulatory Agreement and Deed Rider, which constitute "affordable housing restrictions" as defined in G.L. c.184 §§ 31 and 32, provide for affordability in perpetuity. A shorter term of affordability will be approved only upon a showing that a longer term is infeasible or not in the public interest. The term of affordability for LIP purposes will in all cases be no less than the term specified in a comprehensive or special permit issued for the project, many of which require perpetual affordability. Note that for some comprehensive permit projects, Massachusetts law requires a project to remain affordable as long as it continues to benefit from the Comprehensive Permit (i.e., could not be built under by-right zoning).

e. Municipal Responsibilities

The premise of the LIP is that DHCD and municipalities are working together to create affordable housing. It is the Department's expectation that municipalities will work with DHCD to fulfill the obligations outlined in a project's Regulatory Agreement.

- (1) Annual Monitoring - The municipality, or its designee, is named in the deed rider as the monitoring agent (along with DHCD). Municipal responsibilities include annual monitoring and certification to DHCD that:
 - (a) tenants in affordable rental units meet income limits and the project has been maintained in a safe and sanitary condition consistent with the LIP Guidelines and the recorded Regulatory Agreement, or
 - (b) for homeownership units, that LIP units continue to serve as owners' principal residences; and that any LIP units that have been resold during the prior two years have been resold in compliance with LIP requirements.
- (2) Property Tax Assessments – with respect to for-sale units, additional local responsibilities include adherence to the Appellate Tax Board's 1999 ruling in *Truehart, et al v. Board of Assessors of the Town of Montague*, in which the ATB determined that the restricted, below-market value of a unit is the value of the unit which should be used for real estate tax purposes.

C. Local Action Units

1. Description

Local Action Units (LAU) reflect a program component that gives communities the opportunity to include housing units on the state's Subsidized Housing Inventory (SHI) that are being built **without a Comprehensive Permit but that meet LIP criteria and are suitable for inclusion in LIP**. Such units must be built pursuant to a local action such as a zoning provision, a condition of a variance or special permit issued by the planning board or zoning board of appeals, an agreement between the town and a Developer to convert and rehabilitate municipal buildings into housing, the donation of municipally-owned land, or the use of local funds to develop or write down housing units.

While communities are developing many innovative strategies to expand their supply of affordable housing, only units meeting the following criteria will be approved as LAU and, as a consequence of their inclusion in LIP, be added to the SHI for the community:

- a. they have resulted from city or town action or approval;
- b. they meet the requirements for SHI eligibility as set forth at Section II.A of these Guidelines; and,
- c. except for the requirements related to receiving a Comprehensive Permit, **they otherwise meet the requirements for LIP units set out in Section II of the LIP Guidelines.**

2. Application

DHCD's application form for LAU is available on the DHCD web site: www.mass.gov/dhcd, (type in "LIP Local Action Unit application" in the search field. DHCD expects to process routine applications within 60 days. Local Action Units application requirements include the majority of the Comprehensive Permit procedures of the previous section. Specifically, Local Action Units applications must include the following sections of Part VI. B.3.a (1), (3) – (5), (9), and (11) – (13); and B.4-7 and 9 (see pp.VI-3,4).

There is no application fee for LAU applications.

In order to ensure that locally-developed units will meet LIP standards for LAUs, DHCD encourages communities to discuss their projects with LIP staff *prior* to submitting an application. LIP staff will identify any areas of concern.

3. Local Action Requirement

To receive LAU approval, Local Action Units must result from city or town action or approval and typically involve new construction, building conversion, adaptive re-use or substantial rehabilitation. LAUs cannot be developed with a comprehensive permit (for such projects see "Comprehensive Permit Projects").

The following types of actions will generally be sufficient to satisfy the Local Action requirement provided that the municipal actions or approvals are conditioned, as a matter of record, upon the provision of low- or moderate-income housing:

- a. Zoning-based approval, particularly inclusionary zoning provisions and special permits for affordable housing;

- b. Substantial financial assistance from funds raised, appropriated or administered by the city or town; or
- c. Provision of land or buildings that are owned or acquired by the city or town and conveyed at a substantial discount from their fair market value.

D. Accessory Apartments

1. General

The creation of accessory housing units within existing owner-occupied homes is a way to increase the supply and diversity of housing types. An accessory unit provides a housing opportunity for those in need of rental housing.

In order to have accessory apartments added to the Subsidized Housing Inventory, they must receive Local Action Unit (LAU) approval and meet the same basic requirements as other units qualifying for LAU approval:

- a. they have resulted from city or town action or approval;
- b. are subject to recorded use restriction in a form approved by DHCD, that has a term of not less than 15 years; and,
- c. except for the requirements related to receiving a Comprehensive Permit, they otherwise meet the requirements for LIP units set out in Section B of the LIP Guidelines.

2. Application

a. Form/Requirements

DHCD's application form for accessory apartments is available on the DHCD web site: www.mass.gov/dhcd, (type in "LIP Accessory Apartment application" in the search field, select the first result, and then select "Accessory Apartment Application"). There is no application fee.

Applications shall include:

- (1) Accessory Apartments application requirements include the majority of the Comprehensive Permit procedures. Specifically, Local Action Units applications must include the following sections of "B – Comprehensive Permits": 3a(1), (3)-(5), (9), and (11)-(13); see pp. VI-3 and 4.
- (2) A letter of support signed by the chief executive officer of the municipality.
- (3) An Affirmative Fair Housing Marketing Plan
- (4) Designation of a Local Project Administrator (LPA) for all accessory apartments. The LPA is an individual or entity that is responsible for oversight of the units. This could be a local official, a local housing partnership board member or staff member, the director of an area housing non-profit organization, or another appropriate person meeting DHCD approval.
- (5) A schedule of maximum rent for each accessory apartment.

(6) A proposed tenant application form and plan for processing of applications.

(7) A plan for annual verification of tenants' income.

b. Local Housing Partnership

The Department also encourages the Developer to consult with the local housing partnership, if any, and submit a letter of support from that entity.

After DHCD has approved an application, a municipality shall submit additional information for each accessory apartment created. DHCD will approve each accessory apartment that meets all program standards.

3. Local Action Requirement

a. General

To meet the requirement of local action, a municipality shall have enacted a zoning ordinance or bylaw that allows for the creation of accessory apartments for low- or moderate-income households. Units submitted to DHCD will have received zoning approval under the ordinance or bylaw.

b. Minimum Requirements

While the specific features of such ordinances or bylaws may vary considerably from one municipality to the next, each one shall, at a minimum, allow for the creation of accessory apartments that meet and are consistent with the LAU eligibility standards specified herein. No mandatory requirements applying to accessory apartments authorized under the ordinance or bylaw shall conflict with the LIP requirements.

c. Prohibited Provisions

Examples of ordinance or bylaw provisions that would prohibit approval under LIP and eligibility for the Subsidized Housing Inventory include:

- (1) Allowing affordable accessory dwelling units to be rented to family members.
- (2) Allowing affordable accessory apartments to be rented to households earning more than 80% of area median income.
- (3) A requirement that all accessory dwelling units shall be restricted to residents of the municipality.
- (4) Any provision in conflict with applicable fair housing laws.

d. Technical Assistance

Municipalities contemplating such an ordinance or bylaw may submit a draft to DHCD for compliance review prior to final local approval. DHCD, through provision of technical assistance, will review the draft submission and provide feedback regarding changes needed to ensure that units meet LIP standards. DHCD's review will be limited to noting any provisions that might conflict with LIP requirements.

4. Tenant Eligibility

a. Family Members Prohibited

No family member of the unit owner may be selected by the owner for an accessory apartment. Family member is defined as: a parent, a son, a daughter, an uncle, an aunt, a niece, a nephew, a grandparent and/or a sibling.

b. Income and Asset Limits

- (1) Tenants' household income shall not exceed 80% of the household income adjusted for actual household size, as determined by HUD. A municipality may set lower limits.
- (2) Certification of income eligibility will be made by the LPA. The LPA will review documentation (e.g., recent tax returns, pay stubs, affidavits, etc.) in order to certify such eligibility. The LPA may contact DHCD to request technical assistance in reviewing the eligibility of prospective tenants.
- (3) Information on an application shall be verified by the LPA. Any post-occupancy change in a household must be reported to the property owner and LPA immediately.

5. Affirmative Fair Housing Marketing

a. General

Accessory apartments shall be subject to the same affirmative fair marketing/non-discrimination policies as other LAUs. There shall be a specific prohibition of discrimination on the basis of race, creed, color, sex, age, disability, marital status, familial status, veteran status, sexual orientation, national origin or any other basis prohibited by law in the renting of units.

b. Goal

The goal of affirmative fair housing efforts is to expand housing opportunities for low and moderate income households that are protected under fair housing laws and are less likely to apply for housing in the area. Such efforts include marketing to minority households so that a percentage of minority tenancy in affordable accessory apartments in the area is at least equal to the percentage of minority households in the applicable HUD MSA region.

c. Affirmative Fair Housing and Marketing and Resident Selection Plan

The affirmative fair marketing and resident selection plan must describe the planned advertising and outreach. The affirmative fair housing marketing and resident selection plan must specifically address advertising and outreach to minority households.

See Section III for additional guidance.

- (1) Outreach - The affirmative fair marketing plan should describe the outreach planned by the LPA for media outlets such as newspapers/radio/local access television. It should list community-based organizations that will receive notice of availability of the affordable units, such as community development corporations, housing authorities, places of worship, and not-for-profit organizations, as well as any local employers.

- (2) Minimum Advertising Period - Initial advertising for affordable accessory apartments shall be conducted by the LPA over a period of at least 60 days.
- (3) Wait List - The plan shall also include the establishment and maintenance of a waiting list of *qualified* households applying to rent accessory apartments. This "Ready Renters List" may be retained and used to fill vacant units and periodically updated. Applicants on the List shall have their eligibility verified again at the time a unit is offered to them. The Ready Renters List shall be supplemented as needed, but at least annually, through ongoing outreach efforts. The LPA shall establish and maintain the Ready Renters List.

d. Annual Data Collection

While consistency with regional racial minority percentages is a goal as opposed to a minimum requirement, the LPA shall collect data annually regarding the number of minority households renting accessory apartments.

e. Failure to Apply Good Faith Efforts

DHCD may suspend or revoke the eligibility of units based upon a community's inadequate efforts and progress relative to this goal.

f. Tenant Selection

- (1) Step 1 - The owner of an affordable accessory apartment provides written notice of unit availability to LPA and requests referral of one or more applicants.
- (2) Step 2 - Within 5 business days, the LPA refers the top appropriately-sized household or households on the Ready Renters List to the owner, no more than three at any one time.
- (3) Step 3 - The owner shall meet the referred applicant(s) and show the unit. Referred applicants must be given no fewer than 10 business days to view the unit. The owner may select any of the referred applicants or may request a new referral of applicants. Non-selected applicants will return to the top of the Ready Renters List.
- (4) Step 4 - The owner shall enter into a one-year lease, satisfactory to the LPA, with the selected applicant.
- (5) Rejected applicants - Upon request of the LPA, the owner shall specify in writing a substantial nondiscriminatory reason for having rejected an applicant.

6. Rents; Lease

a. Initial Rent

Rents for accessory apartments shall be calculated in the same way as other LIP rental units (see Section B.6 of these LIP Guidelines).

b. Utility Costs

All utilities shall be included in the rent or, if utilities are separately metered, they may be paid by the tenant and an amount equivalent to a Section 8 utility allowance shall be deducted from the

maximum allowable rent. The LPA shall secure the amount of the appropriate Section 8 utility allowance from the local/regional housing authority.

c. Rent Increases

The property owner may not increase the rent without the prior approval of the LPA and DHCD even if the initial rent is lower than the maximum allowable LIP rent. An increase will be allowed only in proportion to growth in median household income as determined by HUD.

d. Lease Provisions

Leases for accessory apartments shall conform to the requirements of Section B.7 of these LIP Guidelines.

7. Use Restrictions

a. Requirement/Enforceability

Property owners shall agree to execute and the LPA shall record an affordable housing restriction for LIP-approved accessory apartment units. The restriction shall be binding on and enforceable against any person claiming an interest in the property

b. Form

LIP accessory apartment units shall be secured using DHCD's form of "Regulatory Agreement for Affordable Accessory Apartment Projects", which shall be signed by the homeowner, the Municipality, and DHCD.

c. Early Termination of Restriction

In certain circumstances, DHCD will approve accessory apartment programs that allow a use restriction to terminate early or to be revocable by the owner. Notwithstanding the early termination of a use restriction, in all cases, the owner must provide an existing tenant at least 60 days prior written notice that his or her lease will not be renewed.

- (1) **Transfer of the Property** - Restrictions that either terminate automatically or are revocable by the owner upon transfer of the property. If the restriction terminates and is not renewed by the new owner, the municipality must notify DHCD. The unit will no longer be deemed a Local Action Unit and will be removed from the Subsidized Housing Inventory unless the new owner obtains municipal approval to rent the accessory apartment and enters into an affordable housing restriction in the form approved by DHCD.
- (2) **Voluntary Termination** - Restrictions that allow the owner to voluntarily terminate the restriction and cancel a special permit at the end of a tenant's lease term. The municipality may specify that such a voluntary termination may occur only after the owner has rented the accessory apartment to eligible tenants for a minimum number of years. The municipality must notify DHCD that the restriction has been voluntarily terminated, and the unit will no longer be deemed a Local Action Unit and will be removed from the Subsidized Housing Inventory.

8. Municipal Responsibilities

a. Information to Homeowners

The LPA shall inform participating homeowners of their obligations and responsibilities with respect to the program. Homeowners shall be given, and acknowledge in writing, their understanding of an information package including but not limited to the following items:

- (1) An overall description of the program, its goals and homeowner responsibilities;
- (2) Materials about fair housing and anti-discrimination laws;
- (3) Information as to notification, marketing, and tenant selection requirements; and
- (4) Information regarding occupancy requirements, use restrictions and the resale fee (see E.2).

b. Monitoring

The municipality, or its designee, is named in the deed rider as the monitoring agent (along with DHCD). The monitoring agent shall monitor LIP-approved Accessory Apartments on a biennial basis to verify their continued affordability and compliance with all income and occupancy restrictions contained in the affordable housing restriction.

(3) Reporting/Records

By March 15th of each year, the LPA shall prepare an annual report (as of December 31st of the preceding year) summarizing the eligibility of tenants in LIP-approved accessory apartments and documenting rents being charged. In addition to rent and income verification, the annual report shall provide information on the number of minority households housed, the number of non-local residents housed, and the composition of the waiting list. DHCD may request substantiation by supporting documentation.

The monitoring agent must retain annual recertification materials for a minimum of five years.

(May 2013 Update: deleted section on Age Restricted Housing as it reiterated requirements contained in Part II.)

E. Initial Unit Sales, Resales and Refinancing

1. Initial Sale

a. Requirements of Mortgage Financing

Prior to the sale of a unit, DHCD will review and approve the terms of the buyer's mortgage financing. DHCD requires mortgage loans for LIP units to meet the following minimum standards:

- (1) Be a fully amortizing fixed rate mortgage with a down payment of at least 3%, at least half of which must come from the buyer's own funds.
- (2) Be made by an institutional lender. Project sponsors are encouraged to work with local banks to provide competitive financing to potential first-time homebuyers.

- (3) Have a fixed interest rate through the full term of the mortgage that is a current fair market interest rate.
- (4) No more than 2 points.
- (5) Monthly housing (inclusive of principal, interest, property taxes, hazard insurance, private mortgage insurance and condominium or homeowner association fees) may not exceed 38% of their monthly income for the mortgage.
- (6) Non-household members shall not be permitted as co-signers of the mortgage.

b. DHCD Closing Documents

Before the initial sale of an affordable LIP unit, a deed rider and Resale Price Certificate shall be secured from DHCD.

- (1) When an eligible buyer is found, DHCD requires the following ***no less than 2 weeks*** before the loan closing date:
 - (a) A copy of the LOAN COMMITMENT LETTER from the buyer's lender including interest rate, points, length of loan, and annual percentage rate.
 - (b) A copy of the signed PURCHASE AND SALE AGREEMENT for the unit.
 - (c) The LIP Disclosure Form signed by the buyer.
 - (d) Contact information for the loan CLOSING ATTORNEY including name, address, phone, fax numbers and email address.
- (2) DHCD will provide its documents to buyer's closing attorney for closing. The closing attorney should submit a copy of all recorded DHCD documents to: LIP, 100 Cambridge Street, Suite 300, Boston, MA 02114.
- (3) The Resale Price Certificate must be recorded at the Registry of Deeds along with the deed and the LIP Deed Rider.
- (4) Deed Reference to Deed Rider - The deed shall specifically reference the LIP Deed Rider by including language such as, "This conveyance is subject to the affordable housing deed rider attached hereto."

3. Resales

Note: DHCD shall not approve the transfer of LIP units to trusts.

a. Owner Notice

When the owner of a LIP unit is ready to sell, the owner must give written notice to the community and to DHCD as provided for in the use restriction. The deed rider contains strict timelines and it is imperative that, once notified of a LIP resale, the municipality acts swiftly to locate an income-eligible buyer.

b. Municipal Responsibilities

- (1) Resale Plan - Each municipality should have a resale plan in place for LIP units.
- (2) Ready-Buyer List - The municipality should create and maintain a list of income-eligible potential buyers. This type of list could be created by compiling a list of lottery applicants for an affordable development who were not chosen as buyers. This list becomes obsolete 24 months after the prior lottery. The municipality may then create a new "Ready Buyer List" through the use of a lottery process and after conducting affirmative fair marketing. This process must be pre-approved by DHCD.
- (3) Resale Fee - A 2% resale fee will be added to the universal deed rider for all new LIP units. The resale fee will allow for payment for the cost of marketing and reselling the LIP unit. The municipality can elect to handle resales itself or contract with another qualified entity on its behalf.

(e) Capital Improvements

The LIP universal Deed Rider allows for the cost of **pre-approved** capital improvements to be added to the resale price of the unit so long as the resale price remains affordable as per the terms of the Deed Rider.

(f) Steps for LIP Unit Resale

- (1) Property Owner Notifies Local Community and DHCD - The property owner shall submit written notice of their intention to sell and a copy of their Deed Rider to the Monitoring Agent, which will be DHCD and any other entity identified in the Deed Rider as a Monitoring Agent. The property owner's written notice should include their name, the property address, a phone number where they can be reached during the day, and the name and phone number of the person responsible for showing and answering questions about the home.
- (2) Maximum Resale Price - After receiving notification, the Monitoring Agent will calculate the Maximum Resale Price which the owner may receive on the sale of the property and will provide written notice to the owner of the Maximum Resale Price. The Monitoring Agent has 90 days in which to sell the home to an eligible buyer. The Monitoring Agent may extend the 90-day period if the owner fails to cooperate in the resale efforts.

PLEASE NOTE: older LIP deed riders use a discount rate formula to set the maximum resale price. This method multiplies the home's current appraised value by the discount rate specified in the LIP deed rider. Many of these LIP Deed Riders set an alternative maximum resale price at what a low- or moderate-income household can afford. The current model Deed Rider uses a maximum resale price multiplier, which ties increases in resale prices to the increases in median income.

- (3) Marketing the Unit - During the 90-day marketing period the Monitoring Agent should offer the unit to the potential buyers on its list, in order. DHCD will post information about the unit on its web page.
- (4) New Buyer Eligibility - The new buyer shall be income and asset eligible under the LIP program and subject to the resale provisions of the recorded deed rider and the buyer's mortgage loan must meet the requirements of E.1 of these LIP Guidelines. Documentation

verifying the buyer's income, assets, and mortgage terms should be mailed or faxed to DHCD.

- (5) DHCD Closing Documents – After the new buyer has been qualified by the Monitoring Agent(s), the buyer's closing attorney then contacts DHCD's paralegal to obtain closing documents.

(g) Eligible Buyer is Not Located

- (1) For units with the LIP "Universal Deed Rider", if an eligible buyer is not located during the 90-day marketing period the Monitoring Agent or municipality may purchase the property. After an additional 30 days if neither the Monitoring Agent nor the municipality purchases the property, the home may be sold without regard to the income level of the buyer. If a LIP unit is conveyed to an ineligible buyer, the price **may not exceed** the Maximum Resale Price, a LIP Deed Rider must be executed and recorded, and if more than one ineligible purchaser is found, first preference must be given to households earning between 80% and 120% of the area median income adjusted for household size.
- (2) For units with older forms of LIP deed rider, if a unit is conveyed to an ineligible buyer, the unit must be sold for its unrestricted fair market value, the sale proceeds in excess of the Maximum Resale Price are paid to the municipality, and the unit is released from the LIP restrictions.

(h) Death of Unit Owner

A transfer by will or by an executor or administrator of the owner's estate to the owner's spouse will not trigger the resale or transfer restrictions in the Deed Rider provided that:

- (1) the executor or administrator within 90 days of his/her appointment has given DHCD notice of the devise or inheritance of the unit; and
- (2) the owner's spouse intends to continue to use the unit as a principal residence. Any other person who is an heir, legatee, or devisee of the unit owner must demonstrate to DHCD's satisfaction within the 90-day period that he/she is an eligible purchaser, as defined in the Deed Rider; otherwise that person must transfer the unit in accordance with the Deed Rider.

3. Refinancing

a. Review by DHCD

- (1) Request - Owners of LIP units must submit a copy of their Deed Rider and a written request to refinance to the municipality **and** to DHCD. The property owner's written request should include:
 - (a) their name, property address, a phone number where they can be reached during the day;
 - (b) the amount of the refinance or second mortgage requested and the full name of the lending institution; and
 - (c) the name and contact number of the closing attorney.

- (2) Appraisal - *Homeowners with Deed Riders other than the universal Deed Rider must also submit a fair market appraisal of their home.* The appraisal must be performed by a licensed residential appraiser and may be no older than 120 days past its completion date.
- (3) Commitment Letter - The property owner must also submit a copy of the commitment letter from the lender, including the amount of the refinance or second mortgage, the interest rate, points, and term of the loan (i.e. 15-yr, 30-yr).
- (4) Consent to Refinance - After approval of the refinance request by the local community **and** DHCD, DHCD will prepare the "Consent to Refinance" form for the closing attorney.

b. Requirements of Mortgage Financing

The proposed new first or second mortgage shall conform to the requirements of E.1 of these LIP Guidelines as well as the following:

- (1) For 1st mortgage refinancing - The loan amount cannot exceed 97% of the Maximum Resale Price, as determined by DHCD
- (2) For 2nd mortgage financing - The combined amount of the first and second mortgages cannot exceed 97% of the Maximum Resale Price, as determined by DHCD