



Commonwealth of Massachusetts EXECUTIVE OFFICE OF HOUSING & LIVABLE COMMUNITIES

Maura T. Healey, Governor ♦ Kimberley Driscoll, Lieutenant Governor ♦ Edward M. Augustus Jr., Secretary

Memorandum

To: Massachusetts Communities with valid Housing Production Plans (HPP)
From: Chris Kluchman, Director, Livable Communities Division
Subject: Revised 2020 Housing Production Plans Goals/ Frequently Asked Questions (FAQ)
Date: May 6, 2024

The purpose of this memorandum is to inform communities with valid Housing Production Plans (HPP) approved under the Executive Office of Housing and Livable Communities (EOHLC) M.G.L. c. 40B regulations at 760 CMR 56.00 (specifically, 56.03(4)) that their HPP production goals may have been impacted by changes to their year-round housing unit data as enumerated in the 2020 U.S. Census.

Chapter 40B is a state statute that was enacted in 1969 which enables local Zoning Boards of Appeals (ZBAs) to approve housing developments under flexible rules. If a community has an EOHLC approved HPP and is granted certification of compliance with the plan by EOHLC, the community may assert safe harbor (i.e., that a denial or approval with conditions concerning a comprehensive permit application is "consistent with local needs" under Chapter 40B) in accordance with the 40B regulations.

HPP production goals are based upon year-round housing units from the latest available decennial Census, which is currently the 2020 Census. To assist communities to understand the impact of the 2020 Census data on HPP and SHI goals, EOHLC developed Frequently Asked Questions (FAQs) and a list of revised production goals.

An HPP 760 CMR 56.03(4) is a proactive strategy for planning and developing affordable housing. This HPP will assist communities to plan for low- and moderate- income residents by providing a diverse housing supply.

An EOHLC certified HPP is also a regulatory c. 40B "safe harbor" under 760 CMR 56.03(1) that may be asserted in accordance with 760 CMR 56.03(8). Communities with approved HPPs may request EOHLC certification of compliance with the approved plans if they have increased the number of Subsidized Housing Inventory (SHI) Eligible Housing units in their community by at least 0.5% the total number of year-round housing units enumerated for the city/town in the latest available U.S. Census, which is currently the 2020 U.S. Census. (See statewide SHI listing at <https://www.mass.gov/doc/subsidized-housing-inventory-2/download>).

Pursuant to M.G.L. c. 40B and as further specified in EOHLC regulations at 760 CMR 56.03(3)(a), the percentage of subsidized housing in a community is derived by dividing the number of SHI Eligible Housing units in the city or town by the total number of year-round housing units.

Year-round housing units are the total housing units minus seasonal/occasional/recreational use units enumerated for the city/town in the latest available U.S. Census. Use of the latest decennial Census is required under c. 40B and cannot be waived by EOHLC. Communities may be certified for one year (0.5% increase) or two years (1% increase) in accordance with 760 CMR 56.03(4)(f) and the HPP guidelines, which are available along with other HPP resources at <https://www.mass.gov/service-details/chapter-40-b-housing-production-plan>. EOHLC has published the housing production goals based on the 2020 Census at <https://www.mass.gov/info-details/chapter-40b-housing-production-plan> and developed of the following Frequently Asked Questions (FAQs):

Q1: When did the new HPP Production Goals become effective?

A1: The new HPP Production Goals became effective on May 25, 2023, the date of the latest available U.S. Census data for determining the total number of year-round housing units enumerated for the city/town (2020 Demographic and Housing Characteristics File). Therefore, for any comprehensive permit application filed after this date, communities will only be entitled to “safe harbor” status based on the 2020 Census data.

Example:

- Community one (1) had a goal in its approved HPP of 100 housing units for 1-year certification, based on 2010 Census Data. Community 1 achieved 1-year certification before the 2020 Census Data became available:
 - 2020 Census Data would have increased # of units required for certification to 102 housing units. However, because Community One (1) had already achieved certification by the time the 2020 Census Data became available, their certification is still valid based on 100 units produced.
- Community two (2) also had goal in its approved HPP of 100 housing units for 1-year certification, based on 2010 Census Data. Community two (2) did not achieve 1-year certification before the 2020 Census Data became available:
 - Because Community two (2) had not achieved certification by the time the 2020 Census Data became available (May 25, 2023), they must produce 102 housing units to achieve certification.

Q2 My community already has an approved HPP. Is it impacted by the 2020 Census data?

A2: No. The 2020 Census data does not impact the five-year term of your existing/approved HPP. However, the numerical goals applicable to your existing/approved HPP (calculated as a percentage of the number of year-round housing units enumerated for the city/town in the latest available U.S. Census) are based on the 2020 Census data.

Q3: Will EOHLC require that my community submit a new/amended HPP with the updated 2020 Census data?

A3: No. The change in goals resulting from the 2020 Census data automatically applies. However, a community may amend their HPP so that it accurately reflects the 2020 Census data. EOHLC does not require that communities submit amendments where the only change is to update Census data. Please note, if a community does submit a revised HPP, EOHLC may need up to 90 days to review the amended HPP.

Q4: If my community submits an amended HPP, will it start a new five-year term?

A4: No. An amended HPP will not impact the original five-year term of the HPP.

Q5: My community has a certified HPP. Does the 2020 Census Data impact the certification period?

A5: No. The 2020 Census Data does not impact on the current certification period. However, please note that all units must retain eligibility for the SHI for the entire certification period (see the section II.A of the c. 40B/SHI guidelines at <https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf> for further information about SHI eligibility). If units are no longer eligible for inclusion on the SHI, they will be subject to removal and will no longer be eligible for certification. This action may affect the term of your certification.

If you need assistance with the 2020 Census data or any other aspect of Chapter 40B, please contact Phillip DeMartino, Senior Technical Assistance Coordinator at Phillip.DeMartino@mass.gov

Attachment:

➤ 2020 Production Goals