

HOUSING PRODUCTION PLANS

760 CMR 56.03(4)

Frequently Asked Questions

Commonwealth of Massachusetts

**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

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Housing Production Plans Frequently Asked Questions (FAQs)

These FAQs are designed to assist you with a greater understanding of the Housing Production Plan (HPP) requirements. They are a complement to [Housing Production Plan Guidelines](#), available at www.mass.gov/dhcd.

If you have any questions or need assistance, contact Phillip DeMartino, Technical Assistance Coordinator, at (617) 573-1357 or at Phillip.DeMartino@state.ma.us.

Q1: What are Housing Production Plans (HPPs)?

A: A HPP is a community's proactive strategy for planning and developing affordable housing. Through a HPP a community: 1) creates a strategy to enable it to meet its affordable housing needs in a manner consistent with the Chapter 40B statute and regulations, and 2) produces housing units in accordance with the HPP.

Q2: When were the HPP requirements established?

A: The HPP regulation became effective on February 22, 2008 when the DHCD promulgated 760 CMR 56.00, Comprehensive Permit; Low or Moderate Income Housing. The HPP regulation is contained in 760 CMR 56.03(4). HPPs replace Planned Production under 760 CMR 31.07(1)(i).

Q3: Why should a community submit a HPP?

A. There are many advantages for a community to create a HPP. It provides an opportunity to understand current housing conditions and then to determine both the projected housing needs of both the current population and the growth/change in composition of the population (e.g. more families, more elders). For example:

- Are there enough "starter homes" for those forming new households?
- Is there adequate workforce housing?
- What are the options in the community for empty nesters?
- How are the needs of the elderly and the frail elderly being met?
- Are there options for residents with physical and mental disabilities?
- Are there options for both rental and home ownership?

Communities need to look at the amount, type, and condition of the current housing stock to determine whether there is a sufficient variety of supply to meet projected housing demands and preferences in the years ahead.

The projections of future need serve as a starting point for examining suitable locations for housing development. Generally such sites will be in proximity of

existing water and sewer lines. Perhaps they will be in proximity of downtown. This HPP articulates the community's rationale for a diverse housing supply responsive to projected needs and preferences. It serves as the community's pro-active strategy in determining the type and pace of housing growth. Specifically,

- by identifying housing needs in the community and identifying sites for development, the community will be providing guidance and direction for the kinds of development most responsive to local conditions;
- the HPP can serve as the housing element of an overall comprehensive plan ("master plan") and/or capital improvement plan that may be required as a companion to the HPP in order to attract the types of development and housing opportunities the community needs; and
- if a community has a DHCD approved HPP and is granted a DHCD certification of compliance with the plan, a decision by the Zoning Board of Appeals (ZBA) to deny a Comprehensive Permit application will be deemed "Consistent with Local Needs" under MGL Chapter 40B. "Consistent with Local Needs" means the ZBA's decision will be upheld by the Housing Appeals Committee (HAC).

The specific components of the HPP are described in the Guidelines. The HPP requires an explanation of the specific strategies by which the community will achieve its housing production goal, and a schedule for implementing the strategies in order to produce the units that will achieve this goal.

Q4: What resources are available to assist with development of an HPP?

A. DHCD encourages communities to examine approved HPPs that are on the DHCD website. Also, regional planning agencies may have regional plans, statistical information, and mapping data, of use when undertaking the preparation of the plan. Basic census information can be found at www.census.gov.

Q5: What are the housing production goals for my community?

A. A list for production goals can be found as Appendix II.B.1 to the HPP Guidelines, in the previous section of this Guide. The chart indicates the number of Subsidized Housing Inventory (SHI) eligible units that a community would need to produce to achieve a 0.5% increase or a 1% increase in SHI eligible housing units.

Q6: What is an *approved* HPP?

A. A HPP is approved once DHCD staff determines that the plan meets the Regulation and Guidelines. An approved HPP is a prerequisite to a certified plan (see Q10).

Q7: What is the duration of an approved HPP? Do they have to be renewed?

A: A HPP is valid for a five year period from the approval date by DHCD. Upon expiration, HPPs may be renewed. The community must decide whether to update/revise the existing plan or write a new HPP.

Q8: My community already has an approved affordable housing plan under the former Planned Production Program. Is it still valid?

A: It is valid only if it was approved **after** February 22, 2003. All other previously approved plans will need to be updated/renewed because of the five year approval duration.

Q9: If a community has an approved HPP can it deny a Comprehensive Permit application?

A. No, DHCD certification of compliance with the plan is required before a Comprehensive Permit can be denied.

If a community has a DHCD approved HPP and is granted a DHCD certification of compliance with the plan, a decision by the ZBA to deny a Comprehensive Permit application will be deemed "Consistent with Local Needs" under MGL Chapter 40B. "Consistent with Local Needs" means the ZBA's decision will be upheld by the HAC.

Q10: What is the difference between approval and certification of a HPP?

A: This distinction is very important. Plan approval refers to DHCD's action of reviewing a HPP and determining that it is complete and contains all the elements required by regulation and accompanying Guidelines.

Certification of compliance refers to DHCD's determination that the community has produced units that are affordable to low- or moderate-income households totaling at least 0.5% of 1% of year round housing units in one calendar year and in accordance with the approved plan. **In order for a ZBA's decision on Comprehensive Permits to be "Consistent with Local Needs" DHCD must grant certification and not just approval.**

Q11: What is the duration of DHCD certification?

A: Certification lasts for one year if the community has produced 0.5% of year round housing units or two years if it has produced 1.0%.

If the city or town is certified compliant with its plan, DHCD will notify the chief elected official in writing. Regardless of the date of the certification notice, the certification period will be deemed effective on the date upon which the municipality achieved its numerical target for the calendar year in question (see 56 CMR 56. 03 (2)). Thus, certification starts at the time of initial eligibility for the SHI and not the date DHCD receives such requests.

Q13: How long does DHCD have to approve a certification request?

A: Requests for certification may be submitted at any time, and the Department shall determine whether a municipality is in compliance within 30 days of receipt of the municipality's request.

Q14: Can we count units created in different years towards certification?

A: No. All units have to be produced in the same year for which certification is requested.

Q15: When do units count for certification?

A. Units count for certification as soon as they are **initially** eligible to be counted 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.)

Q16: Are all pending cases at the HAC affected if a community achieves certification?

A: No. If a development was under appeal before a certification period, certification will have no impact on the case.

Q17: Are all projects now subject to the new thresholds of 0.5% and 1.0%?

A: The previous Planned Production thresholds of 0.75% (1 year) and 1.5% (2 years) remain in effect if affordable housing units (40B or other) are filed with the ZBA prior to February 22, 2008. All projects filed with the ZBA after February 22, 2008 are subject to the 0.5% and 1.0% thresholds.

Q18: When a community has achieved certification, can they automatically deny a new Comprehensive Permit without holding a public hearing?

A: No. The local ZBA must open a hearing within 30 days of receiving an application even when the community has achieved yearly certification. The ZBA must issue a decision within 40 days after termination of the hearing. DHCD suggests that the certification letter be read at the public hearing to demonstrate the community's current compliance with certification requirements. This compliance is the standard for the ZBA's decision to "deny" or "approve with conditions" any Comprehensive Permit applications will be deemed "Consistent with Local Needs" under MGL Chapter 40B.

Q19: How does a ZBA notify an Applicant (developer) if they are certified?

If a community has achieved certification within 15 days of the opening of the local hearing for the Comprehensive Permit, the ZBA shall provide written notice to the Applicant, with a copy to DHCD, that it considers that a denial of the permit or the imposition of conditions or requirements would be consistent with local needs, the grounds that it believes has been met, and the factual basis for that position, including any necessary supportive documentation.

If the Applicant wishes to challenge the ZBA's assertion, it must do so by providing written notice to the Department, with a copy to the Board, within 15 days of its receipt of the ZBA's notice, including any documentation to support its position. DHCD shall thereupon review the materials provided by both parties and issue a decision within 30 days of its receipt of all materials. The ZBA shall have the burden of proving satisfaction of the grounds for asserting that a denial or approval with conditions would be consistent with local needs, provided, however, that any failure of the DHCD to issue a timely decision shall be deemed a determination in favor of the municipality. This procedure shall toll the requirement to terminate the hearing within 180 days.

Q20: My community's housing plan under the former Planned Production Program was approved over five years ago. Can we submit an updated version?

A: Yes. A community is strongly encouraged to submit an updated HPP for approval by DHCD. This policy also applies to all approved affordable housing plans submitted under the prior Planned Production regulations 760 CMR 31.07. Information submitted to update such affordable housing plans must comply with requirements of 760 CMR 56.03(4), including information not required under previous Planned Production Regulations and Guidelines.

Q21: Are any public funds available for the development of HPPs?

A: Many communities have used Community Preservation Act funds to hire a consultant to develop a HPP. In addition, communities should contact DHCD about additional resources such as the Peer-to-Peer and Community Development Block Grant programs. Also, please visit www.mass.gov/dhcd.

Q22: How many communities have approved HPPs? Where can I find a list of Certified communities?

A: A list of communities with approved plans and a listing of Certified communities is continuously updated at www.mass.gov/dhcd.

Q23: Does the HPP need a simple majority or a super majority vote by the local boards required by the HPP regulations?

A: A simple majority is required. Not a supermajority (2/3 vote).

Q24: Where can I mail a certification request or a new/ amended HPP?

A: HPPs, amendments, updates and requests for certification should be sent to:

Jennifer Maddox, Undersecretary
Department of Housing & Community Development
100 Cambridge Street, Suite 300
Boston, MA 02114
Attn: Phil DeMartino

Electronic copies **must** also be submitted by e-mail
Phillip.demartino@mass.gov

Department staff is 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.