



Commonwealth of Massachusetts DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

Maura T. Healey, Governor ◆ Kimberley Driscoll, Lieutenant Governor ◆ Jennifer D. Maddox, Undersecretary

Local Initiative Program Policy Guidance Regarding Approval of Local Action Units Developed “As of Right”

The Local Initiative Program (“LIP” or the “LIP Program”) is a state program that encourages communities to collaborate with the Department of Housing and Community Development (“DHCD”) to produce low- and moderate-income housing through 40B Comprehensive Permits or through other eligible municipal actions, the latter of which are referred to as “Local Action Units” or “LAU” projects. Examples of municipal actions that are eligible for LAU include zoning-based approvals (e.g., special permit or site plan review approval), conveyance of publicly owned land, or utilization of Community Preservation Act funds, among others, so long as the municipal action is conditioned on the provision of affordable units.

Affordable units in LAU projects may be eligible for inclusion on the state’s Subsidized Housing Inventory (“SHI”), but only if they meet SHI eligibility requirements under DHCD’s M.G.L. c. 40B Guidelines.¹ Regardless of how a project is reviewed and approved at the local level, affordable units will only be included on the SHI if they meet all criteria for inclusion, as set forth in the Guidelines.

DHCD anticipates increased interest in LAU due to the new statutory requirement for an “MBTA community” to establish at least 1 zoning district in which multi-family housing is allowed as of right.² While the multi-family zoning requirement for MBTA communities applies to specific municipalities, this guidance is intended to provide more detail for any community wishing to seek LAU approval where local affordability requirements (e.g. inclusionary zoning) are applied to a project developed “as of right.” The term “as of right” is defined in the Zoning Act as “development that may proceed under a zoning ordinance or by-law without the need for a special permit, variance, zoning amendment, waiver or other discretionary zoning approval.” (“As of Right Project”).³

The LIP Program will review a zoning-based LAU application for an As of Right Project if (1) local affordability requirements are applied to the project through the applicable zoning and (2) a site-specific approval is conditioned on the project meeting those local affordability

¹ 40B Guidelines, available at: <https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf> (see Section II.A for SHI eligibility criteria).

² M.G.L. c. 40A §3A. See also Section 4.b. of the *Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act* (the “3A Guidelines”), clarifying that certain affordability requirements are consistent with as of right zoning for the purposes of compliance with M.G.L. c. 40A §3A. <https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities>.

³ M.G.L. c. 40A §1A.

requirements. For As of Right Projects, the LIP Program will accept the following as site-specific approval:

- (i) Site plan approval;⁴ or
- (ii) If the applicable zoning does not provide for site plan approval, issuance of a building permit.

To ensure that As of Right Projects meet requirements for LAU (and inclusion of units on the SHI), DHCD strongly encourages communities to discuss prospective LAU projects with LIP staff as early as possible prior to issuance of either site plan approval (if applicable) or the building permit. LIP staff will identify any areas of concern regarding the project's eligibility and may provide preliminary or conditional approval of the project, if appropriate.

The information included below highlights important LAU requirements and considerations but is not exhaustive. For further information, see:

- **The LIP information page:**
<https://www.mass.gov/service-details/local-initiative-program>
- **40B Guidelines:**
<https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf>
 - **Noting in particular:**
 - Section II.A (SHI eligibility)
 - Section III (Affirmative Fair Housing Marketing and Resident Selection)⁵
 - Section VI (LIP guidelines)

Important Requirements and Considerations for LAU Projects

LAU Application:

DHCD's application form for LAU is available on the DHCD website:

<https://www.mass.gov/service-details/local-initiative-program>

LAU applications for As of Right Projects must include:

- Documentation of site-specific approval (site plan approval, or, if the applicable zoning does not provide for site plan approval, issuance of a building permit);
- Zoning ordinance/by-law section with provision requiring affordability (e.g., inclusionary zoning or multifamily zoning with required affordability);
- The Affirmative Fair Housing Marketing and Resident Selection Plan required by section III of the 40B Guidelines;

⁴ As described in Section 4.a. of the 3A Guidelines, Massachusetts courts have recognized site plan review as a permissible regulatory tool, including for uses that are permitted as of right, so long as the scope of review is limited to imposing reasonable terms and conditions on the proposed use. <https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities>.

⁵ The AFHMP guidelines are also found as stand-alone guidelines at <https://www.mass.gov/files/documents/2016/07/oj/afhmp.pdf>.

- Regulatory Agreement required by section VI.B.9 of the 40B Guidelines; ownership projects must also include a copy of the required deed rider;⁶
- Site plan; condominium documents, including the Master Deed and Declaration of Trust, if applicable;
- Evidence of compliance with design standards set forth in section VI.B.4 of the 40B Guidelines;⁷
- Other relevant documents as required or as may be requested by DHCD.

Affordable units – no matter how they come into existence – do not count on the SHI unless they comply with the criteria in the 40B Guidelines as well as DHCD’s stand-alone Affirmative Fair Housing Marketing and Resident Selection guidelines, so be sure to review the Guidelines carefully. In particular, please note the following key requirements:

Affordability:

Affordable units under the LIP Program must be made available to households earning not more than eighty percent (80%) of the Area Median Income (“AMI”), adjusted for family size as determined by the U.S. Department of Housing and Urban Development.⁸

DHCD, the Municipality, and the Project Sponsor/Developer will all enter into a LIP Regulatory Agreement restricting the affordable units 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. For ownership projects, a LIP Deed Rider must also be recorded with the sale of each affordable unit.

Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP):

LAUs **must** be subject to an AFHMP that meets DHCD requirements and is approved by LIP staff. If the municipality is requesting a local preference for resident selection, it **must** also be approved by DHCD. DHCD will review the documented need and extent of the local preference in the context of the size of the community, the size of the project, and the regional need for affordable housing. Municipalities are encouraged to contact LIP staff early in the development process to learn more about specific requirements for local preference approval. Please note that the preference must be limited to initial lease-up or initial sale and subject to the requirements of the AFHMP guidelines. Please also note that, for age-restricted housing for persons 55 years of age or older, selection or occupancy policies, special permits or other zoning approvals, or underlying zoning must not prohibit persons 18 years of age or younger from occupying those affordable units.⁹

⁶ Section VI.C.2 of the 40B Guidelines incorporates certain Comprehensive Permit project requirements into the LAU application, including the Regulatory Agreement requirement under Section VI.B.9.

⁷ Section VI.C.2 of the 40B Guidelines incorporates certain Comprehensive Permit project requirements into the LAU application, including the Design and Construction Standards under Section VI.B.4.

⁸ Please note that to comply with the district requirements under the 3A Guidelines, an MBTA community cannot require units to be affordable to households below 80% AMI without special approval from DHCD. Affordable units that are income restricted for households above 80% AMI are not SHI eligible.

⁹ See *Local Initiative Program Policy Regarding Restrictions on Children in Age-Restricted 55+ Housing*: <https://www.mass.gov/doc/lip-policy-regarding-restrictions-on-children-in-55-housing/download>

Design and Construction Standards:

Certain design/construction standards must be met for LAU projects which are highlighted in section VI.B.4 of the LIP Guidelines.

- Noting in particular:
 - Affordable units must be indistinguishable from market-rate units as viewed from the exterior.
 - Units must contain complete living facilities including a stove, kitchen cabinets, plumbing fixtures, a refrigerator, microwaves, and access to laundry facilities.
 - Affordable units must be proportionately distributed throughout a Project, in terms of both location and unit size/type.

For more information about the LAU process or questions about the application please contact:

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