

Chapter 40B

The State's Affordable Housing Law

Chapter 40B, also known as the Comprehensive Permit Law, was enacted in 1969 to help expand the number of communities and neighborhoods where households with low and moderate incomes could afford a safe and affordable home. The law helps to reduce barriers to production created by local approval processes, local zoning, and other restrictions. **In 2010, 58% of voters in Massachusetts overwhelmingly supported keeping Chapter 40B as a tool for providing affordable homes for seniors and working families.**

Chapter 40B enables local Zoning Boards of Appeals (ZBAs) to approve housing developments under flexible rules if at least 20-25% of the proposed units have long-term affordability restrictions.

- ⇒ The developer (a public agency, non-profit organization, or limited-dividend company) has the right to appeal an adverse local decision to the State in communities with little affordable housing (less than 10% of its year-round housing or 1.5% of its land area).
- ⇒ Communities that have not yet met one of these thresholds can receive one- or two-year exemptions from State appeals by adopting a housing production plan and meeting short-term housing production goals.)

Chapter 40B – Serving Working Families and the Elderly

In most cases, Chapter 40B developments are communities with a mix of market rate and affordable homes, apartments, or condominiums. The market rate units often serve middle-income singles, seniors, and families who make between 100% and 150% of the area median income.

- ◆ Affordable units are reserved for seniors or families who make less than 80% of the area median household income. Most of the residents in the affordable apartments and homes earn less than \$50,000 per year.
- ◆ Nurses, teachers, retirees, carpenters, plumbers, electricians, office management staff, and other occupations critical to our state's workforce reside in these homes.



Counting Units toward the 10% Affordable Housing Goal:

1. Units must be part of a "subsidized" development built or operated by a public agency, non-profit, or limited dividend organization;
2. At least 25% of the units in the development must be restricted to families with incomes of less than 80% of the median and have rents or sale prices restricted to affordable levels. These restrictions must run at least 30 years;
3. The development must be subject to a regulatory agreement and monitored by a public agency or non-profit organization; and
4. Owners must meet affirmative marketing requirements.

Accomplishments – A Long History of Results

- ◆ Produced more affordable housing than any other housing program in the Commonwealth.
- ◆ Over 60,000 affordable units produced in almost 1,200 developments, including over 42,000 rental units and 18,000 ownership units.
- ◆ 44 communities meet the 10% affordable housing goal, 4 meet the 1.5% land area standard, and six towns have received two-year exemptions for making progress toward their housing production goals, as of November 2013.
- ◆ 78% of all new affordable housing units were produced in rural and suburban communities (excluding group home beds and homeowner rehab loans), between 1997 and 2010.
- ◆ 44 communities have met the 10% threshold, up from 39 in 2011; 40 communities are at 8% or 9% – up from 17 in 2001; and 57 communities are at 6% or 7% – up from 52 in 2001.
- ◆ 62 communities have approved housing production plans and 6 have two-year exemptions from Chapter 40B appeals as a result of meeting their housing production goals.

The Comprehensive Permit Process – Providing Flexibility for Affordable Housing

- ⇒ To qualify for Chapter 40B, a development proposal must receive a letter of project eligibility under a state or federal housing program. To be eligible, at least 25% of the units must be affordable to low income households who earn no more than 80% of the area median income. Alternatively, for rental housing, the project can provide 20% of the units to households below 50% of median income. Developers must also restrict their profit to a maximum of 20% in for-sale developments and 10% per year for rental developments (unless indicated otherwise in the subsidy program or the comprehensive permit).
- ⇒ Once the project is determined to be eligible, the developer can submit an application for a comprehensive permit to the local ZBA. Within thirty days of the receipt of the application, the ZBA begins a public hearing, which lasts up to six months. The ZBA may apply more flexible standards than the local zoning requirements. The developer, however, must still obtain all permits required by state statutes, such as wetlands protection, state highway access permits, and a local building permit. The ZBA may also include conditions on any aspect of the project such as restrictions on height and density, requiring a longer term affordability of the project, or utility improvements.
- ⇒ After ending the public hearing, the ZBA must issue a decision within forty days. The ZBA may take one of three actions: (1) it may approve the application as submitted; (2) it can approve the project with conditions or changes; or (3) it can deny the application altogether.
- ⇒ If the board denies the application or imposes “uneconomic” conditions, the developer may appeal the decision to the Housing Appeals Committee (HAC) if the project is in a community that has less than the required affordable housing thresholds or if the community has not received an exemption from DHCD.

Regulatory Changes to Chapter 40B

Although the language of Chapter 40B statute has not changed since 1969, regulatory changes have allowed it to remain a dynamic law that continues to meet the affordable housing needs of the Commonwealth.

Highlights include:

Local Control. Recently adopted regulations make it easier for communities to become temporarily appeal-proof by lowering the number of subsidized housing units they must create each year to demonstrate that they are making progress toward the 10% goal. Regulations also allow communities to reject a 40B application if a developer submitted an application for the same site for a non-40B development within the previous 12 months.

Unit Counts. Municipalities can now count group homes, accessory apartments, locally assisted units, and units funded under the Community Preservation Act toward their 10% goal. Changes also allow towns to count units as soon as a comprehensive permit is issued rather than waiting until a building or occupancy permit is issued.

Project Size Limits. Towns may limit project size to 150-300 units, depending on the size of the community, unless the ZBA chooses to allow a larger project. Communities may also delay hearing applications if they are already hearing three or more applications for projects involving a large number of units.

Audits and Cost Certification. DHCD now requires compliance with extensive audit and cost-certification guidelines regarding the profit limitations imposed on 40B developments.

Project Review. Guidelines require subsidizing agencies to more extensively review project designs including how they fit into the neighborhood and town planning efforts. DHCD agencies issued a 40B Design Handbook in early 2011 to facilitate the design review process.

Transparency. Any developer submitting a project eligibility application to a subsidizing agency must also send a copy to the local chief elected official and a written notice to DHCD. The subsidizing agency must also notify communities as soon as it receives a project eligibility application and must consider local comments and conduct a site visit during the 30-day review period.