



The Research Bureau

Bureau Brief—Massachusetts Comprehensive Permit Act—Chapter 40B

Massachusetts General Laws Chapter 40B was adopted in 1969 as part of the Massachusetts Comprehensive Permit Act to encourage and facilitate the building of affordable, long term housing for low-income individuals and families across the Commonwealth and to ensure that low-income residents can remain in their localities if housing costs increase. Under Chapter 40B, 10% of a city or town's housing stock or 1.5% of a city or town's total land area must consist of or contain deed-restricted affordable housing. While the State does not mandate compliance with these thresholds, a developer proposing to build new housing that includes at least 25% affordable homeownership units or 20% affordable rental units may bypass a non-compliant municipality's density and placement zoning laws by appealing local decisions to the State.

AFFORDABLE HOUSING

Chapter 40B requires that every community in Massachusetts ensure that at least 10% of its housing units be qualified affordable. A qualifying affordable housing unit must include a restriction on the deed that limits sale or rental price and sets a maximum income for any owner or tenant, generally up to 80% of Area Median Income (AMI)* as established by the U.S. Department of Housing and Urban Development (HUD). Affordable home sale prices and rents are established so that low- and moderate-income households do not spend more than 30% of their income on housing costs. Under Chapter 40B, affordable units must remain restricted for a period of at least 30 years. The Commonwealth's Department of Housing and Community Development (DHCD) tracks the number of affordable units by community through its Subsidized Housing Inventory.

40B PROJECTS

A 40B Project is a new development or a substantial rehabilitation project in a non-complying city or town in which at least 25% of homeownership units or 20% of rental units are deed-restricted affordable. In order to qualify as a 40B Project, a developer must agree that the project's profits will not exceed 20% on a homeownership development or 10% annually on a rental development.

Chapter 40B requires that projects adhere to smart growth principles, which include location, design, and integration into existing development patterns, and has imposed a project size limit of up to 300 units based on the size of the community. The Commonwealth has also allowed a municipality to reject a 40B Project if any of the following conditions are met: if a developer submitted an application for the same site as a non-40B Project within the previous 12 months; if a community is making progress increasing the number of affordable housing units by 2% over a 12-month period; or if a community has an approved plan and has increased its housing stock by 0.75% over the previous 12 months.

A community may reserve up to 70% of the units in a 40B Project for local residents, as long as the set-aside does not exclude individuals of a protected class.

| 2015 Area Median Income Categories for Worcester Metropolitan Statistical Area | | | | | | | | |
|--|----------|----------|----------|----------|----------|----------|----------|----------|
| Household Size | 1 Person | 2 Person | 3 Person | 4 Person | 5 Person | 6 Person | 7 Person | 8 Person |
| Very Low Income (50% of AMI) | \$30,650 | \$35,000 | \$39,400 | \$43,750 | \$47,250 | \$50,750 | \$54,250 | \$57,750 |
| Low-Income (80% of AMI) | \$46,100 | \$52,650 | \$59,250 | \$65,800 | \$71,100 | \$76,350 | \$81,600 | \$86,900 |

QUALIFYING FOR AFFORDABLE HOUSING

In order to qualify for the purchase of an affordable homeownership unit, a buyer must meet certain income requirements based on household size, be a first-time homebuyer (defined as an individual that has not owned a home in the past three years or a single parent that previously owned a home with a co-parent), and be pre-approved by a lender and have sufficient funds for purchase, down payment, and closing costs.

In order to qualify for an affordable rental unit, a tenant meeting certain income requirements must submit an application for inclusion in an open lottery for available units at a particular location. The lottery is conducted according to terms and procedures outlined in the Commonwealth's handbook *Affirmative Fair Housing Marketing and Resident Selection Plan*, with units offered to qualifying tenants based upon placement in the completed lottery.

Income eligibility is based on AMI and household size. The Fiscal Year 2015 area median income for the Worcester Metropolitan Statistical Area for a family of four is \$83,500. Under Chapter 40B, rental units must be made affordable to a very low-income household earning no more than 50% of AMI, while homeownership units must be made affordable to a low-income household earning no more than 80% of AMI.

APPEALS PROCESS

Under Chapter 40B, a developer may appeal local zoning decisions on qualifying projects to the Commonwealth if the community does not meet the 10% affordable housing threshold. The developer may also appeal a local permit granted with conditions that render the project economically infeasible. The Housing Appeals Committee (HAC), a five-member body, is charged with resolving conflicts between a developer and a municipality by balancing the need for affordable housing with environmental, open space, design, health, safety, and other local concerns. Three members of the Committee are appointed by the Director of DHCD, one of whom must be an employee of that agency. The other two members are appointed by the Governor — one must be a city councilor and the other must be a town selectman. If the HAC finds that the project meets its criteria, it issues a Comprehensive Permit, superseding local decisions. From 2007 through June 2015, the Housing Appeals Committee heard 66 appeals and issued rulings in 65 of the cases. The overwhelming majority of the decisions supported the developers and ultimately overturned the decisions of local zoning boards.

COMPLIANCE

As of December 2014, 46 of the 351 communities in Massachusetts have reached or surpassed the 10% threshold. While the City of Worcester has exceeded the 10% threshold, none of the surrounding communities have met Chapter 40B requirements. The Town of Shrewsbury comes closest at 6.2%. In order to meet the 10% threshold, Shrewsbury would need to build 532 new units of affordable housing. Since 40B affordable housing minimums are a percentage of total housing, however, as Shrewsbury continued to grow the town would need to continue to add affordable units to its housing stock to remain 40B compliant. The City of Worcester's compliance forces questions about the responsibility of surrounding towns to accommodate low-income residents.

| Community | 2010 Census Count of Year-Round Housing Units | # Subsidized Units | % Housing Units |
|---------------|---|--------------------|-----------------|
| Worcester | 74,383 | 9,971 | 13.4 |
| Shrewsbury | 13,919 | 860 | 6.2 |
| Holden | 6,624 | 393 | 5.9 |
| West Boylston | 2,729 | 136 | 5 |
| Grafton | 7,160 | 325 | 4.5 |
| Millbury | 5,592 | 221 | 4 |
| Leicester | 4,231 | 163 | 3.9 |
| Paxton | 1,590 | 62 | 3.9 |
| Auburn | 6,808 | 242 | 3.6 |
| Boylston | 1,795 | 24 | 1.4 |

QUESTIONS TO CONSIDER

Chapter 40B was enacted to ensure affordable housing alternatives throughout the Commonwealth's 351 communities. Yet in the nearly 50 years since its adoption, less than 14% of Massachusetts communities have met the minimum thresholds. The law has not fulfilled its purpose.

- Should the Commonwealth make the Chapter 40B 10% minimum threshold for affordable housing mandatory?
- Should the Commonwealth target certain municipalities for affordable housing based on smart growth criteria and provide dedicated funding to accommodate higher levels of affordability within those community?
- Should the Commonwealth amend Chapter 40B to:
 - Target incentives to private developers interested in developing affordable housing in non-compliant communities?
 - Establish a mandatory surcharge on property taxes in non-compliant communities to generate funds to support affordable housing construction within the community itself? Alternatively, should those same funds be generated in non-compliant communities but used in compliant communities to support municipal services, offsetting the costs of compliance?
- Create earmarks for certain transportation and school funding support to non-compliant communities that have and are implementing an affordable housing development plan?
- Limit certain existing education, transportation, and public infrastructure funding support to compliant communities?
- Should the Commonwealth eliminate Chapter 40B?

Bureau Brief

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