



League of Women Voters of Massachusetts
Citizen Education Fund

Affordable Housing Study Reports



League of Women Voters of Massachusetts
133 Portland Street, Boston, MA 02114
617-523-2999 • Fax 617-248-0881 • lwwma@lwwma.org • www.lwwma.org
www.votinginfo.info

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The League of Women Voters

The League of Women Voters, a nonpartisan political organization, encourages the informed and active participation of citizens in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy.

The Affordable Housing Study is a project of the League of Women Voters of Massachusetts Citizen Education Fund. The Fund was established as an educational trust in 1971 by the League of Women Voters of Massachusetts.

The Citizen Education Fund is a nonpartisan not-for-profit fund that supports voter education. Its mission is to encourage informed and active citizen participation in government through citizen education and voter service projects. It serves the public, both individuals and organizations, by providing advice and training on how to make government responsive and accessible.

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LWVM Affordable Housing Study Reports

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1. The Study & the Consensus Process

At the League of Women Voters of Massachusetts 2005 convention, members voted to investigate affordable housing in Massachusetts. The study was described as follows:

Scope: To evaluate legislation, regulations and programs in Massachusetts; to determine their effectiveness in providing affordable housing; and to propose a new position through consensus or concurrence.

Study may include, but is not limited to:

- Senior housing
- Effect of Chapter 40B, Massachusetts’ Comprehensive Permit statute, on cities and towns
- “Smart growth” concepts

Study Committee

A study committee began meeting in the fall of 2005 and worked for the next two years researching affordable housing in Massachusetts and preparing information, conducting interviews, leading workshops, and distributing Bulletin and Voter articles to educate League members about the subject. The following reports are the results of the breadth and depth of their research.

The committee members are:

Wendy Manz, co-chair, Lexington
 Jane Nash, co-chair, Westwood-Walpole
 Joan Duff, Andover-North Andover
 Clare Gordon, Arlington

Roberta Leviton, Newton
 Mardie McKenna, Norwood
 Muriel Zaginailoff, Beverly
 Lynn Cohen, state board advisor, Westford

Consensus Question

Recognizing that affordable housing is a very large and extremely complex issue, committee members eventually narrowed the focus of the study to areas they believed League members could learn about and address at consensus meetings. In the spring of 2007, the LWVM board approved the following consensus question:

What changes to Massachusetts laws are needed to more successfully encourage the production and retention of affordable housing?

In discussing this question, please consider the following:

- a. Reasonableness and fairness of current eligibility requirements for purchase or rental of affordable housing in Massachusetts
- b. Method of counting affordable housing units under Chapter 40B
- c. Duration of affordability restrictions on housing units—in perpetuity, in perpetuity with some provisions for revision to market rate, or for a specified time
- d. Effectiveness of state incentive programs for smart growth and affordable housing, including Chapters 40R &40S

The Consensus Process

In the League, consensus is reached if:

- a study committee has presented the information
- there has been member discussion
- a substantial number of participating members reach agreement

The consensus/group discussion as stated in the LWVUS's *In League*, "is the technique most often used in the League for reaching member agreement. It is a process whereby members participate in a group discussion of an issue. The 'consensus' reached by members through group discussion is not a simple majority, not is it unanimity; rather it is the overall 'sense of the group' as expressed through the exchange of ideas and opinions, whether in a membership meeting or a series of membership or unit meetings."

Acknowledgments

The League's Affordable Housing Study Committee is in debt to all those who helped us over the past 2½ years as we learned about affordable housing. We sincerely thank the following people for giving us generous amounts of their time, knowledge and expertise. The committee, however, is responsible for the accuracy of the information in these reports.

Judi Barrett
Policy Planner, Community Opportunities Group, Inc
Chapter 40B consultant

Stephen Costello
Town Planner, Norwood

Mary Lou Fitzpatrick
Member, Norwood Housing Authority

Maura Fogarty
Assistant to Vice President for Communications, Community Relations and Public Affairs
The Boston Foundation

Kristine G. Foye
New England Regional Public Affairs Director
U.S. Department of Housing and Urban Development

Aaron Gornstein
Executive Director, Citizens' Housing and Planning Association (CHAPA)

Toni Coyne Hall
Manager, Local Initiative Program
Massachusetts Department of Housing and Community Development

Sandra Litchfield
Trainer in Microsoft Office Suite of products
PC trainer and support

Stephen Merritt
Director, Norwood Housing Authority

Elaine Nickerson
Co-chair, Westford Affordable Housing Committee

Jill Onderdonk
Member, Westwood Housing Authority
Member, Westwood Housing Partnership
Consultant on Local Initiative Planning Projects

William Plasko
Assistant. Director, Norwood Housing Authority

Darcy Rollins Saas
Policy Analyst, New England Public Policy Center
Federal Reserve Bank of Boston

Susan Stott
Executive Director, Andover Community Trust
Past member, Andover Housing Partnership Committee

Ann Verrilli

Research Director, Citizens Housing &
Planning Agency

Eleanor White

Co-chair, Commonwealth Housing Task
Force
President, Housing Partners, Inc

Laura Wiener

Director of Housing, Planning Board
Arlington, MA

Sarah Young

Former Deputy Director for Policy
Development, Massachusetts Depart-
ment of Housing and Community De-
velopment

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Affordable Housing Study Reports

2. League Positions on Affordable Housing

The League of Women Voters has a long history of interest in affordable housing. LWVUS's first housing positions were adopted almost 40 years ago. Today its primary position on housing reads that the League will "support policies to provide a decent home and a suitable living environment for every American family."

The Massachusetts League was quick to use the national position to take action on affordable housing in the Commonwealth. In 1969 LWVM strongly supported the initiation and passage of what has come to be known as Chapter 40B, the law designed to increase the supply and improve the distribution of affordable housing statewide. LWVM has consistently supported measures to ensure adequate funding for this and other affordable housing programs. Many local Leagues continue to be involved in supporting subsidized housing in their communities after studying local housing needs.

Although LWVM is studying affordable housing, it is important to remember that any positions adopted at the state or local level must be consistent with LWVUS's current positions. The following reviews the national positions that deal with housing issues. The full text of the League's national positions are in the LWVUS guide to public policy positions, "Impact on Issues," available online on the LWVUS website. (Go to www.lwv.org and type "Impact on Issues" in the Search box.)

LWVUS Positions on Housing

Housing is addressed primarily in the positions on Meeting Basic Human Needs, Equality of Opportunity and Urban Policy.

The Meeting Basic Human Needs position says:

The League of Women Voters of the United States believes that one of the goals of social policy in the United States should be to promote self-sufficiency for individuals and families and that the most effective social programs are those designed to prevent or reduce poverty.

Persons who are unable to work, whose earnings are inadequate or for whom jobs are not available have the right to an income and/or services sufficient to meet their basic needs for food, shelter and access to health care.

The federal government should set minimum, uniform standards and guidelines for social welfare programs and should bear primary responsibility for financing programs designed to help meet the basic needs of individuals and families. State and local governments, as well as the private sector, should have a secondary role in financing food, housing and health care programs. Income assistance programs should be financed primarily by the federal government with state governments assuming secondary responsibility.

The **Criteria for Housing Supply** section of the position specifies many considerations applying to programs and policies necessary to provide a decent home and a suitable living environment for every American family. It reads:

- The responsibility for achieving national housing goals rests primarily with the federal government, which should:
 - a. assure that our economic system is functioning to produce and maintain sufficient decent housing for citizens at all income levels;

- b. compensate for any failure or inadequacy of the system by building, financing, renting and selling homes to those citizens whose housing needs are not being met;
 - c. give a variety of incentives to local jurisdictions to encourage them to provide within their boundaries an adequate supply of decent housing for low- and moderate-income groups;
 - d. withhold federal funds from communities that fail to encourage such housing.
- State and local governments should assist by establishing effective agencies to aid, promote, coordinate and supplement the housing programs of the federal government and the private sector.
- Government at all levels must make available sufficient funds for housing-assistance programs.
- When families or individuals cannot afford decent housing, government should provide assistance in the form of income and/or subsidized housing.
- Government programs providing subsidies to the building, financing and insuring industries for housing for lower-income families should be evaluated in terms of units produced rather than in terms of benefits accruing to these industries.
- Government at all levels should develop policies that will assure sufficient land at reasonable cost on which to develop housing and that will assure fulfillment of other goals such as access to employment, preservation of open space, environmental cleanliness and beauty, and other aspects of a suitable living environment.
- Regional and metropolitan planning should be promoted to prevent haphazard urban growth, and housing for low- and moderate-income families should be provided as a part of all planned neighborhoods or communities.
- Lower-income families should not be segregated in large developments or neighborhoods. As their economic status improves, lower-income families should be enabled to continue to live in the same units as private tenants or as homeowners, if they are so inclined.
- Housing should be designed to meet human needs and should be built with amenities that will encourage economic integration within apartment buildings as well as within neighborhoods.
- Publicly assisted housing should be included in viable, balanced communities, with provision for quality public services and facilities, including schools, transportation, recreation, etc., that will encourage integration and stability.
- Zoning practices and procedures that will counteract racial and economic isolation should be promoted.
- State and local governments should adopt and enforce:
 - a. uniform building codes with standards based on performance;
 - b. housing codes to protect the health and safety of all citizens.
- State and local tax structures should be examined and revised to:
 - a. benefit communities that build housing for lower-income families;
 - b. encourage private owners to improve their homes;
 - c. reduce speculative land costs.
- Government, industry and labor should encourage innovative building techniques to reduce the cost of housing production.
- Rights of tenants to negotiate for proper maintenance, management of facilities and services should be protected.
- Housing programs should be administered by individuals trained for the jobs and sympathetic with the needs of their clientele.
- Citizen groups should participate in the development of publicly assisted housing programs by:

- a. evaluating performance;
- b. activating nonprofit sponsorships;
- c. supporting legislation;
- d. developing public awareness of housing discrimination and need.

The Equality of Opportunity position states:

The League of Women Voters of the United States believes that the federal government shares with other levels of government the responsibility to provide equality of opportunity for education, employment and housing for all persons in the United States regardless of their race, color, gender, religion, national origin, age, sexual orientation or disability....

In addition to giving the responsibility of ensuring that there is equal opportunity for access to housing on government at all levels, the Equality of Opportunity position, in its **Fair Housing Criteria**, extends that responsibility to the private sector as well, including builders, lenders, and realtors.

The last position that is concerned with housing is **Urban Policy**, which states that “the League is committed to an urban environment beneficial to life and to resource management in the public interest.” One of the **Economic Development Assistance** guidelines under this position supports expanding “middle-income housing while not diminishing attention to low-income housing needs as an important strategy.”

Sources

League of Women Voters of Massachusetts. “Where We Stand,” www.lwvma.org/bhn.shtml.

League of Women Voters of the United States. “Impact on Issues, 2004-2006. A Guide to Public Policy Positions,” www.lwv.org/AM/Template.cfm?Section=Home§ion=ImpactIssues&template=/CM/ContentDisplay.cfm&ContentFileID=1228.

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3. Review of Affordable Housing in Massachusetts

Why Affordable Housing Matters

Here are a few reasons why affordable housing matters to all of us.

- Without an adequate supply of affordable housing, many residents have to pay a disproportionate share of their income for housing at the expense of other basic necessities.
- Diverse communities are described as those that include people of all income levels and skills. Such communities are seen by many as healthy communities. Some see diversity as a social benefit allowing citizens to live in a community more like the world at large.
- Some see a diverse community as a practical necessity. Several recent news articles claim that the lack of affordable housing is causing skilled workers and seniors to look for housing out of the state. News articles and Gov. Romney claimed that the loss of skilled workers was having a negative effect on Massachusetts' ability to compete economically. Employees who work in many suburban communities often cannot afford to live where they work.
- More Massachusetts communities are becoming less diverse. The hometown of the past where peoples of all economic levels and skills lived within the same community is becoming obsolete.
- Decent housing, for all people including for those who can't pay market prices, maintains public health and satisfies aesthetic preferences for livable communities.

League members have already decided that affordable housing matters. This is how the League of Women Voters of the United States puts it: We believe that "every person and family should have decent, safe, and affordable housing."

Few deny the need for more affordable housing in Massachusetts. Housing is the largest single expense most households at all economic levels face. Most people agree that affordable housing for those with very low incomes and for the disabled is in very short supply here. Some claim that even those of moderate means are unable to find housing without cutting back on other necessities.

Economists define the maximum households can "afford" to spend on housing as the total household income less the amount needed to cover other basic needs (food, clothing, transportation and medical care). The federal government (the Department of Housing and Urban Development – HUD) calls housing affordable if it costs no more than 30-35% of a household's income.

In reality, because the cost of meeting basic needs is relatively fixed, most very-low-income households can afford to spend even less than 30%. Using HUD's definition, 21.5% of Massachusetts households had housing affordability problems in 1999.

In August 2006 the State House News Service reported that Massachusetts is adding new housing at one of the slowest rates in the nation. According to them, "Massachusetts added 15,953 units of housing between July 1, 2004 and July 1, 2005 or a 0.6 increase as compared to the 1.5 percent increase of overall growth in the nation." When one considers the housing lost through demolition or expiration of affordability restrictions, there has been a net loss of affordable housing statewide.

Definitions

Terminology is important because using the correct terms facilitates understanding and eliminates confusion. The following reviews some of the major terms used in these reports.

Affordable housing, for the purposes of our study, refers to rental or owner units developed under government programs for residents with limited incomes.

The study does not cover low-rent or low-purchase priced units that have no income restrictions.

These reports use the following definitions for income categories:

- very low income: at or below 30% of the area median income (AMI)
- low income: at or below 50% of the AMI
- moderate income: at or below 80% of the AMI

Area median income is calculated by the U. S. Bureau of the Census for regions within the state as established by the Department of Housing and Urban Development.

An arithmetic refresher: median is not the same as what many think of as an average. By average, we think of adding up a set of numbers (in our case, all the incomes made by a specific set of people) and dividing it by how many there are in the set. This is also known as the “mean.”

In contrast, median income is the middle value when income distribution is divided into two equal parts, one part having incomes above the median and the other having incomes below the median.

Eligibility requirements are developed and used by various regulatory agencies tailored to the program it administers. These requirements determine who is eligible for that particular program. Usually eligibility for affordable housing is stated as a percentage of the area median income. To be precise one must know which regulatory agency administers the program and refer to that agency’s guidelines. The internet can be used to access this information.

The Need in Massachusetts

The need for affordable housing is not new to our country or to our state. It has been documented as far back as 1890. In 1949 Congress passed the Housing Act in response to the nation’s crisis. The Act promised “a decent home and a suitable living environment for every American.” Massachusetts responded in 1969 to our state’s housing crisis with Chapter 774 of the Acts of 1969.

Consider these facts:

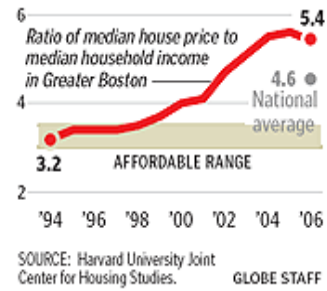
- Boston outpaced Washington D.C., San Francisco and New York City as having the most expensive housing costs in the country.
- Demand for housing has exceeded supply over the last 20 years.
- Massachusetts produces new housing units at one-half the rate of the nation and multi-family units at one-third the national rate.

Here are some additional statistics about the housing problem in Massachusetts:

- The cost of buying the median-priced single family home in Massachusetts doubled from 1998 to 2005.
- In 2005, households earning the median income of their community could afford its median priced single-family house in only 19 of the 161 cities and towns in the Boston region. Three years before that, there were 77 communities in which these households could afford to buy a median-priced home.

- Currently, 81,000 low-income people are on Housing Authority lists waiting for the availability of housing they can afford.

The chart to the right is another way to explain how much more unaffordable housing has become in the Boston area. It shows that in 1994 a family earning the household median income would have had to pay 3.2 times its annual income to buy a median-priced house in the area. In 2006, a family making the median income would have had to pay 5.4 times its annual income to buy a median-priced house.



The need – ownership. Income limits for both rental and ownership programs vary according to the number of people in a household. Rental housing more often includes units set aside for those with incomes of 30 to 50% of area median income. But ownership programs are more often for those at 80% of area median income. This is because it costs more to own and maintain a home than to rent one.

The HUD regional area median incomes cover a very diverse number of communities, so the Lawrence regional area, for example, also includes Andover, Methuen and other communities in eastern Essex county. Communities are grouped into HUD regional areas by proximity, not by their sharing like demographics, for example. The chart below shows how the use of regional data can affect the affordability of homes in different communities. Area median household incomes for each community could not be obtained, so in this chart a single person household is used. While families having more than one income can better afford to purchase a house, this table at least shows the diversity of earning and buying power of a single person household.

	Massachusetts	Lawrence	Andover
Median house/condo value	\$361,500	\$237,700	\$599,300
Median income for single person household	\$57,184	\$31,604	\$97,200
Max. 30% of income for housing	\$17,155	\$9,481	\$29,160
20% down payment-median house/condo	\$72,000	\$48,000	\$120,000
Mortgage amount to borrow	\$289,500	\$189,700	\$479,300
Monthly payments/30 yr./7% rate	\$1,926	\$1,258	\$3,189
Annual mortgage payments	\$23,112	\$15,096	\$38,268
% of income allocated to housing	40%	48%	39%

Median house/condo values range from a high of \$600,000 in Andover to a low of approximately \$238,000 in Lawrence.

The median income in Andover, which again is based on income for a single person household, is more than three times that of Lawrence. If a person, earning the Lawrence median income, wanted to purchase in Lawrence, the down payment on a \$238,000 home would be more than \$47,000 – not easily achieved on an income of just over \$31,000 – and the monthly payment, based on a 30 year mortgage at 7% interest, would be over \$1,200 or over \$15,000 annually, excluding taxes, insurance and maintenance. This represents 48% of that person’s income allocated to housing.

By comparison, a person earning the Andover median income of \$97,000, who purchases a median priced home in Andover at \$600,000, would have a mortgage payment of \$3200 per month, with a down payment of \$120,000 and would be paying out 40% of his/her income in housing.

In all three cases – the state, Andover, and Lawrence – the housing burden is significantly higher than the HUD recommended 30 to 35% of income.

The need – rental. The chart below, extracted from a report by CHAPA, shows the changes in rents and rent burdens from 2000 to 2005. The first important number to note is that the median gross rent increased by more than 30% from 2000 to 2005.

The other two significant numbers are that in 2005 over 46% of renters in Massachusetts were paying more than 30% of their income for rent, while over 23% were paying more than 50% of their income.

	2000 Census	2005 ACS*	% change
MA median renter income	\$30,682	\$31,820	3.7%
MA median gross rent	\$684	\$902	31.9%
US median renter income	27,362	28,251	3.2%
US median gross rent	602	728	20.9%
MA rank among 50 states	7	4	
**Renter households paying >30%	321,683	408,793	87,110
% of all MA renters	34.4%	46.4%	
% of all US renters	*	45.7%	
MA rank among 50 states	15	9	
**Ma renter households paying >50%	156,166	204,299	
% of all MA renters	16.7%	23.2%	
% of all US renters	*	23.2%	

* U.S. Census Bureau American Community Survey

Sources

Blanton, Kimberly. “Home Costs Stay Beyond Reach of Many,” *Boston Globe*, June 11, 2007.

Bluestone Barry, Charles C. Euchner, and Gretchen Weismann. “A New Paradigm for Housing in Greater Boston,” The Center for Urban and Regional Policy, Northeastern University, February 2001, www.curp.neu.edu/publications/finalhousing.pdf.

Citizens’ Housing and Planning Association. “Housing Costs Continue to Outpace Incomes in Massachusetts and the U.S.,” October 2006, www.chapa.org/pdf/HousingTrendsInMA06.pdf.

Citizens’ Housing and Planning Association. “Fact Sheet on Chapter 40B: The State’s Affordable Housing Zoning Law,” January 2006, www.chapa.org/40b_fact.html.

City-data.com. “Andover, Massachusetts,” www.city-data.com/city/Andover-Massachusetts.html.

City-data.com. “Lawrence, Massachusetts,” www.city-data.com/city/Lawrence-Massachusetts.html.

Glaeser, Edward L. “The Economic Impact of Restricting Housing Supply,” Rappaport Institute for Greater Boston, Kennedy School of Government, Harvard University, May 2006, www.ksg.harvard.edu/rappaport/downloads/policybriefs/glaeserhousing_final.pdf.

Greenberger, Scott S. “Romney Targets Housing Shortage.” *Boston Globe*, January 7, 2004.

- Heudorfer, Bonnie and Barry Bluestone. "The Greater Boston Housing Report Card 2005-2006," The Center for Urban and Regional Policy, Northeastern University, September 2006, www.chapa.org/pdf/HousingReportCard2005.pdf.
- League of Women Voters of the United States. "Impact on Issues, 2004-2006. A Guide to Public Policy Positions," www.lwv.org/AM/Template.cfm?Section=Home§ion=ImpactIssues&template=/CM/ContentDisplay.cfm&ContentFileID=1228.
- Norton, Michael P. and Kyle Cheney. "Mass Adds Housing Units at One of Slowest Rates in Nation, Census Data Shows," State House News Service, August 2006.
- Sasser, Alicia. "The New England Rental Market," New England Public Policy Center, Federal Reserve Bank of Boston, bosfed.org/economic/neppc/briefs/2007/briefs071.pdf.
- Scott, Janny and Randal C. Archibold. "Across Nation, Housing Costs Rise as Burden," *New York Times*, October 3, 2006.

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**4. Major Affordable Housing Legislation in Massachusetts:
Chapter 121B – Local Housing Authorities**

In Massachusetts, legislation enabling local housing authorities (LHAs) derives from the Massachusetts Law, MGL Chapter 121B of 1969, which codified all the previous Massachusetts housing laws from 1935 to 1969. Ch.121B enables all cities and towns in the state to create and operate LHAs. The LHA, working with local officials, is charged with studying housing needs and living conditions in the community, and responding to its findings by providing and managing housing for low-income families and elderly and disabled people.

There are about 253 LHAs in Massachusetts. They currently operate nearly 240,000 state and federal housing units, including both conventional and Section 8. (See Report #10 for details on Section 8.) The Massachusetts Department of Housing and Community Development (DHCD) administers the statewide housing program and some of the federal programs.

LHAs are responsible for accounting and reporting their activity to DHCD. It should be noted that local housing authorities in Massachusetts have been mostly state funded. In other states public housing has been almost totally federally funded.

History

The federal government became interested in the need for decent housing, first after World War I, then in the 1930s, to provide employment and slum clearance during the depression. Local public housing agencies were assigned the responsibility for the administration of these programs in the U.S. Housing Act of 1937. After World War II, with the Federal Housing Act of 1949, Congress first made a commitment to provide decent housing nationally for low-income people and veterans.

After that time the construction of public housing increased significantly, and single, elderly people became eligible. The Federal Housing Act of 1969 placed a ceiling of 25% of income on rents, and gave priority on waiting lists to Aid to Families with Dependent Children (AFDC) welfare recipients and dependents on Social Security.

The Section 8 tenant-based rental assistance housing program was introduced in the U.S. Housing and Community Development Act of 1974. The Department of Housing and Urban Development regulates all the federal housing programs. It currently provides rental assistance to very low-income tenants in privately or publicly owned rental units. The state has a rental assistance program also. Currently there are more than 73,000 state and federal Section 8 households in Massachusetts, the majority being administered by LHAs and the rest by the Massachusetts Department of Housing and Community Development.

LHA Powers

The principal power of LHAs is to administer public housing and voucher programs that serve low-income residents. They do this under regulations of the U.S. Department of Housing and Urban Development, which establishes income guidelines for occupants and fair market rents based on median incomes for each area of the country. HUD also sets the contribution toward rent of occupants (usually about 30% of household income).

LHAs in Massachusetts are given other powers under Ch.121B. They may receive loans, grants and annual contributions from state or federal sources; purchase, lease or hold lands; contract for construction; borrow money; invest in securities; and engage in MGL Ch.121A tax agreements.

LHAs have five board members. In towns, four members are elected, one is appointed by the governor. In cities, four members are appointed by the mayor and city council. One of the appointees represents labor, one represents the residents, two are open to the mayor; and the fifth member is appointed by the governor.

LHAs have to consider a variety of factors in providing housing for their communities. What are the housing needs of their low-income population? Should they provide large or small complexes of rental units, private rental apartments, rental houses, duplexes, or client-owned condos? What land is available? Are there potential developers for affordable housing? Where will they get the funding? The LHAs, the municipal planning departments and others working with them have help in all this. Some communities have developed a Comprehensive Master Plan (E.O.418) using grant money from the state to study the community's housing, as well as open space, economic development, resource protection, and transportation. A Housing Committee made up of a cross-section of residents in real estate, banking, business, urban planning, environmental, etc. may be appointed to lead this effort. The resulting Housing Plan would then be submitted to the DHCD for certification. The Housing Committee may act as advocates and advise on local housing issues such as development and implementation of the Housing Plan, identification of suitable land, funding, and negotiation with developers.

Another possible adjunct to the LHA is a Local Affordable Housing Corporation (LAHC), a non-profit corporation to advance the affordable housing program in a community. The LAHC has the power under law to make financial transactions, buy or sell property, receive contributions, etc., on behalf of the LHA. For example, the LHA may award a grant to the LAHC to be used for a down payment on the purchase of a town house or a condo to be rented to needy families. A mortgage from a local bank may help finance the balance, along with state contributions and client rents.

Funding

There are grants and low-cost loans available for affordable housing. Nonprofit developers may be eligible for grants from the State Housing Trust Fund, which distributes \$20 million a year. The New England Fund has been a federal funding source since 1999. The Massachusetts Housing Partnership and the Citizens' Housing and Planning Association (CHAPA), as well as many local banks, are resources for local housing assistance.

In 1969, just as LHAs were being established, a new law, MGL Ch. 40B, was adopted to provide support and encouragement for the development of affordable housing. While Ch. 40B has been effective in producing affordable housing in the state over the years, it is controversial in that it allows 40B developers to build without regard to local zoning laws. As an alternative to this, under the Local Initiative Program (LIP), the LHA may buy property to add to their program, or participate in voluntary agreements between the developers and the municipality to provide affordable housing components in new or existing developments. The Housing Committee may work with developers to affect these agreements. The LHA may administer the programs for the municipality, advertising and running a lottery to select eligible clients to win the right to buy or rent the affordable property.

However, with no independent source of funds, most LHAs have recently been strapped to maintain the publicly-controlled units they have and must depend on other mechanisms and community groups to initiate new developments.

Sources

Citizens' Housing and Planning Association. "Affordable Housing Guidebook for Legislators," CHAPA, June 2005, www.chapa.org/pdf/Guidebook2005.pdf.

Citizens' Housing and Planning Association. "Analysis of 2005 Subsidized Housing Inventory," January 2005, CHAPA, www.chapa.org/pdf/0540banalysis.pdf.

Costello, Stephen M. and Larry Koff & Associates. "'Putting It All Together' Community Development Plan," Town of Norwood, MA, www.ci.norwood.ma.us/planning/Final%20-%20Putting%20it%20all%20Together%20-%20May%2013,%202004.pdf.

Department of Housing and Community Development. "Chapter 40B Subsidized Housing Inventory (SHI) as of September 13, 2007," www.mass.gov/dhcd/components/SCP/shiinv.htm.

Kristine Foye, New England Regional Public Affairs Director, Department of Housing and Urban Development.

League of Women Voters of Andover/North Andover. "Affordable Housing Study Group Report," 2002-2005.

League of Women Voters of Westford. "Affordable Housing Study Report," 2005.

Massachusetts Chapter of National Association of Housing and Redevelopment Officials. "Handbook for Board Members of Massachusetts Public Housing Authorities," NAHRO, April 1996.

Massachusetts Housing Partnership. "Guidebook for Local Housing Partnerships," Massachusetts Housing Partnership, August 2004, www.mhp.net/uploads/resources/chi__partnership_guidebook.pdf.

Michael Lehane, Norwood Town Counsel.

Norwood Housing Authority, "Programs and Developments of the Norwood Housing Authority," Town of Norwood, MA, April 2005.

Stephen Merritt, Director, Norwood Housing Authority Director.

William Plasko, Assistant Director, Norwood Housing Authority.

Westwood Housing Authority. "Westwood Housing Authority Annual Report," Town of Westwood, MA, 2006.

Affordable Housing Study Reports

5. Major Affordable Housing Legislation in Massachusetts: Chapter 40B – the Comprehensive Permit Law

When people talk about affordable housing in Massachusetts most of the time they're referring to what's come to be known as Chapter 40B.

Background

In 1969 the Massachusetts legislature took a bold step to bring the housing crisis under control by passing a law then known as Chapter 774 of the Acts of 1969, often referred to as the "anti-snob zoning law." This law, officially titled "An Act Providing for the Construction of Low or Moderate Income Housing in Cities and Towns in which Local Restrictions Hamper Such Construction," amended Chapter 40B of the General Laws and created what we refer to today as the comprehensive permit or Chapter 40B process.

By streamlining the permitting process for qualified developments, 40B was intended to increase the supply and improve the distribution of low- and moderate-income housing throughout the state. This includes both rental housing and housing built to be sold to those with limited incomes. The target is for every community in Massachusetts to have at least 10% of its housing stock be affordable, as defined by the state. 40B also includes an alternative method for determining if a community has reached its affordable housing goal. A little-used provision allows a community to meet its affordable housing goal if 1.5% of its total land area, with some exclusions, is devoted to affordable housing. Because it's the 10% goal that applies to almost all cities and towns in the Commonwealth, that is what will be used for the purposes of this report.

Communities that reach the level of 10% of their housing units in the low to moderate range become exempt from 40B. In those communities that do not meet their affordable housing goal, 40B developments can be proposed, and the comprehensive permit process applied. The Supreme Judicial Court recently ruled that comprehensive permits can continue to be issued even after a municipality has reached its 10% subsidized housing goal.

Chapter 40B created ways to facilitate the development of affordable housing: the comprehensive permit process and the appeals process.

The Comprehensive Permit Process

The comprehensive permit process allows developers to apply to the local Zoning Board of Appeals for a single permit to build housing developments if at least 20-25% of the units have long-term affordability restrictions. This replaces the usual process of getting separate approvals from a variety of local permitting agencies (for example, the Board of Health and the Conservation Commission).

Under the comprehensive permit process the developer can request waivers of zoning and local requirements if it is proved that such waivers are necessary to ensure the economic feasibility of the project. The comprehensive permit process in no way permits the negating of state zoning, health or conservation laws that would endanger the community or its citizens. Developers are required to meet the state building codes, the Wetlands Protection Act, and Title 5, for example.

The law also requires that the development be approved and subsidized by a state or federal housing program, such as those offered by DHCD, the New England Fund, or MassHousing.

Subsidies. Subsidies are important for two reasons.

- Only subsidized housing qualifies for the “housing inventory,” which is the official list that establishes whether a community has reached its 10% goal enabling it to deny 40B projects. The Subsidized Housing Inventory is discussed below.
- 40B requires that only a public agency, nonprofit or limited dividend organization with a preliminary subsidy approval can apply for a comprehensive permit to the local Zoning Board of Appeals.

In the late 90s the federal and state governments removed themselves and direct money subsidies from the business of developing affordable housing. The challenge of building affordable housing shifted to the private sector. Few direct money subsidies remain today; rather, subsidies are in the form of loans granted at below-market rates and technical assistance.

Qualifying for 40Bs. The comprehensive permit process starts with a development proposal that must be approved and pre-subsidized under a state or federal housing program, such as those offered by DHCD, the New England Fund, or MassHousing.

To qualify as a 40B project, at least 25% of home ownership units must be affordable to lower income households who earn no more than 80% of the area median income. For rental housing, the project can provide 20% of units to households below 50% of median income. Communities can establish a local preference for residents (currently up to 70% of the units). Whether nonprofit or for-profit, developers must agree to restrict their profit to at most 20% in ownership developments and 10% per year for rental developments unless the subsidy program or the comprehensive permit authorizes other factors. Guidelines are set and administered by a regulatory agency like the Department of Housing and Community Development, MassHousing, Mass Housing Partnership, MassDevelopment and the New England Fund.

The developer need only apply to the local Zoning Board of Appeals. The ZBA must open a hearing within 30 days of receiving an application and make a decision within 40 days of closing the hearing. The ZBA notifies and asks for recommendations from other relevant local boards, including, for example, the Planning Board, Board of Health, Conservation Commission, and fire and police departments before deciding whether to issue a comprehensive permit.

The Appeals Process

If a Zoning Board of Appeals denies a project or approves it with limitations that the developer thinks would make the project uneconomic, the developer can appeal to the state Housing Appeals Committee. This appeals process is only open to the developer – not for others who may oppose the project. Denials are upheld if the municipality can show that the development presents a serious health and safety issue that cannot be mitigated. However, in an appeal before the HAC, the burden of proof is on the community to demonstrate that a Chapter 40B project is not consistent with local needs.

The final step in the process, after a comprehensive permit is granted, is that the developer must get written approval from the subsidizing agency before construction can begin.

Tracking Affordability: The Subsidized Housing Inventory

The Department of Housing and Community Development keeps track of affordable housing built under 40B for every community via a Subsidized Housing Inventory. This inventory is the vehicle that establishes whether a community has reached its 10% affordable housing goal. The Subsidized Housing Inventory tracks properties that are built with subsidies that carry deed restrictions on units that are reserved for occupants with incomes below at least 80% of a regional median income. Generally, only properties built with subsidies and that have deed restrictions are counted on the Subsidized Housing Inventory. For that reason, other types of subsidized housing, including those that accept tenant-based federal and state Section 8 certificates and homes purchased with subsidies under a first-time home buyer’s program, are not counted on the Housing

Inventory and thus do not count toward a community's 10% affordable housing goal. And for the same reason, housing units with purchase prices that may be deemed affordable are also not counted if they're not subsidized and do not have deed restrictions.

Affordable housing rental units are counted differently than are affordable ownership units. In rental developments, all units are counted toward meeting a community's 10% affordability goal even though only a minority of the units, which can be as low as 20% of all units, are set aside for low- or moderate-income residents. In ownership developments, only those units that are deed restricted for low- or moderate-income residents, which again can be as few as 20%, are counted. All other units in 40B developments can and usually are rented or sold at market rates.

Eligibility

Eligibility covers two areas – that of the potential renter or buyer and that of the developer.

Potential buyers of subsidized affordable housing are eligible if they have incomes at or below 80% of the median income of the region. For potential renters, most regulatory agencies require income limits at between 30 and 50% of median income for the region. It is this lower income requirement that causes advocates for low-income families to press for adding more rental units.

See Appendix B for more details about income limits for buying or renting affordable housing in Massachusetts.

In most cases today, Chapter 40B developments have both market-rate and affordable homes, apartments or condominiums.

There are also eligibility requirements for developers, which are set by the regulatory agency.

Monitoring

Projects built under Chapter 40B are monitored by the state's Department of Housing and Community Development. The Housing Appeals Committee is an administrative law division of the DHCD and/or the project's monitoring agent. Monitoring eligibility requirements for income and project guidelines are important to ensure fairness and reliability.

A Controversial Law

Chapter 40B was enacted amid widespread debate and opposition. Proponents of the law saw it as a way to provide access to the suburbs for people previously denied this opportunity. Opponents saw it as an usurping of local control. Even though many communities have used 40B with much success, opposition continues.

Another paradox of Chapter 40B is that it gives developers tremendous leverage to secure a comprehensive permit in communities that have not achieved their 10% goal and very little leverage in those that have met their goal.

40B achievements. Proponents claim that 40B is successful and point to the number of units built under it; it has produced more affordable housing units than any other program

From 1970 to 2006 40B produced 54,373 units in 979 developments statewide. This total includes 36,013 rental units and 18,360 ownership units. Of these, 27,616 affordable homes were reserved for households with less than 80% of median income. Chapter 40B has achieved other milestones. Developments built under 40B are responsible for approximately 30% of all housing production over the past three years and 82% of all new production of affordable housing units over the last five years in those communities below the 10% goal.

Many of the Commonwealth's 351 cities and towns are moving closer to the 10% affordable housing goal.

- 47 communities have reached or exceeded the 10% goal, up from 23 communities in 1997.

- 36 communities are at 8-9% and are likely to reach the 10% goal in the near future.
- 41 communities are at 6-7%.
- 112 communities need fewer than 100 units to reach the 10% goal.
- 82 communities need 100-200 units to reach the 10% goal.

The chart below, by Barry Bluestone, director of the Center for Urban and Regional Policy at Northeastern University, shows the increases in affordable units in Massachusetts from 2002 through 2005. For example, from 2004 to 2005, the number of approved affordable units increased by almost 26%.

Year	Total affordable units	Rental units	Owner units
2002	1,427	1,181	246
2003	1,889	1,379	510
2004	1,997	1,359	638
2005 change from 2004	2,508	1,303	1,205
% 2005 change from 2004	+26%	-4%	+89%

This chart also shows that affordable ownership units are increasing much faster than rentals; that is, ownership not rental has become the development of choice. From 2004 to 2005, affordable ownership units increased 89% while the number of approved rental units decreased by 4%.

During the first 30 years of Chapter 40B developments, from the late 1970s to 2006, approximately 485 comprehensive permits were issued to build almost 28,000 units of housing. That was an average of 16 projects and 933 units annually.

Changes began in 2001. According to DHCD records, in the period between March 2001 and January 31, 2004, some 436 applications were initiated, proposing over 29,000 units. That's an annual average of 160 projects and 10,000 units annually.

These numbers show that there are more units of housing in the 40B pipeline right now (that is, units that developers have proposed but are not yet in construction) than the total number built over the law's history.

Some see the growth in 40B developments as positive while others see it as a concern. Proponents of Chapter 40B say that because it is the only program that produces substantial numbers of affordable housing units in the state, it is a success. They also point out that by increasing the total number of housing units, both affordable and market-rate, 40B will eventually bring down housing prices.

40B concerns. The significant increase in the number of 40B projects is exactly why so many communities feel overwhelmed. The 10-fold increase in the use of Chapter 40B to develop housing may be the single most important factor driving the call to reform the law. Although recently the permits have slowed and many developments in the pipeline have been stalled, some still view the increase in 40B permits with alarm.

There are other serious concerns about 40B. These include:

- It overrides local planning and zoning regulations.
- The method of counting the number of affordable housing units and including them in the Subsidized Housing Inventory does not truly reflect the number of affordable units. That's because the methods of counting ownership and rental units towards the 10% goal are inconsistent. Although only 20-20% of units in a 40B rental development may be reserved for low and moderate-income households, all units in these developments are

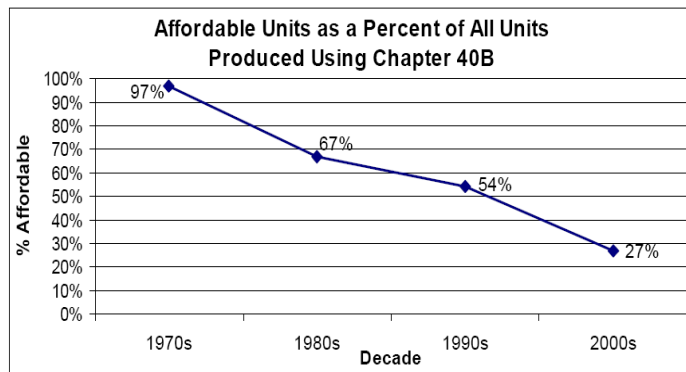
counted as affordable. In contrast, in ownership developments only the affordable units are counted. This causes the statistics on affordable housing to be inflated.

- While some funding increases to the Department of Housing and Community Development have been approved in recent years, the DHCD budget had been cut more than almost any other state agency.
- Current preservation and monitoring requirements allow some loss of affordable units. In addition, some towns have reached their 10% goal only to lose it again due to demolition, “expiring use,” and foreclosures. See Report #11 for how communities are now working to protect affordability.
- The subsidy requirement impedes some developers from entering the affordable housing market.

Other critics claim 40B has failed because in 35 years it has produced fewer than 28,000 affordable housing units, which they claim is equal to about three units a year per municipality in the Commonwealth.

Ownership vs. rental housing. Since the 1970s, as the government has removed itself from directly funding affordable housing, there’s been a sharp decrease in affordable units as a percentage of all units produced under Chapter 40B. In addition, more ownership units are being built, affecting those with low and very low income. Rental units, not ownership, can meet the needs of those who need affordable housing the most.

The graph below, from a 2004 report produced by the office of Massachusetts Representative Harriett L. Stanley, shows this dramatic shift.



In the 1970s 97% of all units built under 40B were affordable, were rentals, and they were built under government programs.

By the 1990s the government had opted out and developments were mixed income and the percent of affordable units had dropped to 54%. Most were still rentals.

Today 27% of Chapter 40B units are affordable, they’re mostly ownership and are built primarily by for-profit developers with few government subsidies.

There are several reasons for the shift toward ownership units. The first is the loss of direct federal and state subsidies. Another is the huge appreciation in real estate values over the last 30 years, with single family homes and condos leading the list. In fact, nothing in Chapter 40B limits the sale price of the market rate units that make up 75% of most proposals. That means Chapter 40B can be – and is – used to permit \$800,000 houses built outside of the local zoning code as long as 25% of the units are reserved as affordable. Developers can recoup their expenses and

collect their profits as soon as ownership units are sold. In contrast, owners of rental developments have to wait years to fully earn back their investment.

The fact that more ownership units are being built also impedes a community's ability to reach the 10% goal. That's because of the difference between how rental and ownership units are counted. Currently, the average size of proposed Chapter 40B ownership project is 57 units. If 25% of the units in each project is reserved as affordable, only 14 units count toward the 10% goal. That's not substantial progress for a community that needs hundreds of units to meet its goal. If this were a rental development, all 57 units would be counted toward the 10% goal.

A streamlined process? The comprehensive permit process was designed to reduce the barriers created by local approval processes, zoning, and other restrictions. But projects are sometimes delayed because local Zoning Boards of Appeals take many months (as many as 18) to close the hearings and make a decision. Too, projects are often held up for many years due to suits by both proponents and opponents. Researchers at the Housing Affordability Initiative at the MIT Center for Real Estate collected data on 369 applications for comprehensive permits in 95 municipalities in the greater Boston area from 1999 through 2005. While stating that the "40B process is working," the MIT study also found that in those cases where an appeal is filed, "it takes on average 17 months from the time of the ZBA decision until the appeal is settled, and further issues such as abutters' claims often arise even after the settlement." And this follows an average of 10 months of consideration by the ZBA.

Delays in constructing these projects can increase the builder's costs and the price of market-rate units.

Regulatory Changes to 40B

According to CHAPA (Citizens' Housing and Planning Association):

From 2001-2003, DHCD made 16 regulatory changes to Chapter 40B, including:

- Imposing a project size limit of 150-300 units, depending on the size of the community.
- Enabling a municipality 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.
- Allowing group homes, accessory apartments, locally assisted units, and units funded under the Community Preservation Act to count toward a community's 10% goal.
- Enabling a community to deny a comprehensive permit if that community has made recent progress on affordable housing. This is defined as either: a 2% increase in affordable housing over the previous 12 months or .75% increase plus an approved housing plan over the previous 12 months.
- Allowing units to count on the subsidized inventory as soon as a comprehensive permit is issued rather than having to wait until a building or occupancy permit is issued.
- Requiring DHCD and the local chief elected official to be notified when a developer applies to the ZBA.
- Requiring a 30-day comment period for communities from the time a 40B application is filed. The subsidizing agency must consider the community's comments when issuing a site letter.

- Mandating that site approval letters contain more extensive, standardized information.
- Requiring developers who want to access financing from the New England Fund to obtain a site approval letter from a state agency. The state agency will then monitor and oversee the project.
- Updating of the subsidized housing inventory every two years (communities can submit changes to DHCD at anytime).

Housing Crisis Solved or Not?

Most supporters and critics of the comprehensive permit process would agree that much more needs to be done to resolve the housing crisis in Massachusetts. According to a 2001 report by the Center for Urban and Regional Policy:

To meet the demand and dampen the cost of housing, it will be necessary to build sufficient numbers of units to account for the natural increase in population as well as to increase the vacancy rate to a more optimal level. Greater Boston needs to add approximately 10,000 new housing units a year simply to keep pace with growth in the number of households and a modest increase in the population. In addition, we need to construct 5,100 additional units a year to raise the vacancy rates. Assuming the current production rate does not decline, *this leaves a production gap of approximately 7,200 new units a year in Greater Boston – a total of 36,000 units above current production levels over the next five years.*

The majority of experts agree that the housing crisis will be solved only when government at all levels, the private sector and the citizens of Massachusetts all agree that yes, we must “provide a decent home and a suitable living environment for every American family,” as the League’s positions puts it. And then we must all work together to meet that need.

Sources

- Bianchi, Don and Kelley Whitmore, “Housing on Hold: The State Freeze on Funding on New Affordable Homes,” Massachusetts Association of Community Development Corporations, July 2005, www.macdc.org/uploads/176/Housing_on_Hold.pdf.
- Bluestone, Barry, Charles C. Euchner, and Gretchen Weismann. “A New Paradigm for Housing in Greater Boston,” The Center for Urban and Regional Policy Northeastern University, February 2001, www.curp.neu.edu/publications/finalhousing.pdf.
- Bluestone, Barry. “Progress on Housing,” The John LaWare Leadership Forum, October 2006, www.tbf.org/uploadedFiles/finaloctober30presentation.pdf.
- Citizens’ Housing and Planning Association. “Fact Sheet on Chapter 40B: The State’s Affordable Housing Zoning Law,” January 2006, CHAPA, www.chapa.org/40b_fact.html.
- Department of Housing and Community Development. “Guidelines for Housing Programs in Which Funding is Provided Through a Non- Governmental Entity,” DHCD, August 2005, www.mass.gov/dhcd/components/SCP/NEFguide.pdf.
- Fisher, Lynn. “Chapter 40B Permitting and Litigation,” MIT Center for Real Estate Housing Affordability Initiative, June 2007, web.mit.edu/cre/research/hai/pdf/40B-report_fisher_07-0618.pdf.
- Gregory, Andrea. “As Year of 40B Squabbles Ends, Town Looks to Chart Own Course,” *Andover Townsman*, January 1, 2004.

- Heudorfer, Bonnie. "The Record on 40B: The Effectiveness of the Massachusetts Affordable Housing Zoning Law," CHAPA, June 2003, www.chapa.org/pdf/TheRecordon40B.pdf.
- Krevet, Sharon. "The Impact of Chapter 40B: The 1969 Massachusetts Comprehensive Permit and Zoning Appeals Act," Clark University Active Learning and Research, Clark University, www.clarku.edu/activelearning/departments/government/krefetz/krefetz.cfm.
- Massachusetts Housing Partnership and Edith M. Netter. "Local 40B Review and Decision Guidelines," November 2005 www.mhp.net/uploads/resources/local_40b_v3_low_res.pdf.
- MIT News. "MIT Study Finds 40B Projects Often Selayed," Massachusetts Institute of Technology, web.mit.edu/newsoffice/2007/forty-b-0618.html.
- Schechter, Gail. "Affordable in Name Only," National Housing Institute Shelterforce Online, issue #133, January/February 2004, www.nhi.org/online/issues/133/affordable.html.
- Stanley, Harriett L. and Todd Prussman. "A Legislator's Introduction to Chapter 40B," office of Representative Harriett L. Stanley, April 2004, www.harriettlstanley.org/docs/LegislatorsIntroto40b.pdf.

League of Women Voters of Massachusetts

133 Portland Street, Boston, MA 02114

617-523-2999 • Fax 617-248-0881 • lwvma@lwvma.org • www.lwvma.org • www.votinginfo.info

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**6. Major Affordable Housing Legislation in Massachusetts:
Chapters 40R and 40S – Smart Growth**

The Massachusetts Legislature passed Chapters 40R in 2004 and 40S in 2005 to implement “smart growth” principles, to reduce urban sprawl and stimulate the production of affordable housing. They are intended to work with Ch. 40B, not replace it.

Denser or more affordable development, such as apartment buildings and small households, do not significantly increase a community’s real estate tax base and have the high probability of increasing costs of services, including education, water, sewers, and roads. Ch. 40R and 40S (also known as compensation legislation) seek to address this problem with incentives for communities that build more affordable and market-rate housing.

Enacted in 1969, Ch. 40B has been an important policy in producing affordable housing but not totally successful. Communities resist Ch. 40B because they see it as usurping local control and increasing service and school costs through higher-density developments.

Smart growth is a land development policy that emphasizes mixing land uses, increases the availability of a range of housing types in neighborhoods, preserves open space, protects natural resources, restricts urban sprawl and enhances quality of life.

Chapter 40R

In order to encourage housing production in the Commonwealth consistent with the concept of smart growth, the legislature passed Chapter 40R in 2004. This act provides financial rewards to communities that adopt special zoning districts allowing as-of-right high-density residential developments. Smart growth zoning districts can be in all or any of the following locations:

- areas near transit stations, including rapid transit, commuter rail, bus and ferry terminals
- areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns, and existing rural village districts
- areas that by virtue of their infrastructure, transportation access, existing underutilized facilities or location make highly suitable for residential mixed-use smart growth zoning districts

Ch. 40B is the legislation under which a community can establish affordable housing and Ch. 40R is selective legislation to assist in the building of affordable housing. It is volunteer participation by a community, not a mandate. Ch. 40R provides financial incentives to communities that establish a state-approved Smart Growth Zoning District (SGZD). Density is a key factor in smart growth, and SGZDs are required to allow denser residential development: eight houses per acre for single-family homes; 12 units per acre for two- and three-family residences; and 20 units per acre for condominiums and apartment complexes. In addition, 20% of housing developed in the zone must be affordable and deed restricted for 30 years.

Once the SGZD has been identified it is submitted to the Department of Housing and Community Development for preliminary approval, after which it may be adopted by the municipality. Once the municipality has adopted the smart growth zoning and received final approval from the Department it become eligible for a one-time incentive payment:

- \$10,000 for up to 20 units

- \$75,000 for 21 to 100 units
- \$200,000 for 101 to 200 units
- \$350,000 for 201 to 500 units
- \$600,000 for 501 or more units.

An additional density bonus payment of \$3,000 per housing unit is disbursed when a building permit has been issued. If the goal, defined by the designers of the legislation as over 30,000 new units built in the next 10 years, is reached, it is estimated that the density bonuses will cost an estimated \$14 million annually.

Chapter 40S

To address the potential impact on education costs a companion law, Ch. 40S, creates a Smart Growth School Cost Reimbursement Fund to provide full reimbursement for any net new education costs for eligible students resulting from housing units built under Ch. 40R. Eligibility is defined as children living in a SGZD and enrolled as of the prior year in an elementary or high school.

Reimbursement costs are achieved by formula; cost of educating eligible students living in an SGZD, less an amount equal to the sum of new property and excise taxes in the SGZD, multiplied by the average percent of total local spending on education across the Commonwealth (approximately 52%), and any increases in other state education funding that are directly a result of the new students. Based on a goal of approximately 30,000 new housing units over 10 years, it has been estimated that school supplement costs will be \$3.5 million annually.

Funding

Funding for Ch. 40R and 40S is unusual. Massachusetts General Law Ch. 10, Section 548 created a Smart Growth Housing Trust Fund. This fund is to be capitalized through the sale of surplus state land. While initially this is a viable source for the payment of incentive funds, there are serious questions about the stability of financing through a decreasing source of revenue.

As of August 2007, current funds have been exhausted and no future stable funding source for these programs has been found.

Concerns

The provision in Ch. 40R stating that mixed-use and affordable housing is allowed as-of-right is viewed by some municipalities as an infringement on their local zoning planning. While communities can pre-plan the types of developments that they allow as-of-right in SGZDs, the desire to maintain local control over the entire development process may be a stumbling block for 40R. Although there has been active interest in some communities, overall the program is still too new to analyze how effective Ch. 40R and 40S will be and time is needed to evaluate how strong the financial and zoning concerns may prove to be.

Sources

Chapter 141 of the Acts of 2005, An Act Relative to Smart Growth Zoning and Housing Production, www.mass.gov/legis/laws/seslaw05/sl050141.htm.

Department of Housing and Community Development. "Chapter 40B Subsidized Housing Inventory (SHI) as of September 13, 2007," www.mass.gov/dhcd/components/SCP/shiinv.htm.

Massachusetts Executive Office of Energy and Environmental Affairs. "Smart Growth Toolkit," www.mass.gov/envir/smart_growth_toolkit/.

Metropolitan Area Planning Council. "Summary of Chapter 40R Smart Growth Zoning Districts," MAPC, July 2004, updated April 2005, [www.mapc.org/whats_new/Smart Growth Zoning Summary_Regs.pdf](http://www.mapc.org/whats_new/Smart_Growth_Zoning_Summary_Regs.pdf).

Rollins, Darcy. "An Overview of Chapters 40R and 40S," New England Public Policy Center, Federal Reserve Bank of Boston, February 2006, www.bos.frb.org/economic/neppc/briefs/2006/briefs061.pdf.

League of Women Voters of Massachusetts

133 Portland Street, Boston, MA 02114

617-523-2999 • Fax 617-248-0881 • lwvma@lwvma.org • www.lwvma.org • www.votinginfo.info

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7. Local Options for Building Affordable Housing

While the League's study of affordable housing focused on the effectiveness of the major state affordable housing laws and programs, there are also local mechanisms that Bay State communities can use to build affordable housing. Many cities and towns in Massachusetts are now addressing the need for affordable housing by cooperating with developers in the Local Initiative Program, by establishing local inclusionary zoning that creates affordable housing units at the same time that new market-rate homes are created, or by adopting the Community Preservation Act, a state opt-in statute.

Local Initiative Program

Often referred to as a "friendly" 40B, the Local Initiative Program (LIP) is a state housing program authorized by state regulation in 1990 and administered by the Department of Housing and Community Development.

LIP gives cities and towns more flexibility in their efforts to provide low- and moderate-income housing and allows developers to count state technical assistance as a subsidy in order to qualify for the program. It also provides technical assistance to communities.

LIPs support two types of housing developments:

- Local Initiative Projects (40B), which are developed through the comprehensive permit process.
- Local Action Units, which are developed through a city/town's zoning or permit issuance process.

LIPs differ from 40B projects in two ways. First, they must be submitted to and accepted by the local governing authority (the city council in cities and the board of selectmen in towns), not just submitted to the Zoning Board of Appeals.

Second, agreements are negotiated between the developer and local planning agencies. With 40B projects, the developer need not negotiate with municipal boards.

According to DHCD, LIP units like those that are built under Chapter 40B "must serve households below 80% of the area median income; the units must be subject to use restrictions to ensure that they remain in a community's affordable housing stock, and must be sold or rented on a fair and open basis." Between 1990 and 2006, 318 LIP projects were approved, creating 10,574 housing units, of which 2,894 are affordable.

There are a number of concerns about LIPs, however. They have produced a limited number of affordable housing units so far. Because they depend heavily on approval by local officials, the approval process can be cumbersome. There have also been fewer of these projects in recent years.

Inclusionary Zoning

Inclusionary zoning are local bylaws based on the principle that some percentage of new housing created in a community is required by municipal bylaws to be affordable. Bylaws in different communities vary along several parameters.

Typically the bylaws require that when a residential subdivision of a given size is built, a speci-

fied percentage of the new housing must be affordable. For example, Belmont requires that all developments of six units or more must be 25% affordable, while Wellesley requires that all developments of four units or more must be 20% affordable. Newton sets the threshold at one new housing unit, and requires a monetary contribution (which goes into an affordable housing fund) based on the square footage of housing built.

Some bylaws use the state definition of “affordable,” that is, affordable to a family making up to 80% of the area median income (AMI). (AMI applies to regions, such as the greater Boston area, and is defined annually by the federal Department of Housing and Urban Development (HUD).) Housing units at this level qualify toward the state statutory requirement that each community must have at least ten percent of its housing affordable or be subject to “unfriendly” developments under Chapter 40B. Inclusionary bylaws in some communities are broader, including moderate housing affordable to families making 100% of the AMI or more. These units provide moderate housing that is genuinely needed, but does not count toward the state’s 10% requirement.

Because affordable units are not as profitable to a developer as market rate units are, some inclusionary bylaws provide cash incentives to the developer, or allow the developer to build more units than the community’s zoning would ordinarily permit in order to make up the difference.

While Newton and Brookline, for example, have had their inclusionary bylaws in place for a number of years, and have added substantially to their affordable housing inventory, many other inclusionary statutes are relatively recent and have not yet established a track record. In communities that have adopted the Community Preservation Act, there is the possibility of using cash incentives from community preservation funds in combination with inclusionary bylaw requirements.

Community Preservation Act

The CPA, a state enabling statute passed in 2000, offers cities and towns the option of establishing a dedicated source of financing for community preservation projects. The Act defines these projects as:

- the acquisition and preservation of open space
- the acquisition, preservation, rehabilitation and restoration of historic resources
- the creation, preservation and support of community (affordable) housing
- the creation and preservation of recreational land and facilities.

The Act requires communities to vote to add a surcharge of up to 3% to their property taxes. To date, 127 of the Commonwealth’s 351 cities and towns have voted to increase their property taxes in order to support the goals of the CPA.

The Act also created a state fund to be used exclusively to match the funds raised by the surcharge in each community. For those communities that adopted the CPA early, the state match has been 100%. As more communities opt in, the state matching funds available to each community may decrease.

The CPA requires that at least 10% of the surcharge and matching funds a community receives each year be allocated to affordable housing projects, as well as 10% to open space and 10% to historical preservation. The remaining 70% of the funds can be allocated to these purposes and for recreation projects as the community sees fit. Money can be banked from year to year, so that communities can accumulate larger amounts for substantial projects.

Each community that has adopted the CPA must appoint a Community Preservation Committee to evaluate potential projects and submit those it finds appropriate to the community’s legislative body for approval. (In towns, the legislative body is the town meeting; in cities, the legislative

body is generally a city council or board of aldermen.) Typically, this pool of money allows communities to undertake projects that their budgets have not previously been able to cover.

Often supplementing other sources of funding, cities and towns have used CPA funds in a variety of ways to increase the availability of affordable housing in their communities. A few examples:

- Acton purchased two condominium units to be maintained affordable through deed restrictions.
- Chatham hired a consultant to search for town land desirable for affordable housing.
- Lincoln constructed a two-family affordable home.
- Nantucket provided assistance to Habitat for Humanity for construction of one or more affordable units.
- Rockport funded a rental and mortgage assistance program.
- Wareham studied converting specific buildings to affordable housing.
- Wayland purchased 2.75 acres from the federal government for 16 units of affordable housing.
- Weston funded a 12-year bond to purchase permanent affordability deed restrictions on 13 units.

Sources

Community Preservation Coalition. "Status of Community Implementation," CPC, www.communitypreservation.org/CPAVotes.cfm.

Toni Hall, Local Initiative Program Manager, Department of Housing and Community Development.

Massachusetts Department of Housing and Community Development. "Local Initiative Program Guidelines," DHCD, July 2007, www.mass.gov/dhcd/Temp/06/LIPgdlines.pdf.

Massachusetts Department of Housing and Community Development. "Local Initiative Program – Division of Housing Development," DHCD, www.mass.gov/dhcd/publications/fact_sheets/lip.htm.

Netter, Edith M. "Inclusionary Zoning Guidelines for Cities & Towns," Massachusetts Housing Partnership Fund, September 2000, www.mhp.net/uploads/resources/inclusionary_zoning_guidelines__netter.pdf.

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133 Portland Street, Boston, MA 02114

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8. Senior Housing

Demographics

Aging of Massachusetts baby boomers will produce a considerably older state during coming years. The percentage of adults 65 and over is expected to jump from 13.5% in 1999 to over 20% in 2030, according to U.S. Census projections. It is anticipated that the over-65 population will rise 70% to 1,463,110 and the over-85 population will grow 82% to 211,939 while the state population increases only 11% to 7,012,009.

Elder renters and, increasingly, elder homeowners show housing affordability problems. In 1999, almost 172,000 Massachusetts households over age 62 with incomes at or below 80% of median paid more than 30% of their incomes for housing. This included 79,000 renters (43% of all elder renters) and 93,000 homeowners (24% of all elder homeowners).

The high percentage of seniors living alone and the high senior homeownership rate also influence senior housing needs. At the time of the 2000 census, almost 30% of the state 65+ population lived alone. Among 65+ households, 68% owned their own homes. These factors, augmented by lengthening life expectancies, foretell growing demand for support services and accessible or adaptive housing.

Aging in Place and Support Services

AARP surveys repeatedly indicate a strong preference among seniors to remain at home and age in place. "Housing America's Seniors," a report by the Joint Center for Housing Studies, points out that 90% of people age 70 and over live in conventionally-designed homes lacking structural modifications, such as grab bars and ramps, to ease daily functioning. The report also cites increasing need for support services as new medications and medical devices enable more seniors to avoid institutional living.

Massachusetts-funded home care and support services are administered by 27 nonprofit corporations (Aging Services Access Points or ASAPs) under contract to the Executive Office of Elder Affairs. ASAPs provide information, develop service plans for home management, personal care and nursing care, and coordinate services. The state adult foster care program pays families who provide room and board and personal care for Medicaid-eligible elders who can no longer live alone.

The Supportive Senior Housing Program operates in state elderly public housing developments and offers services including case management, daily meals, medication reminders, homemaking and personal care. The program is available to almost 3,000 households in 22 developments (expected to soon expand to 30).

Naturally Occurring Retirement Communities (NORCs) is a term often used to describe apartment buildings or housing complexes where residents have aged in place and the majority are over age 60. One service model links NORCs with health and social service agencies that provide senior services and activities chosen by the senior residents themselves. Pilot NORC programs have been set up with federal funds by the Jewish Family & Children's Service at sites in Brookline, Malden, and Swampscott. Beacon Hill Village is a more dispersed kind of NORC comprising 380 residents who live in their own apartments in and near Beacon Hill. Private funding and membership fees fund supportive services.

Senior Homeowners

Property taxes and tax deferral. Low-income senior homeowners, even those with no mortgages, often have difficulty coping with escalating property taxes. Tax relief measures include the senior property tax exemption of \$500 (up to \$1,000 at local option), the senior “work-off” program that reduces up to \$750 of the tax bill for community service, and the property tax deferral program that allows postponement of property taxes with an 8% simple interest charge until the house is sold. The “circuit-breaker” program provides additional help through a state income tax credit up to \$840 for homeowners whose property tax and water/sewer bills exceed 10% of their income. (Elderly renters qualify if 25% of their rent exceeds 10% of their income.) Seniors who pay no state taxes receive cash. The “circuit breaker” program provides more tax relief for more seniors than the other programs combined.

Low utilization of tax deferral is generally attributed to the 8% interest rate and reluctance of seniors to pass debt on to their heirs. In an effort to boost utilization, the legislature in 2005 gave cities and towns the option to lower the interest rate on deferred taxes to as low as 0%. Over the prior 10 years, only about 1,200 seniors annually had deferred property taxes. Encouraging adoption of a lower interest rate through local option could potentially help low-income senior homeowners.

Accessory apartments and reverse mortgages. Accessory apartments can provide additional income for older homeowners who want to remain in their houses. But restrictive zoning ordinances and difficulties owners face during the conversion process have limited use of this alternative. Newton is now utilizing Community Preservation Act funds for a pilot program which subsidizes creation of affordable accessory apartments and provides procedural assistance to homeowners by a local nonprofit.

Reverse mortgages are designed to help “house-rich, cash-poor” senior homeowners whose low incomes rule out ordinary home equity loans. Reverse mortgages can provide lump sums or monthly payments or a combination of the two. Repayment isn’t due until the end of the loan term or when the homeowners dies or moves. Initial mortgage costs can be very high for reverse mortgages insured by the U.S. Department of Housing and Urban Development (HUD). These are complex loans that require counseling by independent nonprofits, such as Homeowner Options for Massachusetts Elders.

Senior Public Housing

State public housing. The state Chapter 667 program funds public housing for elderly (age 60+) and non-elderly disabled households. About 28,000 of the 32,310 units are reserved for elderly households with incomes at or below 80% of the median income. About 700 are congregate units for elders with supportive service needs. Residents pay 30% of their income for rent. The housing is managed by local housing authorities, which issue applications and maintain waiting lists. The state Department of Housing and Community Development (DHCD) provides subsidy funds for operating costs not covered by tenant rents.

Most Chapter 667 housing was constructed between 1960 and 1985. Only 168 new units were built between 1993 and 2003. Some of the older developments have experienced high vacancy rates due to small, outmoded units and limited accessibility. Additional state funding is needed for modernization and upgrading.

Federal public housing. About 15,000 federal public housing units in the state are designated for elderly (age 62+) and non-elderly disabled households. HUD funds service coordinators at some of the elderly developments.

Federally-Assisted Private Elderly Housing

Section 202 Supportive Housing for the Elderly. The Section 202 program began in 1959 and is the only federally-funded housing program designed specifically for elderly. It provides grants to nonprofits to develop rental housing for tenants with incomes below 50% of median. New projects since 1992 have been limited to frail elders and must include supportive services. Massachusetts has about 10,100 units of Section 202 housing for the elderly and/or disabled. In 2005, new Section 202 awards in the state had fallen to 150 units with further cuts proposed.

Sections 236 and 221d3 and Section 8 project-based rent subsidy. About 70,000 private housing units in the state were built between the mid-1960s and the early 1980s utilizing HUD mortgage interest subsidies (Sections 236 and 221d3 programs) or Section 8 project-based rent subsidies. Some of these developments are partially or fully designated for the elderly. Continued affordability of many units is threatened by expiration of Section 8 subsidy contracts or by mortgage prepayment or expiration and conversion to market housing.

Other Age-Restricted Housing Options

Age-restricted active adult housing. Active adult housing typically targets healthy, financially-secure adults 55 and over. Since 2000, this housing type has proliferated in Massachusetts, supported by favorable zoning and fiscal concerns. Municipalities support these developments as a source of property tax revenue unencumbered by school costs. By 2003, there were 150 active adult developments with 10,000 housing units, existing or under construction. Another 14,000 units in 109 developments were planned, proposed, or in the permitting process. Most developments are located in eastern or central Massachusetts.

Increasingly, the comprehensive permit provisions of Chapter 40B are being used for age-restricted active adult housing. In 2004, about 18% of ownership projects in the 40B pipeline were age-restricted. Asset criteria for purchasers or renters of affordable units vary by supporting government program. Many long-term homeowners in eastern Massachusetts exceed asset limits, and it has sometimes been difficult to find qualified purchasers for the age-restricted affordable units.

Congregate housing. This housing type offers living arrangements in which seniors have private bedrooms and share common space. Support services are usually available. Most congregate housing is sponsored by local housing authorities or nonprofit organizations.

Assisted living. These residences are designed for seniors who require some help in the activities of daily living but do not require skilled nursing and medical care. Available services usually include three meals a day, housekeeping, transportation, emergency call systems, medication management, and laundry. Most assisted living residents are in their mid-80s.

There are currently 189 certified assisted living residences in Massachusetts with 11,736 units. Since 2000, about two or three new residences have opened each year. Assisted living costs vary by residence and depend on apartment size and amount of services. Monthly fees range from several thousand dollars to more than \$6,000 for residents with memory impairment.

MassHousing and MassDevelopment offer financing for affordable assisted living. Between 2000 and 2004, 600 affordable units were produced with their financing, and several hundred units were developed under the Low Income Housing tax credit program of the Department of Housing and Community Development. The Group Adult Foster Care (GAFC) program of MassHealth, the state Medicaid program, subsidizes the service component of assisted living costs. The Supplemental Security Income Living Arrangement G (SSIG) program, a joint federal and state program, can be applied to room and board costs. Medicare does not cover assisted living, but some long-term care insurance policies offer limited coverage.

Continuing care retirement communities. CCRC developments generally offer independent living apartments, assisted living services and nursing home care all in one location. Seniors can meet their changing needs without moving. In 2005, the Executive Office of Elder Affairs listed 24 CCRCs in the state.

CCRCs vary by method of payment for nursing home care. So-called “life care communities” charge entry and monthly maintenance fees which cover all housing and nursing facility costs. Other CCRCs require a resident contribution to the cost of nursing home care. The CCRC may pay for a specified number of annual days, may guarantee care at a specified rate, or may guarantee only access to its nursing facility. Other CCRCs require residents to purchase long-term care insurance for nursing home costs.

Nursing homes. In 2005, Massachusetts nursing homes cared for nearly 46,000 people. This included long-term care for frail elders, chronically ill and disabled individuals and short-term care for people who need rehabilitation after hospitalization. Medicaid coverage through MassHealth is available for seniors who meet financial and clinical eligibility requirements. MassHealth pays the difference between the individual’s income (minus a \$60 monthly personal needs allowance) and the daily Medicaid nursing facility rate.

“Equal Choice” law. Under this 2006 law, seniors and the disabled eligible for long-term care under MassHealth will have an “equal choice” of care at home or care in a nursing home. The new law focuses on care “in the least restrictive setting appropriate” to an individual’s needs and shifts emphasis from institutional care to individual care at home. About 75% of MassHealth funding for long-term care now goes to nursing homes. The “equal choice” law is expected to save the state \$134 million in the program’s first five years. Through a new pre-admission counseling program, everyone about to enter a nursing home – private-paying or seeking MassHealth support – will be able to first explore community options.

Sources

Citizens’ Housing and Planning Association. “Affordable Housing Guidebook for Legislators,” CHAPA, June 2005, www.chapa.org/pdf/guidebook2005.pdf.

Dembner, Alice. “A Senior-Care Concept Redefines Community,” *Boston Globe*, July 20, 2006, www.boston.com/yourlife/health/aging/articles/2006/07/20/a_senior_care_concept_redefines_community/.

Gornstein, Aaron and Ann Verrilli. “Mixed-Income Housing in the Suburbs: Lessons from Massachusetts,” Citizens’ Housing and Planning Association, September 2006. www.chapa.org/pdf/MixedIncomeReport.pdf.

Heudorfer, Bonnie. “Age Restricted Active Adult Housing in Massachusetts: A Review of the Factors Fueling Its Explosive Growth and the Public Policy Issues It Raises,” Citizens’ Housing and Planning Association, June 2005, www.chapa.org/pdf/AgeRestrictedHousinginMA.pdf.

Massachusetts Assisted Living Facilities Association, www.massalfa.org/.

Massachusetts Executive Office of Elder Affairs, www.mass.gov/elder.

Massachusetts Extended Care Federation, www.mecf.org/.

Mass Home Care Association, www.masshomecare.org/.

Office of the State Auditor. “The State Auditor’s Report on the Local Financial Impact of Property Tax Exemptions for Senior Citizens,” Massachusetts Office of the State Auditor, Division of Local Mandates, September 2005, www.mass.gov/sao/seniortaxexemptions05.pdf.

Schafer, Robert. "Housing America's Seniors," Joint Center for Housing Studies of Harvard University, 2000, www.jchs.harvard.edu/publications/seniors/housing_americas_seniors.pdf.

U.S. Census Bureau, Population Division. "Interim State Projections for Five-Year Age Groups by Sex: July 1, 2004 to 2030," U.S. Census Bureau, 2005, www.census.gov/population/www/projections/projectionsagesex.html.

League of Women Voters of Massachusetts

133 Portland Street, Boston, MA 02114

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9. Federal Role in Affordable Housing

Even in Massachusetts where the state has assumed a large role in providing affordable housing, federal government funds assist over 70% of the affordable subsidized units in the state in addition to regulating the vast majority of housing programs. This aligns well with the position of the League of Women Voters of the United States, which states, “The responsibility for achieving national housing goals rests primarily with the federal government.” The League position recommends a series of principles for implementation by all levels of government, including incentives to local jurisdictions.

Seven major federal housing programs provide assistance to over 163,000 households.

- Section 8 rental vouchers assisted 68,600 households in 2005.
- Long-term rental and/or interest subsidies have helped fund almost 800 private multifamily housing developments with 76,000 affordable units for disabled or elderly persons or families.
- The U.S. government has built 33,500 units of public housing in Massachusetts and provides funds annually to maintain them.
- Block grants which may be allocated toward housing needs go to the state, two regions and 35 larger cities and towns as Community Development Block Grants (CDBG) and HOME Block Grants. The total amount was \$172 million in 2005.
- Grants for about 80 units a year are given for new elderly and disabled housing.
- Federal grants for homeless persons’ temporary housing and services have risen to about \$60 million per year.
- Housing and service programs for those with HIV/AIDS were funded with about \$4 million in federal grants in 2005.

In addition, the federal government’s data and eligibility guidelines are usually adopted for use by housing programs developed under state or private auspices. For example, median incomes and fair market rents are tracked and updated annually by the U.S. Census according to areas they establish (there are 20 areas in Massachusetts). Poverty-level guidelines that affect many assistance programs are also federally determined. The Massachusetts Department of Housing and Community Development (DHCD) and Local Housing Authorities (LHAs) administer most federal programs.

A declining level of federal support for affordable housing in recent years, coupled with policy shifts, have had large impacts in Massachusetts. Funding for public housing has been steadily cut since 2001. Funding for Section 8 vouchers did not increase to account for inflation and higher rents so that appropriated funds covered fewer households than in the past. Support for home ownership programs (which serve fewer people) has grown modestly at the expense of rental assistance. Smaller grants have been consolidated and local authorities have been given greater discretion in how funds are dispersed along with requirements for five-year plans and annual performance reports.

Federal housing support targeted to low-income households may be compared to other policies that benefit primarily moderate and high-income homeowners. Tax revenue costs from income tax deductions related to housing ownership (mortgage interest, etc.) were estimated by Congress in 2005 to amount to \$147 billion. John Quigley of the University of California stated, "More than half of these benefits for homeowners accrue to the top 15% of the income distribution." Federal programs managed by the Department of Housing and Urban Development, principally benefiting low-income households, were about \$41 billion during 2005.

Sources

Citizens' Housing and Planning Association. "Affordable Housing Guidebook for Legislators," CHAPA, June 2005, www.chapa.org/pdf/Guidebook2005.pdf.

League of Women Voters of the United States. "Impact on Issues, 2004-2006. A Guide to Public Policy Positions," p. 73, www.lwv.org/AM/Template.cfm?Section=Home§ion=ImpactIssues&template=/CM/ContentDisplay.cfm&ContentFileID=1228.

Quigley, John M. "Housing Policy in the United States," Program on Housing and Urban Policy, U. of California, Berkeley, 2006. PaperW06-001_2, 2006, works.bepress.com/john_quigley/22.

U.S. Department of Housing and Urban Development. www.hud.gov/.

League of Women Voters of Massachusetts

133 Portland Street, Boston, MA 02114

617-523-2999 • Fax 617-248-0881 • lwvma@lwvma.org • www.lwvma.org • www.votinginfo.info

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**10. Tenant-Based Rental Assistance Programs:
Section 8 & Massachusetts Rental Voucher Program**

Development of Tenant-Based Programs

Lower-income households usually have no choice other than renting their housing because they have not accumulated the funds to purchase a home, particularly in high-cost Massachusetts. Those in the lowest ranges of income require subsidies in order to rent housing that meets community standards. Rental assistance was traditionally offered in government-owned buildings, however, the numbers receiving housing assistance were expanded through tenant-based “mobile vouchers” which can be used for privately owned market-rate housing across the community. The major programs that assist renters using mobile vouchers in Massachusetts are the federal Housing Choice Voucher Program (usually called Section 8) and the Massachusetts Rental Voucher Program (MRVP). Several smaller programs are available for specialized populations.

During the 1970s and 1980s the federal government shifted most of its affordable housing expenditures from subsidies for buildings to subsidies for low-income renters. Section 8 of the Housing and Community Development Act of 1974 activated this policy and gave the program a name that stuck. There are over two million vouchers in the U.S. and it is the only federal housing program serving low-income families that has grown with the population over the last 20 years. Even so, only about one in four eligible households receives any form of federal housing assistance. In recent years new federal programs and revised regulations have emphasized home ownership and assistance for renters tied to specific buildings. Federal appropriations for Section 8 and state funding for MVRP have both fallen far below demand, contributing to increasing levels of homelessness in Massachusetts.

Pros and Cons of Tenant-Based Housing Assistance

The tenant-based approach was seen as a way to avoid the contentious political process of deciding where to locate subsidized projects, as well as a means to disperse disadvantaged households in communities and provide some anonymity for them.

The advantages for tenants who obtain vouchers that offer more choice of where to live have been documented in several studies.

- Children moving to low-poverty neighborhoods have been less involved with crime, either as victims or perpetrators. There are improved educational outcomes as families move less often.
- Families leave welfare and remain off welfare more often when they use housing vouchers.
- Workers are able to move closer to actual or potential jobs, are more successful in the workplace and reduce their use of other public benefits.

The Congressionally chartered Millennial Housing Commission in its final report concluded that the voucher program is flexible, cost-effective and successful in its mission and that funding should be expanded.

There are also disadvantages of the tenant-based approach.

- Apartment owners do not have to rent to voucher-holders so finding an available unit is often very difficult for the potential tenant.

- Renters may be forced to move if the rent increases or if the area's allowable rent goes down.
- The affordability of units is transient so communities may not be able to maintain a stock of housing to meet the needs of residents with lower incomes.
- There is greater risk for an increase in homelessness, especially in times of rapidly increasing housing costs.

The instability of subsidized units has led to programs where local officials are allowed to contract with private owners of buildings for periods of many years to reserve units for Section 8 voucher-holders. (Agencies receiving Section 8 funds have been allowed to designate a percentage for specific developments, moving outside the original mobile approach but considered responsive to local needs.)

Some critics consider it a disadvantage that local authorities have less control over where low-income residents choose to locate. Vouchers have been criticized for bringing people with undesirable lifestyles to the suburbs, subsidizing marginal landlords and exporting ghettos.

In relation to Massachusetts' Chapter 40B legislation, housing units occupied by tenants with mobile vouchers are not counted toward the 10% affordable units that communities must have in order to be exempted from its provisions.

Section 8: The Housing Choice Voucher Program

This federally funded program served 73,443 Massachusetts households in 2006. (A small minority of these vouchers were tied to specific buildings.) Section 8 works as a public-private partnership.

The federal government provides funds and sets up the basic requirements of the program. The U.S. Department of Housing and Urban Development (HUD) writes the regulations and determines eligibility and fair rents in each area based on census data. The U.S. Census regularly surveys incomes and rent levels for Primary Metropolitan Statistical Areas (PMSAs), Micropolitan Areas and non-urban County Areas and adjusts these figures annually. As urban populations change, the delineation of areas is also changing. Massachusetts has 20 areas, with several crossing state lines. They are: Barnstable, Boston-Cambridge-Quincy, Brockton, Lawrence, Lowell, Berkshire county, Pittsfield, Easton-Raynham, New Bedford, Providence-Fall River, Taunton-Mansfield-Norton, Franklin County, Springfield, Eastern Worcester County, Fitchburg-Leominster, Western Worcester County, Worcester, Dukes County, Nantucket county, and Nashua, NH.

The states implement the Housing Choice Voucher program through state agencies and Local Housing Authorities (LHAs). The Massachusetts Department of Housing and Community Development (DHCD) and its Division of Public Housing and Rental Assistance control about a quarter of the vouchers (18,532). In addition to on-line information and applications, services are offered through eight Regional Housing Offices. About half of the state's LHAs administer Section 8 and they account for three-quarters of the vouchers issued.

Local developers, builders, and owners make available housing units. Rental units offered must meet minimum standards of health and safety and the rent charged must meet HUD guidelines for fair rents that are reasonable in comparison to rents charged for similar unassisted apartments in the area.

Eligible families and individuals in need of housing must search for available units, choose where to live and pay the required portion of their income as rent. Eligibility is based primarily on income that is under limits set by HUD related to the area median income. In some cases they must also meet other criteria (such as having a disability).

How the Section 8 Program Works in Massachusetts. Applications are available at the following places in Massachusetts:

- Eight regional administering agencies in Pittsfield, Lowell, Hyannis, Springfield, Boston, Gardner, Framingham, and Kingston
- Approximately 130 or half of the local Housing Authorities
- Online at www.state.ma.us/dhcd where the homepage has an eight-page Universal Standard Application for State-Aided Housing.

Applications may be sent to as many locations as desired and are placed on waiting lists when they are submitted. (There is a statewide list maintained by DHCD if the application goes through a regional housing agency.)

Eligibility is usually restricted to households whose total annual income is below 50% of the area median income (AMI). Three-quarters of the vouchers must go to those with incomes under 30% of the AMI. Up to 80% of AMI is technically allowed, but few Local Housing Authorities vote to do so for rental housing. Preference is given to people who are homeless or living in substandard housing, currently paying more than 50% of gross income on rent, or involuntarily displaced. Applicants must inform the housing agency of address changes and respond to letters that are sent to check on continued eligibility. Often LHA lists are closed for extended periods but the regional agencies are supposed to continue taking applications.

When a voucher becomes available, the household at the head of the list is contacted and recertified as eligible. Section 8 uses both mobile (tenant-based) vouchers that the household can use anywhere in the state and a minority of project-based vouchers that are tied to specific buildings or developments. Some of the Section 8 developments also provide specific relevant services, such as for mentally disabled individuals or persons living with AIDS. Once a mobile voucher is issued, the holder has up to 180 days (or less, depending on the specific type of voucher) to locate a suitable rental unit or to stay where they are and get a subsidy if the unit is appropriate. Project-based vouchers are effective as soon as the holder moves in.

A rental subsidy is paid directly to the unit owner on behalf of the participating household by the housing agency. The family is responsible for paying the difference between the actual rent charged by the landlord and the subsidy paid by the Section 8 program. Usually tenants pay between 30 and 35% of their income as rent depending on whether utilities are included, and they may pay more if the unit chosen is more expensive.

Massachusetts Rental Voucher Program (MRVP)

This program is a successor to an experimental housing allowance program, Chapter 707 of the Acts of 1966. To prevent deep cuts to recipient vouchers in 1990, a suit was filed and won claiming that essentially Section 8 rules should apply to reductions. In 1992 the program was restructured as MRVP. It is restricted to families whose income level does not exceed 200 percent of the federal poverty level. (Note that the income threshold is different from Section 8 and is the same all over the state.) At its peak in 1990, MRVP assisted over 14,900 households with tenant-based vouchers, but in 2005 it assisted 1544. The program was frozen for a decade until 2000 and then again in 2002. It had been the main program to assist homeless families to move out of shelters, but funding cuts made it a minor resource.

Applications can be obtained on the DHCD website and at the same agencies as for Section 8 applications. Applications are taken on a first-come first-served basis and selection criteria and preferences are the same as for state public housing. A mobile voucher can be used anywhere in the state.

Voucher holders pay 30% of their income plus \$50 toward the rent. In 2005 this was adjusted so tenants pay a maximum of 40% of income toward rent because the \$50 increment meant some disabled individuals had to pay nearly 60% of their income for rent. The program pays the difference between the tenant payment and the rent to the apartment's owner.

The Massachusetts Rental Voucher Program also serves low-income tenants in specific buildings. In these cases, once a tenant moves out the rental assistance voucher is lost and others would be eligible for the space. However, there are some combination programs that allow tenants to keep the voucher when moving to another apartment.

Alternative Housing Voucher Program (AVHP)

Established in 1995, the Alternative Housing Voucher Program is a state program that provides rental vouchers to disabled applicants under age 60 who have been determined eligible for Chapter 667 (elderly and disabled) housing. The tenant pays 25% of the rent without utilities or 30% if utilities are included. The program served 238 households in 2005 and is administered by the DHCD Division of Public Housing and Rental Assistance.

Section 8 for Specialized Populations

There are at least 12 programs that serve individuals and families that may be expected to have lower incomes and need public assistance in order to live in their own apartments in the community. All of those eligible must meet the same income criteria as others eligible for Section 8 vouchers plus have special characteristics. These programs are administered by DHCD in conjunction with other state or contracted agencies. For example, the Department of Mental Retardation runs the program for persons with mental retardation and the Department of Social Services runs the program for women and children displaced by domestic violence. In some cases there are specific sites where voucher recipients must live in order to access appropriate social services. Information is available from the DHCD website on the programs listed. Overall the authorized number who could be served through these programs is about 2000 households, but many agencies have experienced budget cutbacks that have reduced the numbers served.

- Section 8 Department of Mental Health Voucher Program
- Section 8 Department of Mental Retardation Voucher Program
- Section 8 Family Self-Sufficiency Program
- Section 8 Family Unification Program
- Section 8 for Victims of Domestic Violence
- Section 8 Homeownership Option
- Section 8 Housing Options Program
- Section 8 Independent Living Program
- Section 8 Mainstream Program for People with Disabilities
- Section 8 Project-Based Voucher Program
- Section 8 Raising the Next Generation Program (for Grandparents)
- Section 8 Tenant Assistance for Persons Living with HIV/AIDS
- Section 8 Veterans Administration Supported Housing Program (VASH)
- Section 8 Welfare to Work (Job Link) Program

Sources

- Center on Budget and Policy Priorities. "Introduction to the Housing Voucher Program," CBPP, 2003, www.centeronbudget.org/5-15-03hou.htm.
- Citizens' Housing and Planning Association, www.chapa.org/.
- Citizens' Housing and Planning Association. "Affordable Housing Guidebook for Legislators," CHAPA, June 2005, www.chapa.org/pdf/guidebook2005.pdf.
- Mary Doyle, Metropolitan Boston Housing Partners.
- Kristine Foye, New England Regional Public Affairs Director, US Dept. of Housing and Urban Development.
- Heudorfer, Bonnie and Barry Bluestone. "The Greater Boston Housing Report Card 2005-2006," The Center for Urban and Regional Policy, Northeastern University, September 2006, www.chapa.org/pdf/HousingReportCard2005.pdf.
- Husock, Howard, "Let's End Housing Vouchers," *City Journal*, Autumn 2000, www.city-journal.org/html/10_4_lets_end_housing.html.
- Massachusetts Department of Housing and Community Development, www.mass.gov/dhcd/.
- Molinari, Susan and Richard Ravitch, chairs, "Millennial Housing Commission Final Report," 2002, govinfo.library.unt.edu/mhc/MHCReport.pdf.
- Molinari, Susan and Richard Ravitch, Eds. "Report of the Millennial Housing Commission," 2002. govinfo.library.unt.edu/mhc/WHM.doc.
- Peggy O'Brien, Housing Program Specialist, Massachusetts Department of Community and Housing Development Bureau of Federal Rental Assistance.
- Reid, Alexander. "Rent Subsidies Get Second Look: Voucher Values Readjusted Again Following Outcry," *Boston Globe*, October 10, 2004, www.boston.com/news/local/articles/2004/10/10/rent_subsidies_get_second_look?mode=PF.
- Smith, David A. "Rethinking Section 8: A Paper for Living Cities," Recap Advisors, Boston, MA, 2006. www.recapadvisors.com/.
- Tegeler, Philip, Mary Cunningham and Margery Austin Turner, Eds. "Keeping the Promise: Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program: Final Report of the Third National Conference on Housing Mobility," www.prrac.org/pdf/KeepingPromiseAppendixA.pdf.
- U.S. Housing and Urban Development Department, www.hud.gov/.
- Laura Wiener, Housing Officer, Planning Department, Town of Arlington.

League of Women Voters of Massachusetts

133 Portland Street, Boston, MA 02114

617-523-2999 • Fax 617-248-0881 • lwvma@lwvma.org • www.lwvma.org • www.votinginfo.info

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11. Preserving Affordability

Preservation of Affordable Ownership Housing

Affordable units created under Chapter 40B must be subject to a deed restriction in order to remain on the Subsidized Housing Inventory (SHI) – the list maintained by the Department of Housing and Community Development of a community’s progress toward meeting the goal of 10% of its housing stock being affordable. This deed restriction is recorded at the Registry of Deeds with the deed and other deed documents.

As more affordable homes are built in Massachusetts, especially under Chapter 40B, local officials have increasingly insisted that the units remain affordable to future low- and moderate-income buyers “in perpetuity” or for the longest term allowed by law. Much of the affordable housing built in the 1980s was built with the period of affordability running 20 to 30 years, at which point these primarily rental units could and did move to market rate – and are continuing to do so. See below for more information on preserving affordable rental units.

A deed rider is the method used to specify many requirements and restrictions intended to protect the affordability of an ownership unit. Some examples are:

- Eligibility requirements of purchaser.
- The property must be occupied and used by the purchaser as his/her principal residence.
- The property cannot be leased, refinanced or mortgaged without the permission of the Monitoring Agent; if this does occur, any rents or profits received by the owner will be recovered by the Monitoring Agent or the municipality, including any associated costs with recovering the money. The proceeds can be deposited in its Affordable Housing Fund, if the city or town has established one.
- If the owner decides to sell the property, the Monitoring Agent and municipality must be notified in writing. The Monitoring Agent will calculate the resale value of the property – maintaining its affordability; the owner will hire a broker and cooperate in every way in finding an eligible buyer. The Monitoring Agent also has marketing responsibility, and listings are available online.

Deed riders require that the units be sold to qualified low or moderate income buyers.

The property must be sold generally within 90 days after the Monitoring Agent is informed of the desire to sell, with some exceptions. The city or town also has the right to purchase the property.

If more than one eligible purchaser qualifies, the Monitoring Agent may conduct a lottery or similar procedure as provided in the Regulatory Agreement.

At closing, any amount of profit to the seller, which exceeds the maximum resale price, will be paid to the municipality for deposit in its Affordable Housing Fund.

Under some of the existing deed riders, if the property goes into foreclosure, the affordability component is lost. However, any amount in excess of the balance of the mortgage, and some expenses, are returned to the municipality to be deposited into its Affordable Housing Fund.

However, there is good news on protecting the affordability of units, even in the event of foreclosure. Fannie Mae used to require that all deed restrictions be extinguished in the event of foreclo-

sure. Now Fannie Mae will purchase mortgages on single-family properties that have deed restrictions that survive foreclosure. A new Affordable Housing Deed Rider boilerplate, designed by Fannie Mae and MassHousing, has been created for projects in which affordability restrictions do not terminate upon foreclosure. The new legal document is designed to be ‘universal’ and can be used in conjunction with any government subsidy program that creates low-cost, for-sale housing in Massachusetts, including Chapter 40B.

DHCD has stated that affordable units subject to the new deed rider will continuously be counted on the SHI, if used in conjunction with an approved state or federal housing subsidy program. The new universal deed rider will also eliminate the costly and time-consuming process whereby individual deed riders were reviewed by local officials, developers, government agencies, lenders and secondary market investors.

For rental properties, deed riders include requirements like:

- Eligibility of renters, including local preference, if it applies
- Maximum rents
- Basic parameters for appropriate lease terms, like a term of at least a year, conditions under which a landlord can terminate the lease and notice terms, including eviction, non-renewal of lease, etc.

Preservation of Affordable Rental Housing

The “expiring use” problem in affordable rental housing arises from a federal government decision in the early 1960s to partner with private developers to produce affordable housing. In return for subsidized mortgages and tax benefits, developers agreed to rent to low-and-moderate-income tenants and to charge affordable rents. These public-private partnerships were cheaper for the government and more politically acceptable than public housing. Developments built under Section 221d3 of the National Housing Act effectively had 3% mortgages, and later Section 236 developments effectively had 1% mortgages.

Starting in 1974, the federal government began using project-based Section 8 tenant rent subsidies instead of mortgage subsidies to stimulate affordable development. The rent subsidies pay owners the difference between a federally-determined “fair market rent” and the tenant rent payment, set at 30 % of income.

Subsidized mortgages were typically written for 40 years, but in most cases pre-payment was allowed after 20 years. By pre-paying, owners could terminate low-and-moderate-income use restrictions, raise rents to market levels, convert to condominiums, or sell the properties. As housing markets heated up, owners began to utilize the pre-payment option and to decline renewal of Section 8 rent contracts. Over the past 15 years, thousands of federally-subsidized private housing units have been lost, and thousands more are at risk of being lost.

The Massachusetts Chapter 13A program, like the federal Section 236 program, provides interest subsidies to reduce rents to the level they would be if mortgages had been financed at 1% interest. Chapter 13A developments were built primarily in the 1970s with 30-40 year mortgages and 20-year pre-payment options.

At-risk private subsidized housing in Massachusetts. About 85,000 affordable housing units were built or substantially rehabilitated in Massachusetts using federal or state mortgage subsidies and/or project-based rental subsidies. Between 1995 and July 2006, more than 4,500 subsidized private units had been permanently lost through mortgage pre-payment and/or expiration of Section 8 subsidy contracts. Another 28,000 private affordable units are at risk of loss by the end of 2010. These 28,000 units represent 14% of the state’s total affordable housing inventory, both public and private.

Mechanisms for preserving private subsidized housing. Federal statutes passed in 1987 and 1990 in effect barred mortgage prepayment and offered various financial incentives to maintain affordability. But in 1996, Congress restored prepayment rights, ended funding for preserving affordable units, and shifted focus to protecting residents from displacement.

Massachusetts traditionally provided supplementary resources for preserving at-risk affordable housing. But policy and procedural changes introduced in 2005 constrained use of these resources. The Department of Housing and Community Development (DHCD) eliminated a preservation set-aside for allocation of federal low-income housing tax credits. Similarly, housing production was given priority over preservation for other funding programs.

The nonprofit Citizens Housing and Planning Association in 2006 made the following recommendations for addressing preservation needs in Massachusetts:

- Restart the Capital Improvement and Preservation Fund (CIPF) and allow use of the Housing Stabilization Fund (HSF) for preservation.
- Remove barriers to the use of low-income tax credits and bond financing for preservation.
- Launch a technical assistance program to inform tenants, nonprofits and municipalities about local expiring-use properties and help them negotiate long-term preservation agreements, and access purchase and rehabilitation funding.

Proposed bills to enable municipalities to preserve expiring use properties. As of June 2007, the Joint Committee on Housing had before it three bills (S. 782, H. 1276, and H. 1295) on creation of a regulatory framework for municipalities to preserve expiring use properties. At request of the Committee, Citizens Housing and Planning Association convened a working group with expertise in this area to offer suggestions and advice. Opinions varied on the primary issue of whether owners who intend to convert to market should be required to sell to entities which would maintain affordability.

Sources

Achtenberg, Emily. "Stemming the Tide: A Handbook on Preserving Subsidized Multifamily Housing," Local Initiatives Support Corporation and Fannie Mae, September 2002, www.lisc.org/content/publications/detail/893.

Achtenberg, Emily. "Smart Preservation: Preserving At-Risk Subsidized Housing with State Bond Funds (CIDF and HSF)," Citizens' Housing and Planning Association, June 2005, www.chapa.org/pdf/PreservationReportFinal.pdf.

Citizens' Housing and Planning Association. "CHAPA Position Paper on State Housing Policy for the Gubernatorial Candidates," CHAPA, July 2006, www.chapa.org/pdf/CandidatesPolicyPaper.pdf.

Expiring Use Working Group. "Report of the Expiring Use Working Group," June 2007, www.chapa.org/pdf/ExpiringUseReportFinal.pdf.

PolicyLink. "Expiring Use: Retention of Subsidized Housing," PolicyLink, policylink.org/EDTK/ExpiringUse.

Retsinas, Joan M. and Nicolas P. Retsinas. "Subsidized Elderly Housing: Public-Private Partnerships on the Brink," *Journal of Aging and Social Policy*, Vol. 5(3), p. 55, 1993.

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Appendix A. Major Massachusetts Housing and Zoning Laws
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Massachusetts General Law Chapter 40A

Chapter 40A is the state's zoning enabling legislation, called the Zoning Act. The statute was originally enacted in 1954 and updated in 1975.

Chapter 40B

Chapter 40B is the state's comprehensive permit law, enacted in 1969 (part of Chapter 774 sometimes referred to as the "anti-snob zoning" law), which established an affordable housing threshold of 10% of housing stock for every community. In communities below the 10% level, developers of low- and moderate-income housing can seek an expedited local review under the comprehensive permit process and can request a limited waiver of local zoning and other restrictions that may hamper construction of affordable housing.

Chapter 40R

Chapter 40R encourages municipalities to adopt zoning overlay districts that allow higher density residential and mixed-use development in smart growth locations by providing fiscal incentives to cities and towns. Chapter 40R offers cities and towns an one-time zoning incentive payment, a density bonus per housing unit built and priority consideration for some state discretionary grant programs.

Chapter 40S

Created in December of 2005, Chapter 40S reimburses cities and towns for costs associated with school enrollment growth as a result of 40R development, including increases in local public or charter school attendance and the need for other educational services.

Chapter 121A

In 1969 Massachusetts enacted chapter 121B of the 1969 MGL which enables all cities and towns in Massachusetts operate housing authorities and also codified all previous Massachusetts housing laws from 1935 to 1969.

Community Preservation Act

The CPA, enacted in December 2000, allows cities and towns in Massachusetts to vote to raise local property taxes in order to acquire and protect open space, preserve historic buildings and landscapes, and create and maintain affordable housing. It also provides significant state matching funds to participating communities.

Local Initiative Program

The LIP program was established by the Legislature in 1990 to stimulate the production of affordable housing opportunities by fostering cooperation between municipalities and housing developers. The program provides technical assistance to developers and municipalities seeking to develop housing that serves households at or below 80% of the area median income within mixed-income (market-rate and affordable) housing developments.

Sources

Citizens' Housing and Planning Association, "Taking the Initiative, Appendix E: Glossary of Housing Terms," CHAPA, www.chapa.org/pdf/appendixe_glossary.pdf.

Community Preservation Coalition, "Guide to Local Adoption," CPC, [www.communitypreservation.org/CPA Guide.pdf](http://www.communitypreservation.org/CPA_Guide.pdf).

Massachusetts Department of Housing and Community Development. "Local Initiative Program – Division of Housing Development," DHCD, www.mass.gov/dhcd/publications/fact_sheets/lip.htm.

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Appendix B. Income Limits Eligibility for Affordable Housing in Massachusetts
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Most affordable housing is reserved for households whose income is less than a certain amount stated as a percentage of the Area Median Income (AMI). These figures are updated annually in April based on actual surveys and estimates by the U.S. Census Bureau. They are developed into tables according to the number in the household or family and adopted as guidelines by the U.S. Department of Housing and Urban Development (HUD). Often they are not strictly mathematical; for example, median incomes in some areas decreased in 2006 but the 2007 guidelines were “held harmless” and not decreased.

The areas used for affordable housing purposes are also determined by federal agencies (Census Bureau, Office of Management and Budget, and HUD). Areas are redefined frequently, at least every 10 years, based on population changes and economic factors such as typical commuting patterns. Massachusetts communities are currently in 20 different areas, with several crossing state lines.

Area divisions and Income Limits Tables are determined by the federal government and are simply tools used by Massachusetts agencies. State laws can determine the percent of area median income used as an eligibility cutoff or use another measure altogether. The state can not direct the AMI process.

Income Limits for Rental Housing Units

Public housing. Federal public housing units were built and are maintained with federal funds, while state public housing units were built and are maintained with state funds. State public housing follows guidelines that are set for federal public housing by HUD. All of the public housing is managed by Local Housing Authorities. Income limits are 80% of area median income (AMI). Also, 40% of newly approved openings go to tenants with income limits of 30% of AMI.

Rental units built under Chapter 40B. These units are under private ownership and management, restricted to low/moderate income tenants by deed until a fixed expiration date. 25% of the units in the development have tenant income limits of 80% of AMI *or* 20% of the units in the development have tenant income limits of 50% of AMI.

Massachusetts Rental Voucher Program. This program provides mobile vouchers that go with the tenant. Income limits everywhere in the state are 200% of the federal poverty level.

Income Limits for Ownership Units

Units built under Chapter 40B. These housing units are sold to low/moderate income families and deed restricted to remain affordable if sold to others; owners are selected by a lottery among applicants.

- Income limits are 80% of AMI.

Units built under DHCD home and HSF homebuyer assistance (for first time homebuyers)

- Income limits are 80% of AMI

Homes built with State Affordable Housing Trust Fund

- Income limits are 110% of AMI

Other programs for first-time or other homebuyers vary, but limits are below the AMI.

**THREE EXAMPLES OF 2007 INCOME LIMITS
Used for Massachusetts Affordable Housing Programs**

Income Guidelines for BOSTON-CAMBRIDGE-QUINCY AREA *

Number in Household	Area Median Family Income	80% AMI Low Income	50% AMI <u>Very Low</u> Income	30% AMI <u>Extremely Low</u> Income	Twice Federal Poverty Level (Mass. Rental Voucher Program)
	82,400				
One Person		46,300	29,450	17,700	20,420
2 Persons		52,950	33,650	20,200	27,380
3 Persons		59,550	37,850	22,750	34,340
4 Persons		66,150	42,050	25,250	41,300

*The Boston-Cambridge-Quincy MSA (Metropolitan Statistical Area as defined by the U.S. Census Bureau) includes 112 contiguous cities and towns from 5 counties on the Eastern coastal border of Mass.

Income Guidelines for SPRINGFIELD AND 7 OTHER AREAS (LOWEST AMIs in MA)**

Number in Household	Area Median Family Income	80% AMI Low Income**	50% AMI <u>Very Low</u> Income	30% AMI <u>Extremely Low</u> Income	Twice Federal Poverty Level (Mass. Rental Voucher Program)
	62,500				
One Person		40,150	25,150	15,050	20,420
2 Persons		45,900	28,700	17,200	27,380
3 Persons		53,600	32,250	19,350	34,340
4 Persons		57,350	35,850	21,500	41,300

**The Springfield MSA includes 44 towns and cities in western Massachusetts. Seven other areas have the same income limits for a total of 92 cities and towns with the lowest limits. These statistical areas with the lowest income limits include Barnstable, Berkshire County, Pittsfield, Franklin County, Fitchburg-Leominster, Western Worcester County, and Dukes County).

Income Guidelines for EASTERN WORCESTER COUNTY (HIGHEST AMI in MA)***

Number in Household	Area Median Family Income	80% AMI Low Income	50% AMI <u>Very Low</u> Income	30% AMI <u>Extremely Low</u> Income	Twice Federal Poverty Level (Mass. Rental Voucher Program)
	93,900				
One Person		46,300	32,850	19,700	20,420
2 Persons		52,950	37,550	22,500	27,380
3 Persons		59,550-	42,250	25,350	34,340
4 Persons		66,150	46,950	28,150	41,300

***This is one of the smallest MSAs with 11 towns. Note that Nantucket has a higher level for 80% AMI although the 30% and 50% levels are lower.

Sources

Citizens' Housing and Planning Association. "Affordable Housing Guidebook for Legislators," CHAPA, June 2005, www.chapa.org/pdf/guidebook2005.pdf.

U.S. Census Bureau. "Current Lists of Metropolitan and Micropolitan Statistical Areas and Definitions," www.census.gov/population/www/estimates/metrodef.html.

Department of Housing and Urban Development HUD User Data Sets, "State: Massachusetts Income Limits," www.huduser.org/datasets/IL/IL07/ma_fy2007.pdf