



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Deval L. Patrick, Governor ♦ Timothy P. Murray, Lt. Governor ♦ Tina Brooks, Undersecretary

Housing Production Plans Frequently Asked Questions (FAQs)

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

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

Q1: What are Housing Production Plans (HPPs)?

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

Q2: When were the HPP requirements established?

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

Q3: Why should a community submit a HPP?

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

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

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

The projections of future need serve as a starting point for examining suitable locations for housing development. Generally such sites will be in proximity of existing water and sewer lines. Perhaps they will be in proximity of downtown. The HPP articulates the community's rationale for a diverse housing supply responsive to projected needs and preferences. It serves as the community's pro-active strategy in determining the type and pace of housing growth. Specifically,

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

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

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

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

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

A. A list for production goals can be found as Appendix II.B.1 to the HPP Guidelines, or on line at www.mass.gov/dhcd. The list indicates the number of Subsidized Housing Inventory (SHI) eligible units that a community would need to produce to achieve a 0.5% increase or a 1% increase in SHI eligible housing units.

Q6: What is an *approved* HPP?

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

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

A: A HPP is valid for a five year period from the approval date by DHCD. Upon expiration, HPPs may be renewed. The community must decide whether to update/revise the existing plan or write a new HPP. A community can also submit an updated/revised plan in advance of its expiration date to assure a continuous period of plan approval. Example: A community has a plan that will expire in June 2010. A new plan is approved by DHCD on October 27, 2009. The expiration of the plan will be October 26, 2014, five years from the 2009 approval date.

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

A: It depends on the original date of approval. A plan approved in 2004 will expire in 2009. All other previously approved plans will need to be updated/renewed because of the five year duration requirement. All communities have been notified of their expiration dates. A detailed list of expiration dates is also available at www.mass.gov/dhcd.

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

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

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

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

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

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

Q11: What is the duration of DHCD certification?

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

If the city or town is certified compliant with its plan, DHCD will notify the chief elected official in writing. Regardless of the date of the certification notice, the certification period will be deemed effective on the date upon which the municipality achieved its numerical target for the calendar year in question (see 56 CMR 56.03 (2)). Thus, certification starts at the time of initial eligibility for the SHI and not the date DHCD receives such requests.

Q12: How long does DHCD have to approve a certification request?

A: Requests for certification may be submitted at any time. DHCD shall determine whether a community is in compliance within 30 days of receipt of a complete submission requesting certification.

Q13: Can we count units created in different years towards certification?

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

Q14: When do units count for certification?

A. Units count for certification as soon as they are **initially** eligible to be counted on the SHI at the earliest of the following:

1. For units that require a Comprehensive Permit under M.G.L. c.40B, §§ 20 through 23, or a zoning approval under c.40A or completion of plan review under M.G.L. c.40R, the date when (a) the permit or approval is filed with the municipal clerk, notwithstanding any appeal by a party other than the Board, but subject to the time limit for counting such units set forth at 760 CMR 56.03(2)(c), or (b) on the date when the last appeal by the Board is fully resolved.
2. When the building permit for the unit is issued.
3. When the occupancy permit for the unit is issued.
4. When the unit is occupied by an Income Eligible Household and all the conditions of 760 CMR 56.03(2) (b) has been met (if no Comprehensive Permit, zoning approval, building permit, or occupancy permit is required).

Q15: Are pending cases at the HAC affected if a community achieves certification?

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

Q16: Are all projects now subject to the new thresholds of 0.5% and 1.0%?

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

Q17: When a community has achieved certification, can they automatically deny a new Comprehensive Permit without holding a public hearing?

A: No. The local ZBA must open a hearing within 30 days of receiving an application even when the community has achieved certification.

Q18: How does a ZBA notify an Applicant (developer) if the community is certified?

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

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

Q19: My community's housing plan under the former Planned Production Program was approved over five years ago. Can we submit an updated version?

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

Q20: Are any public funds available for the development of HPPs?

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

Q21: How many communities have approved HPPs? Where can I find a list of Certified communities?

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

Q22: Can we submit a draft HPP for DHCD review?

A: Yes. DHCD staff will provide comments to communities that submit draft plans. Draft plans can be submitted to DHCD prior to local approval.