

**Appendix 1: Chapter 40B Guidelines for Planned Production Regulation<sup>6</sup> (Summary)**

Revisions to Chapter 40B issued by the Department of Housing and Community Development’s Housing Appeals Committee in December 2002 stipulate that the Affordable Housing Plan must incorporate a “Planned Production Development Rate” provision. This provision allows a local Board to deny or grant with conditions a comprehensive permit for up to a two year period if the community has adopted an affordable housing plan approved by DHCD. The plan must stipulate an increase in the community’s number of low or moderate income housing units by at least three-fourths of one percent of total units every calendar year until that percentage exceeds 10% of total units. In subsequent years, the community will have to demonstrate continued progress toward implementing the housing plan. **Compliance will be determined based on the qualifying housing units produced within the calendar year for which certification is requested.**

The affordable Housing Plan must be accompanied by a document that summarizes the four Plan Elements:

1. Housing Needs Assessment:

This section analyzes and suggests a mix of housing opportunities for families, individuals, persons with special needs, and the elderly that are consistent with local and regional needs and feasible within the housing market in which they will be situated along with an analysis of the municipality’s infrastructure and development constraints, and the municipality’s ability to mitigate them.

2. Affordable Housing Goals consistent with the Town’s plan are to be identified

3. Strategies by which the municipality will achieve its housing goals established by its comprehensive needs assessment are to be identified

4. A description of the use restrictions which will be imposed on low or moderate income housing units to ensure that each unit will remain affordable long term to and occupied by low or moderate income households will be stated

<p>Populations that should be served by affordable housing include:</p> <ul style="list-style-type: none"> <li>● Families</li> <li>● Individuals</li> <li>● Persons with special needs</li> <li>● Elderly</li> </ul> <p>The following are some types of housing that now qualify as affordable under Chapter 40B:</p> <ul style="list-style-type: none"> <li>● Local, state or federally subsidized units</li> <li>● Privately funded units in a variety of building types, renovated or new housing, assuming rents are within affordable housing cost limits (80% of median income) and there are use restrictions to maintain affordability (Local Initiative Program).</li> <li>● Units created through Community Preservation Act funding that serve low and moderate income households</li> <li>● Group homes</li> <li>● Accessory apartments created after July 2002</li> </ul>
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The Affordable Housing Plan shall include one of more of the following, but shall not be limited to:

1. The identification of zoning districts or geographic areas which will permit the proposed residential uses
2. The identification of specific sites for which the municipality will encourage the filing of comprehensive permit applications
3. Characteristics of proposed developments that would be preferred by the municipality (cluster, mixed-use, etc.)
4. Municipally owned parcels for which the municipality commits to issue request for proposals to develop low or moderate income housing

<sup>6</sup> M.G.L. 760 CMR 31.07(1)(i)  
See also MGL Chapter 40B Guidelines for Planned Production Regulation, Department of Housing and Community Development.

An approved plan shall take effect only when the Department certifies that the municipality has approved permits resulting in an initial annual increase in its low or moderate income housing units of three-quarters of one percent of total housing units. In subsequent years the community will have to continue to demonstrate progress toward meeting this goal.

***Approval of Affordable Housing Plan***

All affordable housing plans must be submitted by the municipality’s chief elected official. DHCD will approve or disapprove the plan within 90 days of submission. If DHCD disapproves a plan, the notification will include a statement of reasons for disapproval. If a plan is disapproved, a municipality may submit a new or revised plan at any time. Communities may also amend a plan at any time if DHCD approves the amendment.

**Certification of Compliance with Affordable Housing Plans**

Communities with an approved affordable housing plan may request DHCD certification of compliances by submitting evidence that housing units have been produced in the calendar year for which certification is requested that are eligible to be counted on the Subsidized Housing Inventory and total at least ¾ of 1% of the total housing units in the community. DHCD will determine whether a community is in compliance with its plan within 30 days of receiving the request for certification.

An approved plan shall take effect only when DHCD certifies that the municipality has approved permits resulting in an initial annual increase in its low or moderate income housing units of ¾ of 1% of total housing units in accordance with its plan. In order for the units to be counted as part of the municipality’s affordable housing stock, the municipality must submit evidence and certify to DHCD that building permits have been issued for those units. Compliance will be determined based on production of qualifying housing units within the calendar year for which certification is requested.

**Plan Submission**

Communities should submit the plan to:	Jane Wallis Gumble, Director MA Department of Housing and Community Development Office of Sustainable Development 1 Congress Street Boston, MA 02114 MaryJane.Gandolfo@ocd.state.ma.us
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The Department would prefer an electronic copy of the plan for its review, submitted via e-mail attachment or on disc.

**Sample Chronology**

***November 15, 2004***

Step 1: Completion and submittal of affordable housing plan to DHCD.  
*Community X completes an affordable housing plan and submits it to DHCD for approval.*

***Prior to February 15, 2005 (within 90 days)***

Step 2: DHCD review period.  
*DHCD determines that the plan is complete, reviews it and approves Community X’s housing plan and notifies the community.*

***April 15, 2005***

Step 3: Municipal request for certification of compliance with plan for first year.  
*Community X requests DHCD certification of compliance with their plan based on permitting and/or production of units within calendar year 2005, that are:*

- *Eligible to be counted on the Subsidized Housing Inventory*
- *In accordance with the approved plan, and*

- Total more than  $\frac{3}{4}$  of one percent of their total housing units.

**Prior to May 15, 2005 (within 30 days)**

Step 4: DHCD certification review period for first year.

*DHCD certifies that Community X is in compliance with its approved plan based on production of housing within calendar year 2005, retroactive to May 15, 2005 and effective until May 14, 2006.*

**October 2, 2005**

*The Zoning Board of Appeals in Community X denies an applicant for a comprehensive permit based upon their certification. If appealed, the HAC will uphold the denial.*

**February 11 and March 6, 2006**

*The ZBA in Community X approves two comprehensive permits for projects with units that are eligible for inclusion on the inventory and that total at least  $\frac{3}{4}$  of one percent of their total housing units.*

**April 15, 2006**

Step 5: Municipal request for certification of compliance with plan for second year.

*Community X requests DHCD certification of compliance with their plan based on permitting and/or production of units within calendar year 2006 that are*

- *Eligible to be counted on the Subsidized Housing Inventory*
- *In accordance with the approved plan, and*
- *Total more than  $\frac{3}{4}$  of one percent of their total housing units.*

**Prior to May 15, 2006 (within 30 days)**

Step 6: DHCD certification review for second year.

*DHCD certifies that Community X is in compliance with its approved plan based on production of housing within calendar year 2006, retroactive to May 15, 2006 and effective until May 14, 2007.*

**Appendix 2: Local Initiative Program Guidelines<sup>7</sup>**

The Local Initiative Program is a state housing program administered by the Department of Housing and Community Development (DHCD) that was established to give cities and towns more flexibility in their efforts to provide low and moderate income housing. The program provides technical and other non-financial assistance to cities and towns for the development of two types of housing: Local Initiative Units, which are developed through the conventional zoning process, and Comprehensive Permit Projects, which are developed according to Chapter 40B. All low and moderate income units developed through the Local Initiative Program are counted towards the town’s affordable housing stock under Chapter 40B.

The Local Initiative Program allows most of the financing, design, and construction decisions to be made by local public officials. Only the incomes of housing residents, the quality of housing provided, fair marketing, and level of profit are subject to state review.

**Local Initiative Units**

To be eligible for inclusion on the Subsidized Housing Inventory, Local Initiative Units must the following requirements. These units do not have to be constructed as part of a development with 25% affordable housing.

1. The units must be for households at or below 80% of median household income.
2. The units are subject to Use Restrictions of a substantial duration to ensure that the units remain available exclusively to those with qualifying incomes. A use restriction is a legal document that guarantees that the housing units will remain affordable during a specified “lock-in” period; under the Local Initiative Program, this lock-in must be for the longest period feasible. The initial lock-in period must be no less than 30 years for new construction and 15 years for substantially rehabilitated units. Local Initiative Units must have been created or converted to affordable housing for the explicit purpose of serving low or moderate income people, and may not qualify unless there are income restrictions that resulted directly from municipal action. Local actions include:
  - Zoning-based approval (rezoning, special permits, density bonuses, site plan approval, subdivision approval)
  - Financial assistance from funds raised, appropriated, or administered by the community
  - Provision of land or buildings that are owned or acquired by the community and conveyed at a below-market cost
3. The units must be sold or rented on a fair and open basis. The owners of the units must execute an equal housing opportunity agreement with DHCD for existing units or adopt an affirmative fair marketing plan for new units.

**Application Forms:** Applications for approval of Local Initiative Units must be submitted in the form provided by DHCD. The application must include documentation of the local actions that created the affordable units, a copy of the use restriction, and executed equal opportunity agreement for existing units, and an affirmative marketing plan for new units developed after February 1, 1990.

**Comprehensive Permit Projects**

The purpose of allowing Comprehensive Permit Projects within the Local Initiative Program is to enable communities to develop low and moderate income housing through the flexible zoning

<sup>7</sup> Local Initiative Program Guidelines. Department of Housing & Community Development. August 2002.

and local approval process provided by Chapter 40B. These projects must meet the following requirements:

1. The Project must have the written support of the chief elected official and local housing partnership.
2. At least 25% of the units must be affordable to households at or below 80% of regional median household income.
3. The developer must agree to a long term lock-in period for the affordable units that is enforced by a regulatory agreement with DHCD. In a regulatory agreement, the developer agrees to construct and maintain the units in accordance with the requirements of the Local Initiative Program and be limited to a reasonable profit. The lock-in period must be for the longest period of time allowed by law.  
A “reasonable profit” is defined as limits the distribution of return to all partners and owners to no more than 10% of equity per year during the lock- in period for rental and cooperative housing, and limits the profit and developer’s fees to all partners and owners to no more than 20% of total development costs for homeownership projects.
4. The project developer and/or owner(s) must agree to develop and implement an affirmative fair marketing plan in a form approved by DHCD.

**Application Forms:** Applications for approval of a Comprehensive Permit Project must be submitted in a form provided by DHCD. After an application is filed, a DHCD site visit and project evaluation will occur. Applications must be accompanied by the following:

- Documentation of the developer’s interest in the site (a deed, option, or purchase and sale agreement)
- A site plan showing the footprint of all proposed buildings, roads, parking, and other improvements
- Sample floor plans and elevations for each building and unit type
- A tabulation of the proposed units by size, type, number of bedrooms, location within the project, and proposed rent or sales price
- A financial pro forma
- A brief description of existing site conditions, any required permits, and proposed efforts to mitigate environmental impacts
- An appraisal of the site reflecting the site’s value under existing “by-right” zoning without a comprehensive permit
- Information regarding the relationship of the proposed project to local or regional growth management plans

### **Other Program Components**

The Town should become familiar with the following components of the Local Initiative Program, described in detail in the Local Initiative Program Guidelines published by DHCD.

- Marketing and Buyer/Tenant Selection
  - ◆ Affirmative Marketing Plans
  - ◆ Local Preference
  - ◆ Lottery process
- Minimum Design and Construction Standards
- Consistency with Growth Planning Criteria
- Consistency with Critical Housing Needs
- Fees
- Monitoring and Oversight of units
- Subsidized Housing Inventory
- Qualified Housing Type

**Appendix 3: Pepperell Zoning**

**Area Covered by Zoning Districts**

Zoning District	% of Town Covered by District	Acres
Rural Residence	47.6%	7,055
Town Residence	27.6%	4,097
Recreational Residence	11.9%	1,756
Suburban Residence	8.3%	1,232
Urban Residence	1.3%	189
Commercial	0.5%	73
Industrial	2.8%	421
Total	100.0%	14,823

**Principal Uses**

Use	Zoning District						
	RR	TR	RCR	SR	UR	C	I
<b>Residential Uses</b>							
Single family dwelling	Y	Y	Y	Y	Y	N	N
Two family dwelling	N	N	N	PB	Y	N	N
Multifamily dwelling	N	N	N	N	PB	PB	N
Dwelling unit(s) above first floor	N	N	N	N	N	Y	N
Boarding house	BOS	BOS	BOS	BOS	Y	Y	N
Assisted living facility	PB	PB	PB	PB	PB	N	N
Trailer or mobile home park	N	N	N	N	N	N	N
<b>Governmental or Institutional Uses</b>							
Cemetery	BOS	BOS	BOS	BOS	BOS	N	N
Hospital	PB	PB	PB	PB	PB	PB	N
Airport, public or private	N	N	PB	N	N	PB	PB
Essential services	PB	PB	PB	PB	PB	PB	PB
Government administration building or fire or police station	Y	Y	Y	Y	Y	Y	Y
Public recreation or water supply	Y	Y	Y	Y	Y	Y	Y
Public garage, yard, or service area	BA	BA	BA	BA	BA	BA	BA
Public solid waste disposal facility	BA	BA	BA	BA	N	BA	BA
Community center	N	Y	N	N	Y	Y	N
<b>Commercial Uses</b>							
Nonexempt educational use	N	N	N	N	N	PB	PB
Nonexempt commercial greenhouse	Y	BOS	Y	BOS	N	Y	N
Nonexempt dairy, poultry, or livestock farm	Y	BOS	Y	BOS	N	N	N
Nonexempt farm or nursery	Y	Y	Y	BOS	BOS	N	N
Fur farm or piggery on nonexempt parcel	N	N	N	N	N	N	N
Nonexempt farm stand	BOS	BOS	BOS	BOS	BOS	BOS	N
Adult day care facility	PB	PB	PB	PB	PB	PB	PB

Use	Zoning District						
	RR	TR	RCR	SR	UR	C	I
Family day care, small	Y	Y	Y	Y	Y	Y	Y
Family day care, large	PB	PB	PB	PB	PB	PB	PB
Hotel, motel or inn	N	N	PB	N	PB	Y	N
Retail of building, plumbing or heating supplies	N	N	N	N	N	Y	Y
Retail stores and services not elsewhere set forth	N	N	N	N	N	Y	N
Retail sales where more than 50% of gross floor area devoted to sales is not within a building	N	N	N	N	N	Y	N
Business or professional office	N	N	N	N	N	Y	PB
Bank or financial institution	N	N	N	N	N	Y	BA
Radio or television transmission tower	N	N	N	N	N	N	BA
Restaurant	N	N	BOS	N	BOS	Y	Y
Restaurant, fast food	N	N	N	N	N	PB	PB
Indoor facility for the rental of equipment or goods	N	N	N	N	N	Y	N
Motor vehicle sales and rental	N	N	N	N	N	PB	N
Motor vehicle light service	N	BOS	BOS	BOS	N	BOS	BOS
Motor vehicle general and body repair	N	N	N	N	N	BOS	Y
Car wash	N	N	N	N	N	Y	N
Commercial kennel	N	N	N	N	N	BOS	BOS
Animal clinic or hospital	BOS	BOS	BOS	BOS	N	BOS	BOS
Nursing or convalescent home	Y	Y	Y	Y	Y	BOS	N
Funeral home	N	BOS	BOS	BOS	BOS	Y	N
Medical center or clinic, excluding methadone clinic	N	N	N	N	N	Y	Y
Nonprofit club or lodge	BOS	BOS	Y	BOS	BOS	Y	N
Personal service establishment	N	N	N	N	N	Y	N
General service establishment	N	N	N	N	N	Y	Y
Temporary outdoor shows or exhibitions	Y	Y	Y	Y	Y	Y	Y
Commercial parking facility	N	N	N	N	N	Y	N
Drive-in or drive-through facilities or windows	N	N	N	N	N	PB	PB
Body art or piercing	N	N	N	N	N	N	PB
Flea market	N	N	N	N	N	PB	PB
Wireless Communications Facility	PB	PB	PB	PB	PB	PB	PB
<b>Industrial Uses</b>							
Manufacturing, assembly or processing	N	N	N	N	N	PB	Y
Light manufacturing; research laboratory	N	N	N	N	N	Y	Y
Warehouse, wholesale or indoor storage facility	N	N	N	N	N	Y	Y
Rail or motor freight terminal; passenger terminal; bus storage yard	N	N	N	N	N	PB	Y
Commercial storage of fuel, sand, cement, lumber or other goods	N	N	N	N	N	PB	PB

Use	Zoning District						
	RR	TR	RCR	SR	UR	C	I
Sawmill	PB	PB	PB	N	N	N	Y
Contractor's yard or outdoor storage facility; landscaping yard	N	N	N	N	N	Y	Y
Junkyard or automobile graveyard	N	N	N	N	N	N	N
Earth removal	N	N	N	N	N	N	BOS
Commercial dumping ground	N	N	N	N	N	N	N
Composting facility	N	N	N	N	N	N	N
Self-storage facility	N	N	N	N	N	Y	Y
Fuel or hazardous material storage facility	N	N	N	N	N	N	PB
<b>Recreational Uses</b>							
Commercial ski grounds, picnic grounds, bathing beach or miniature golf course	PB	N	PB	N	N	Y	N
Commercial golf course	Y	PB	Y	N	N	N	N
Commercial recreation camp, boat or canoe livery, marina, riding academy	PB	PB	PB	N	N	Y	PB
Bowling alley or billiard parlor	N	N	N	N	N	Y	N
Theater or movie house	N	N	N	N	N	Y	N
Indoor/outdoor racquet sports facility	N	N	N	N	N	N	Y
Physical fitness training facility	N	N	N	N	N	Y	Y
Indoor soccer facility	N	N	N	N	N	N	Y
Martial arts instruction facility	N	N	N	N	N	Y	Y
Dance studio	N	N	N	N	N	Y	Y
Retail operations on premises of recreational use set forth herein	N	N	PB	N	N	Y	N
<b>Other Uses</b>							
Open air display of goods or merchandise accessory to principal use	N	N	N	N	N	BOS	N
The keeping of nondomestic animals for personal enjoyment or household use, accessory to a residential use	Y	Y	Y	Y	N	N	N
The keeping of domestic animals and a garden primarily intended for use and enjoyment of a household	Y	Y	Y	Y	Y	Y	Y
<b>Exempt Uses</b>							
Use of land for the primary purpose of agriculture, horticulture, floriculture, viticulture on a parcel of more than five acres in area	Y	Y	Y	Y	Y	Y	Y
Facilities for the sale of produce, and wine and dairy products, provided that during the months of June, July August and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in	Y	Y	Y	Y	Y	Y	Y



Use	Zoning District						
	RR	TR	RCR	SR	UR	C	I
area on which the facility is located							
Child care facility located in an existing structure	Y	Y	Y	Y	Y	Y	Y
Child care facility located in a new structure	PB	PB	PB	PB	PB	PB	PB
Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y	Y	Y	Y	Y	Y	Y
Use of land or structures for religious purposes	Y	Y	Y	Y	Y	Y	Y

RR = Rural Residence; TR = Town Residence; RCR = Recreational Residence; SR = Suburban Residence; UR = Urban Residence; C = Commercial; I= Industrial  
Y = Permitted by right; N = Not permitted; PB = Permitted by special permit from the Planning Board; BOS = Permitted by special permit from the Board of Selectmen

**Dimensional Regulations**

Zoning District	Minimum Lot Area (sq. ft.)	Minimum Lot Frontage (ft.)	Minimum Front Yard (ft.)	Minimum Side Yard (ft.)	Minimum Rear Yard (ft.)
RR	80,000	200	50	30	75
TR	80,000	150	50	25	60
RCR	80,000	150	50	25	60
SR	40,000	150	30	15	45
UR	40,000	150	30	15	45
C	None	50	30	15	25
I	None	None	40	30	45

RR = Rural Residence; TR = Town Residence; RCR = Recreational Residence; SR = Suburban Residence; UR = Urban Residence; C = Commercial; I= Industrial

**Accessory Apartments**

Accessory apartments are allowed by special permit subject to the following criteria.

- Submission of a plot plan of the existing dwelling unit and proposed accessory apartment
- Owner occupation of one of the two dwelling units
- Limit of one accessory apartment per lot
- Accessory apartment may not exceed 800 sq. ft. in floor space
- Accessory apartment must be located in the principal residential structure
- At least one additional parking space must be provided

**Open Space Residential Development**

An Open Space Residential Development (OSRD) allows residential dwellings to be developed at greater densities as long as the residences are grouped in clusters and meet certain requirements. An OSRD may be located within a residential zoning district on a minimum area of ten acres. The parcel must not be located within a Water Resource Protection Overlay District, must contain at least 75% contiguous upland and must be served by town water. All land not devoted to residential lots must be set aside as common land and preserved in its natural condition. An OSRD is approved with a special permit from the Planning Board.

**OSRD Minimum Requirements**

Requirement	Served by Town Sewer	Not Served by Town Sewer
Minimum lot area	20,000 sq. ft.	30,000 sq. ft.
Minimum contiguous lot area exclusive of wetland, flood hazard and surface water areas	18,000 sq. ft.	25,000 sq. ft.
Minimum lot frontage	75 ft.	120 ft.
Minimum side yard	15 ft.	25 ft.
Minimum rear yard	25 ft.	25 ft.
Minimum front yard	25 ft.	25 ft.

**Planned Unit Development**

The Planning Board may allow a Planned Unit Development (PUD) by special permit on parcels of at least 120,000 sq. ft. The PUD may contain a mix of uses and a variety of building types as long as they are permitted by right or by special permit in the district.

**Multifamily Residential Development**

Multifamily Residential Development is allowed by special permit by the Planning Board in the Urban Residence and Commercial Districts. No more than four dwelling units per multifamily dwelling are permitted. Any multifamily development containing eight or more units may have no more than 20% of the total number of apartments contain three or more bedrooms. Developments must be served by the public water system or a private communal water system.

Requirement	
Minimum land area	10,000 sq. ft. per dwelling unit
Minimum distance between buildings	20 ft.
Minimum floor space area	480 sq. ft.

**Water Resource Protection Overlay District (WRPOD)**

The WRPOD consists of the Water Source Protection Zone (WSPZ), Well Protection Zone (WPZ) and Aquifer-Watershed Protection Zone (AWPZ). The WSPZ consists of a 400-foot radius around public wellhead/water sources and coincides with the Zone I area defined by state regulations. Uses other than as public water supply and accessory uses thereto are not permitted. The WPZ consists of the area adjacent to the WSPZ and coincides with the Zone II area as defined by state regulations. The AWPZ consists of the area that contributes to the groundwater recharge of the WSPZ and the WPZ and coincides with the Zone III area defined by state regulations.

Use	WSPZ	WPZ	AWPZ
Construction of single family residences served by and connected to Town sewer	N	Y	Y
Construction of single family residences served by subsurface disposal systems in compliance with Title V on lots containing at least 80,000 sq. ft.	N	Y	Y
Construction of multifamily residences served by and connected to Town sewer	N	Y	Y
Construction of multifamily residences services by subsurface disposal systems in compliance with Title V on lots containing at least 80,000 sq. ft.	N	SP	SP

### **Site Plan Review**

The Planning Board requires minor site plan review for construction or alteration of structures (other than single and two family dwellings and their accessory uses) that will have less than 3,000 sq. ft. of gross area.

The Planning Board requires major site plan approval for the following:

- Construction or alteration of structures (other than single and two family dwellings and their accessory uses) that will have more than 3,000 sq. ft. of gross area and for buildings containing drive-through windows.
- Construction or expansion of six or more parking spaces (other than single or two family dwellings)
- Removal of more than 10% of the vegetation on a lot