



Local Action Units (LAU) Guidelines

I. INTRODUCTION

What are Local Action Units?

Local Action Units (LAUs) are affordable housing units created as a result of an intentional action taken by a community, without a comprehensive permit, and which meet the requirements for inclusion on the Subsidized Housing Inventory (SHI).

Local Action Units are a component of the Local Initiative Program (LIP), established by DHCD in 1989 in response to a recommendation by the state legislature, with the goal of giving cities and towns more flexibility in their efforts to provide low and moderate income housing. For projects developed through LIP, the Commonwealth provides services and technical assistance as a subsidy for the creation, maintenance and preservation of affordable housing. Two types of housing are supported through the LIP Program: Local Initiative Projects, which are developed through a comprehensive permit process authorized by M.G.L. Chapter 40B, and Local Action Units (LAUs), which are created through municipal actions *other* than a comprehensive permit, but which meet LIP criteria and are eligible for inclusion on the State's Subsidized Housing Inventory (SHI).

What is a “Local Action”?

A Local Action is an action undertaken by a municipality through an approved political or administrative process intended to result in the creation, preservation or rehabilitation of affordable housing. Local Actions can include:

- The adoption of a zoning provision aimed at creating affordable housing, such as Inclusionary Zoning;
- The inclusion of a condition in a Special Permit that requires the creation of one or more affordable units;
- A negotiated agreement (i.e. MOA) between a developer and a municipality which occurs outside of a permitting process, and results in the creation of an affordable unit;
- The disposition of public land for the purposes of creating affordable housing;
- The allocation of municipal funds in support of the creation of affordable housing;
- In special cases, the use of HOME funds.

What are the Eligibility Requirements for LAUs?

While communities in Massachusetts have undertaken a variety of creative strategies to expand their supply of affordable housing, housing units will only be approved by DHCD as Local Action Units (and thereby be eligible for the SHI) if:

1. They have resulted from municipal action or approval (a Local Action as described above)
2. Except for the requirements related to receiving a comprehensive permit, they otherwise meet the design and construction requirements of the LIP program, including design and construction standards, income and asset limits, and limits on maximum rents and sales prices.
3. They meet ALL the requirement of the Subsidized Housing Inventory (SHI) as outlined in the most recent version of DHCD's Guidelines for G.L. C.40B Comprehensive Permit Projects (the "Guidelines") including:
 - Must be affordable for households earning less than 80% AMI
 - Occupancy restricted to Income Eligible Households
 - Subject to an Affirmative Fair Housing Marketing Plan (AFHMP) approved by DHCD
 - Subject to a long-term affordability restriction
 - Subject to ongoing monitoring

Purpose of this Document.

Local Action Units can represent a significant component of a municipality's affordable housing stock. To date, nearly 3500 LAUs have been created in approximately 130 cities and towns across the Commonwealth.¹ More recently, municipalities have identified creative new ways to use LAUs to proactively grow their supply of affordable housing. In order for LAUs to truly benefit a community, however, it is important to understand and assign responsibility for all of the steps involved with ensuring compliance from the time that LAUs are permitted, through occupancy, and through the entire term of affordability.

¹ This estimate does not include affordable units created by inclusionary housing requirements imposed by the cities of Boston (which has resulted in the creation of nearly 2000 units) and Cambridge (over 1000 units).

The goals of this document are 1) to describe methods that communities are using to create LAUs; 2) provide technical guidance on how communities can ensure that all LAUs are affordable and will be eligible for inclusion on the SHI, and 3) outline requirements and best practices for ongoing compliance monitoring.

II. HOW ARE LOCAL ACTION UNITS CREATED?

Communities have used a variety of mechanisms to create Local Action Units. This section will provide information and examples of a variety of “Local Actions” which communities have used to create Local Action Units including:

- Inclusionary Zoning (including mandatory, incentive-based, and Accessory Dwelling Unit By-Laws)
- Inclusionary Housing Policies
- As a Condition to a Special Permit
- Donation of Town-Owned Land
- Use of Municipal Funds, including Community Preservation and funds held by a Municipal Affordable Housing Trust
- Use of HOME funds (through a HOME Consortium or Local CDC for example)

This section will provide some details about each of these approaches. Whatever method is used to create LAUs, interested communities should contact DHCD staff in the LIP Program talk with them about potential LAU projects as early as possible.

Using Zoning to Create Local Action Units

Communities can support the creation of Local Action Units by amending their local zoning bylaw to incorporate what is broadly known as Inclusionary Zoning—provisions to encourage or require developers to include affordable units as part of a market rate development. Depending on the specific regulations established by a municipality, the affordable unit can be included within the development or built off-site; some by-laws also allow a “payment in lieu” in the form of a contribution to a designated Municipal Affordable Housing Trust. Nearly two thirds of all Massachusetts municipalities have some form of Inclusionary Zoning. That said, depending primarily on the local real estate market and the specific IZ requirements, while some communities have seen notable results, many IZ by-laws have not resulted in the creation of a single affordable unit.

- The Town of Watertown, MA adopted a town-wide inclusionary zoning by-law in 1989, which applies to all new development resulting in the creation of greater than 6 units. Due to an extraordinary rate of new development in Watertown over

the past decade, there have been more than 350 affordable units created to date, 242 of them since 2010. While the by-law as initially written required developer to include 10% affordable housing, this was increased to 12.5% in 2014. In 2015, in anticipation of two very large, mixed-use developments proposed for the Arsenal Street Corridor, the Town amended their Zoning By-law to require a 15% set-aside requirement in that particular district. Watertown's inclusionary zoning units are closely monitored by staff from the Community Development and Planning Department in coordination with DHCD.

- On the other side of the spectrum, the Town of Hadley, MA adopted a town-wide inclusionary zoning by-law in 2006, requiring that 15% of all developments larger than 6 units be affordable. In sharp contrast to Watertown, however, and due largely to a relatively slow rate of new development, only one affordable unit has been created to date. Additionally, the Town is currently questioning their capacity to handle monitoring and compliance obligations should additional units be created.

While some municipal zoning by-laws have an entire chapter or section clearly titled "Inclusionary Zoning," others use their Zoning By-Law to provide for the creation of affordable units in ways that may be less easy to identify through a quick scan of the Zoning By-law, but which would qualify as Inclusionary Zoning nonetheless.

- The Town of Bedford adopted an Industrial Mixed Use Overlay District in 2002, allowing for a mix of commercial, professional, light industrial and multi-family residential development, provided that 25% of permitted multi-family development be affordable to households below 80% AMI.
- Natick's Zoning by-Law includes a Housing Overlay Option Plan (HOOP I and II), encompassing portions of its downtown commercial core in which higher density residential development is permitted in exchange for the provision of affordable units.
- The Town of Hingham allows for a Flexible Residential Development as an alternative to a conventional subdivision. Developers of an FRD can benefit from a density bonus of 30%, provided that one third of the additional units are affordable. The FRD has been used twice to date, resulting in the addition of four affordable homeownership units to the Town's SHI.

Finally, while typically characteristic of larger cities like Boston, some municipalities also include affordable housing requirements not through zoning, but through their general code or ordinance.

- Chapter 9 of the General Ordinances for the Town of Barnstable (adopted 1999) outlines town-wide requirements for the provision of funds or a percentage of deed-restricted affordable units (depending on the nature and size of the development) that is applicable to both residential and non-residential development.

Zoning for LAUs-Before You Start

If an individual advocate or community group wishes to amend their zoning by-law to allow for the provision of affordable units, it is important to understand the process for doing so as set forth under the Massachusetts Zoning Act. A good place to start is to talk to a knowledgeable member of your municipal government, including the planning director, clerk, building commissioner, or a member of the planning board or zoning board of appeals. Because every municipality's zoning by-law is structured differently, this may be the most useful approach.

For groups or individuals aiming to use zoning to create LAU units it is important that you reach out to staff at DHCD's Local Initiative Program to discuss your approach. More important, make sure that LIP staff have reviewed the actual draft zoning article before it is submitted for consideration by the Town Meeting or City Council.



Tips for Drafting Amendments to Zoning Bylaws

When drafting an amendment to a Zoning By-law, keep the language as simple as possible, and reference existing regulations to the fullest extent possible. If the goal is to create Local Action Units that will be eligible for inclusion on the SHI, a simple statement that specifically references DHCD regulations relative to the SHI, and notes that the units created must comply with these regulations is sufficient. This is, in part, for the purpose of keeping the by-law language direct and uncomplicated. More importantly, this will ensure that, should the regulations change, the by-law will still be directing the creation of eligible units.

Guidance on how to amend a zoning by-law can be found in the attached annotated overview of the Zoning Act prepared by DHCD (see Section 5). <https://www.mass.gov/files/documents/2016/07/wr/zoningact.pdf>

An excellent overview of the process to amend a zoning by-law can also be found in the latest edition of Handbook of Massachusetts Land Use and Planning Law (Published by Wolters Kluwer) by Mark Bobrowski

Creating Local Action Units as a Condition of a Special Permit

Communities can, in certain instances, negotiate with a developer on a case-by case basis to create Local Action Units as a condition of a Special Permit. The Massachusetts Zoning Act (M.G.L. Chapter 40A, Section 9) provides for the use of special permits to grant incentives for the creation “housing for persons of low or moderate income.” In these cases, the “Local Action” is found in the one-time decision by a local board to issue a Special Permit, subject to a specific condition requiring that they create one or more affordable units.

- Planning Staff in Salem reported in 2018 that while they do not have an Inclusionary Zoning By-Law, the City’s Planning Board has, in response to a surge in mixed-use and multi-family development proposals in Salem’s historic downtown, had success consistently negotiating a ten percent affordability requirement for new residential projects.

Donation of Public Land

The LIP Guidelines specify that “provision of land or buildings that are owned by the city or town and are conveyed at a substantial discount from their fair market value” is recognized by DHCD as a valid form of local action. **Municipalities should be fully aware of the requirements and restrictions associated with the disposition of public property and it is highly recommended that an attorney review any Request for Proposals (RFP) for compliance with all applicable regulations, including Chapter 30B.**

- In 2014, The Town of Provincetown issued an RFP to dispose of the 9,000 square foot Grace Gouveia building, which formerly housed the Town’s Council on Aging and some municipal offices. The winning proposal resulted in the conversion of the building into 9 condominiums, three of which are Local Action Units. In 2016, when the Project was complete, the affordable units were sold to the Housing Authority, who now provide ongoing management.

Municipal Funds

The LIP Guidelines also identify the use of “Substantial financial assistance from funds raised, appropriated or administered by the city or town” as an eligible local action. This can include funds collected through the Community Preservation Act, funds held by a Municipal Affordable Housing Trust, or other municipal funding sources. Municipal funds

can be used to support both the creation of new affordable units, as well as “buy-down” programs targeting existing homes and their restriction as affordable units.

- The City of Gloucester provided funds from both their CPA and Municipal Affordable Housing Trust Fund to support a private developer’s efforts to purchase land previously owned by the Gloucester Housing Authority for the development of three affordable condominiums. All three units are listed on the SHI.
- The Town of Marshfield’s Housing Opportunity Purchase Program (MHOPP) provides down payment assistance to income eligible, first-time homebuyers to purchase single family homes or condominiums in exchange for the placement of a long-term affordability restriction on the home. To date, the Town has been able to add 27 existing homes to the SHI through the Local Action program using this method.



Marshfield Harbor

HOUSING TOOLBOX

for Massachusetts Communities 

Municipal Affordable Housing Trusts

The establishment of a Municipal Affordable Housing Trust (MAHT) allows municipalities to collect funds for affordable housing, segregate them out of the general municipal budget into a trust fund, and use the funds for local initiatives to create and preserve affordable housing. The use of Trust Funds qualifies as a Local Action for the purposes of establishing Local Action Units, so housing created or preserved using MAHT funds can, if they meet all other criteria, be approved as LAUs and included on the SHI.

MHP provides extensive support for communities wishing to create MAHT’s, as well as for the actions of Trusts already in existence. For more information see the section on Housing Trusts in the Housing Toolbox or contact MHP’s Community Assistance Team directly.

Use of Federal HOME Funds

Affordable units built using funds from HOME program funds not administered by DHCD (for example, HOME funds administered by a regional HOME Consortium or Community Development Corporation) are also eligible for inclusion on the SHI as Local Action Units. In many cases, units supported with HOME funds are also supported with CPA funds or other sources that would also count as a “Local Action,” though the use of certain HOME funds alone would also qualify. It is important to talk to DHCD early in the process as some of the supporting documentation required for the LAU application is different.

- Citizens for Affordable Housing Development in Newton Organization (CAN-DO) used a combination of HOME and CPA funds to purchase an existing, market-rate, two-family home, and renovate it to include two affordable rental units. The project received approval from DHCD as a LAU in 2012, and was completed in 2016.
- North Shore Habitat for Humanity worked with the City of Peabody and the North Shore HOME Consortium to purchase an existing historic building and associated land to develop six units of housing units, five of which are included on the SHI as Local Action Units. The project was completed in 2013.



Park Street, Peabody

Accessory Dwelling Units (ADUs)

Accessory Dwelling Units (created either through a zoning permit or pre-existing non-conforming accessory units) can be eligible for inclusion on the Subsidized Housing Inventory as LAUs. In order to have accessory units added to the SHI they must receive Local Action Approval and meet the same basic requirements as other units qualifying for LAU approval. This means

1. They have resulted from municipal action or approval (a Local Action as described above);
2. They meet the requirement of the Subsidized Housing Inventory;
3. Except for the requirements related to receiving a comprehensive permit, they otherwise meet the design and construction requirements of the LIP program.

DHCD staff report that while there are many municipalities that permit accessory units, very few have pursued this option, in part because property owners have generally concluded that the effort required to move through the LAU process outweigh the potential benefits.

The application must be signed by the chief executive officer of the municipality and must include a full Affirmative Fair Housing Marketing Plan (AFHMP). It also requires that a Local Project Administrator (LPA) approved by both the Municipality and DHCD be appointed who will be responsible for long-term monitoring of the unit. There is no application fee.

Despite the challenges associated with getting ADUs on the SHI, a few Towns have had success:

- The Town of Yarmouth has a provision in their zoning by-law that allows for two types of accessory apartments in selected districts: “family” accessory apartments, which have no affordability requirements, and “affordable” accessory apartments, which could be eligible for inclusion on the SHI as LAUs. According to Town staff, since the by-law was adopted, many more family accessory units have been created than affordable units. For the affordable units, the Town certifies the initial eligibility of the tenant and provides annual compliance monitoring for an annual fee of \$250-\$500 depending on the size of the units. That said, of the affordable units created, the Town has only had success getting one listed on the SHI due to the extensive requirements for marketing, lottery, and ongoing compliance monitoring.

- The Town of Lincoln recently (2017) adopted an ADU provision to their zoning by-law which allows for the creation of Accessory Dwelling Units with a Special Permit from the ZBA. In response to hurdles associated with fair housing marketing and ongoing compliance, the Town has committed to creating and manage a “ready-renter” list and assist with ongoing compliance. The Town further incentivizes the creation of ADUs through the potential for tax abatements, though approval from the state legislature is still pending. Additionally, interest free cash loans of up to \$25,000 will be available that can be forgiven if the units remains affordable for ten years or more.

Tips for Drafting Local Approval Documents for LAUs

Whatever the mechanism used to provide for the creation of Local Action Units (zoning, special permit, disposition of land, etc.) it is important that the language used in the specific local approval document is clear, and complies with all DHCD and Federal Fair Housing Requirements.

In drafting a Special Permit that includes a condition to require one or more affordable units, it is advisable to be as clear as possible about the terms of affordability, but to reference existing laws and regulations to the fullest extent possible. Any Special Permit condition or Memorandum of Agreement requiring the provision of affordable units should include the following:

1. Number of affordable units
2. Description of affordable unit mix
3. Clear statement of the term of affordability (30 years or perpetuity)
4. Clear reference to a plan showing the location of the affordable units
5. A clear reference to the local action taken that resulted in the creation of the affordable unit. For example, in the case of a unit created as a result of an Inclusionary Zoning By-law, the Special Permit should include a reference to the specific section of the zoning by-law.
6. Most importantly, the document should include a clear directive that the unit should meet all requirements to be approved as a Local Action Unit by DHCD, and be eligible for inclusion on the Subsidized Housing Inventory (SHI).

It is very important to note that any municipal approval document requiring the creation of affordable housing must not be in conflict with state or federal Fair Housing requirements. For example, if a Local Preference is specified, a durational requirement (specifying how many years a person has lived in a community) is not permitted. Staff at DHCD’s LIP Program encourage

communities to provide them with draft documents as early in the approval process as possible.

Once the Permit or MOU approving the creation of one or more LAU is complete:

- Make sure all documents are properly recorded at the Registry of Deeds;
- Notify Building Officials of Relevant Pre-Conditions;
- Notify Office of Assessors that these will be Affordable Units.

III. ONGOING COMPLIANCE FOR LOCAL ACTION UNITS—THE MUNICIPALITY’S ROLE

After a municipality has implemented an eligible Local Action and all local permitting for one or more affordable units has been finalized, the hard work of getting the LAUs on the SHI and keeping them there begins. While the developer will be involved in the initial steps, it is ultimately the municipality’s responsibility to guide the process along. Municipal duties include:

- Apply to DHCD for approval of LAU application;
- Review Affirmative Fair Housing Marketing Plan (final approval comes from DHCD);
- Monitor initial occupancy process for compliance with AFHMP;
- Submit Requesting New Units Form (RUNF) to DHCD to get LAUs on the SHI;
- Conduct annual compliance monitoring, report to DHCD;
- For homeownership units, manage resales, refinancing, etc.
- For rental projects, ensure that AFHMP is up-to date, monitor income and rent limits for current and prospective tenants;
- On-going trouble-shooting.

Given the complexity of the entire process, it is often not feasible for the same staff, board and committee members who spearheaded the local action resulting in the creation of the LAUs to serve in an ongoing monitoring role. For this reason, it is important for those promoting the creation of LAUs to identify who will ultimately be

responsible for ongoing compliance. Municipal strategies for taking on these roles will be discussed at the end of this document.

Applying for LAU Approval

Whether the Local Action is Inclusionary Zoning, a one-time negotiation, or through the donation of public land or funds, the municipality is still required to apply for and get approval from DHCD's LIP Program to ensure that the units will be eligible as Local Action Units. It is very important to note that even after DHCD approves the LAU application for the project in which the affordable unit is located,

The LAU application process, which is spelled out in detail in DHCD's LIP 40B Guidelines, entails the completion of an application form, along with numerous attachments. There is no fee required. The application form can be found on the DHCD website, is attached in the link below.

<https://www.mass.gov/files/documents/2017/10/16/localactionunitapp.doc>

Attachments required for a complete application include the following:

1. Evidence of Municipal Action

Documentation of the municipal action that resulted in the creation of the unit (copy of the Special Permit, Town Meeting vote authorizing disposition of land, relevant section of the zoning by-law. etc.);

2. Long-Term Use Restriction (Draft)

DHCD has model Regulatory Agreements (which serve as the long-term use restriction) for ownership and rental projects. The regulatory agreement is effectively a contract, in which the specific roles and responsibilities of the developer, DHCD, the municipality, and the unit occupant are written down. DHCD's model agreement **must** be used for all LAU units unless there are exceptional circumstances. Draft regulatory agreements should be requested from LIP staff prior to submission of the LAU application. In requesting the application, specify the type of housing (rental/homeownership), and provide details about the project so that DHCD will provide you with the correct form. Draft documents should be redlined by the Municipality to show project-specific information, and submitted with the rest of the LAU application.

3. Documents verifying the developer's legal existence and authority to sign the Regulatory Agreement, including

- Certificates of Organization/Registration and Good Standing from the office of the Secretary of State
 - Mortgagee consents to the Regulatory Agreement
 - Trustee certificates or authorization for signers to execute all documents
4. For Condominium Projects: The master deed showing schedule of undivided interest in common areas
5. For Rental Projects Only: copy of the Local Housing Authority's current utility allowances;
6. Massachusetts Environmental Policy Act (MEPA) Environmental Notification Form completed by the Applicant;
7. Affirmative Fair Housing and Marketing Plan (DRAFT)
- Advertisements and Flyers with appropriate HUD logos
 - Informational material for applicants
 - Application Form
 - Non-discrimination statement
 - Language addressing limited English proficiency (LEP)
 - Eligibility requirements
 - Rents/Sales Price/Condo and Utility Fees
 - Lottery application and financial forms
 - Lottery and resident selection plan
 - Request for local preference

Getting Individual LAUs on the Subsidized Housing Inventory (SHI)

A Local Action Unit can go on the Subsidized Housing Inventory on the earliest of the following dates:

- The zoning permit or approval is filed with the municipal clerk

Affirmative Fair Housing Marketing and Resident Selection

In order to be eligible for inclusion on the SHI, ALL LAUs must be subject to the requirements set forth in Section III of DHCD's 40B Guidelines relative to Affirmative Fair Housing and Resident Selection. The developer, or project owners, is responsible for ensuring compliance with "the full spectrum of activities that culminate with occupancy," including outreach, marketing, and determining the qualifications of potential residents. The Affirmative Fair Housing Marketing Plan (AFHMP) is a document that maps out this entire process, not just for the initial occupancy, but for as long as the unit or units in a project remain affordable remains affordable.

DHCD also requires that the person or entity charged with resident selection have specific qualifications and experience. Unless the developer is already qualified to conduct AFHMP activities it is typically necessary to hire a professional third party who has the necessary experience, and has been approved by DHCD to do so.

- On the date when the last appeal by the Board is fully resolved
- When the building permit for the unit is issued.
- For units restricted through funds from a buy-down program, the unit will be eligible at the time of purchase or occupancy by an eligible household.

If more than 12 months elapse between the zoning approval and the issuance of the building permits, the units will become ineligible for the SHI until the date that the certificate of occupancy is issued. Similarly, if more than 18 months elapses between the issuance of the building permit and issuance of the certificate of occupancy, the units will become ineligible for the SHI until the date that the certificate of occupancy is issued.

The Municipality submits units to DHCD's Office of the General Counsel using a form titled "Requesting New Units Form" (RNUF). This is the same form that is used for all SHI-eligible units, whether they are created through a comprehensive permit, special permit, buy-down program, etc. The Requesting New Units Form (RNUF), like the initial LAU application, requires a certain amount of documentation aimed at showing that they are, in fact, eligible for inclusion on the Subsidized Housing Inventory. This includes evidence of

1. The Local Action under which the housing was authorized
2. Evidence of DHCD approval of the LAU Application
3. A copy of the recorded use restriction (regulatory agreement).
4. Evidence that the units are subject to an AFHMP that was approved by DHCD
5. A copy of the zoning permit, building permit or occupancy permit.

All accompanying documentation, get submitted to:

DHCD Office of the General Counsel
Attn: Subsidized Housing Inventory
100 Cambridge Street, Suite 300
Boston, MA 02114

A Note on Timing

If Municipality chooses to put the LAU unit on the SHI after it is occupied, it is important to ensure that initial marketing and occupancy occurred in compliance with the AFHMP. Please see the following section on "Initial Occupancy."

MONITORING

Once an LAU has been included on the SHI, the municipality, in coordination with DHCD, plays an important role ensuring that the unit remains in compliance with DHCD regulations. Before an LAU is created therefore, communities should be up to speed on exactly what is required to keep an LAU on the SHI, and who will be responsible for ongoing compliance and monitoring.

Read the Regulatory Agreement!

General guidance for ongoing monitoring for LAUs is available in the 40B Guidelines. Project or unit-specific information, however, can be found in the regulatory agreement for that specific unit or project—a form of contract signed by the Developer, DHCD and the Chief Executive Officer of the Municipality at the time that the project is approved, and recorded at the Registry of Deeds. The Regulatory Agreement includes answers to many of the most frequently asked questions, including the identity of the developer, term of affordability, monitoring and compliance requirements, etc. For ownership LAUs, individual units are also subject to an Affordable Housing Deed Rider signed by the owner, DHCD and the municipality, which maps out the requirements for resales, capital improvements.

The Municipality should make sure they whoever is charged with monitoring LAUs have access to and be familiar with all relevant documents including the local permit, Regulatory Agreement, and Deed Rider (if applicable).

Initial Occupancy

Section III of the 40B Guidelines, addressing the steps involved with the initial marketing and occupancy of SHI-eligible units, states that

“The developer is responsible for resident selection, including but limited to drafting the resident selection plan, marketing, administering the initial lottery process, and determining the qualification of buyers and/or tenants. The developer is responsible for paying all of the costs of affirmative fair housing marketing and administering the lottery....”

Yet while the developer is ultimately responsible for initial occupancy, it is highly recommended that the Municipality or their consultant carefully monitor the process in order to ensure full compliance. This includes:

- Reviewing local zoning decisions and permits
- Reviewing the AFHMP
- Witnessing the lottery

- Confirming household eligibility
- Maintaining copies of recorded documents, etc.

Annual Reporting

After the LAU is initially occupied, DHCD requires annual reporting from the developer or property manager (for rental projects) or the municipality (for homeownership units) affirming that the unit remains in compliance with DHCD regulations and the terms of the Regulatory Agreement.

Rental Units

Specifically, for rental units, annual reporting submitted to the Municipality and DHCD must include

- 1) A proposed schedule of monthly rents and utility allowances;
- 2) A signed certification that all occupants of affordable units continue to meet income limits;
- 3) Confirmation that the project or unit has been maintained in the conditions required by the LIP program and the terms of the regulatory agreement.

It is very important that the individual who reviews the schedule of monthly rents and utility allowances for the municipality be familiar with the eligibility standards for the SHI as set forth in Section II of the 40B Guidelines.

Homeownership Units

For homeownership units, annual reporting to DHCD is a bit less complicated, in that the purchaser is not required to remain income eligible for any period of time after they occupy the unit. That said, it is a good idea to stay in regular communication with the owners of LAU units. DHCD requires monitors to obtain of an annual certification from each LAU owner stating that

- 1) The low and moderate income units continues to be occupied by person or persons who purchased the house;
- 2) That any affordable units that have been resold were done so in accordance with the requirements set forth in the Deed Rider; and
- 3) That the unit has been maintained in a condition that complies with the requirements of the LIP Program.

It should be noted that for LIP 40B and LAU homeownership units, DHCD is actively involved with the resale process, though they may contract with a third-party resale agent.

Municipal Strategies for Keeping Track of Local Action Units

As the subsidizing agency for all LAU units, DHCD is the final authority in terms of compliance. As noted earlier, however, DHCD relies heavily on the municipality to take the lead on monitoring both initial occupancy and ongoing, annual compliance. While a requirement for annual monitoring may seem simple, ensuring that the project or units remain in compliance with the terms of the regulatory agreement and applicable Fair Housing regulations can be complex. Situations and questions that may come up could include one or more of the following:

The owner of a LAU plans to sell the home;

The owner of a building including rental Local Action Units decides to sell the building;

The annual rental recertification process reveals that a LAU tenant is significantly over-income;

A neighbor complains to the municipality that an LAU homeownership unit is being rented as an Air B and B;

A community group reports that the owner of LAU rental units refuses to rent a unit to a transgender individual.

Ideally, a community will have designated a specific person or entity who will be in charge of ongoing monitoring and compliance before an LAU is created. Given the wide range of Massachusetts municipalities in terms of size and professional capacity, cities and towns have taken different approaches to keeping track of LAU units, including the use of in-house staff, reliance on a consultant, or participation in a regional housing consortium. What is most important is that whoever is performing monitoring duties has the qualifications and experience needed to do the job.

- *In-House Staff* Many municipalities (Watertown, Bourne, Needham, and Yarmouth, among others) use dedicated in-house staff to perform ongoing monitoring. Typically part of the Planning or Community Development departments, duties include reviewing and approving the AFHMP, attending and

witnessing lotteries, reviewing the eligibility of initial occupants, and ongoing affordability monitoring for all units included on the SHI.

- *Regional Housing Services Offices* With the support of the Metropolitan Area Planning Commission (MAPC), the Towns of Acton, Bedford, Burlington, Concord, Lexington, Sudbury, Wayland and Weston have entered into an inter-municipal agreement establishing a Regional Housing Services Office (RHSO). Under this model, member Towns receive administrative housing services for an annual. Services include reviewing AFHMPs, compliance monitoring, inventory management, and program administration. Two other RHSOs have also been established in Metro North (Reading, North Reading, Wilmington and Saugus) and MAGIC (Bolton, Boxborough, Hudson, Littleton, and Stow)
- *Private Consultants* Some municipalities contract with use private consultants to perform ongoing monitoring and other housing-related duties. Critical to a consulting relationship is the development of a specific scope of duties that outlines timelines and deliverables. The hiring process must also comply with regulations addressing public procurement, as outlined in the Uniform Procurement Act (M.G.L. Chapter 30B).