

LANCASTER AFFORDABLE HOUSING TRUST

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DEFINITIONS & FREQUENTLY ASKED QUESTIONS (FAQs) – AUGUST 4, 2023

Affordable Housing

Deed-restricted rental and ownership units for households that meet specific income eligibility requirements, typically those that earn below 80% of Area Median Income. Housing is generally considered affordable if the household pays less than 30 percent of its monthly income to secure it. The annual income limit by household size is calculated by the US Department of Housing and Urban Development and posted on-line. See “Area Median Income” below for more details.

Affordable Housing Restriction

From Regional Housing Services Office: “There are many forms of restrictions and often the restriction is attached to the property deed and referred to as a Deed Restriction. Restrictions define the income levels of the resident, the rent/sale price methodology to remain restricted, the term of the restriction, the Monitoring Agent and other important legal aspects. The restriction must have language that it [is] an affordable housing restriction as that term is defined in M.G.L. c. 184, § 31 and as that term is used in M.G.L. c.184, § 26, 31, 32 and 33.”

Area Median Income (AMI)

The calculation of the mid-point of all local residents’ annual income in an identified group of communities. It is used to as a benchmark in determining both the affordability of units and the eligibility of households, and most often at the 80%, 50% and 30% levels. AMI is calculated annually by the U.S. Department of Housing and Urban Development (HUD) and listed by Metropolitan Statistical Area (MSA). Lancaster is in the Eastern Worcester County MSA.

Chapter 40B

From DHCD: “Chapter 40B is a state statute, which enables local Zoning Boards of Appeals to approve affordable housing developments under flexible rules if at least 20-25% of the units have long-term affordability restrictions.” Chapter 40B is project specific (not zoning) and includes waivers from local zoning and environmental bylaws for affordable housing production.

Chapter 40R

From DHCD: “Chapter 40R of the Massachusetts General Laws encourages cities and towns to establish new overlay zoning districts to promote housing production and, more generally, smart growth development. Chapters 40R and 40S both provide financial incentives to communities to adopt these new zoning districts.” This zoning is also called a Smart Growth Overlay District.

Community Preservation Act (CPA)

A funding source for locally driven affordable housing. From MassGIS, “the CPA allows communities to create a local Community Preservation Fund to raise money through a surcharge of up to 3% of the real estate tax levy on real property for open space protection, historic

preservation and the provision of affordable housing.” The act also creates a significant state matching fund, which serves as an incentive to communities to pass the CPA. Lancaster residents approved and then ratified the CPA in 2020 at a 1% surcharge. CPA funds are overseen locally by the Community Preservation Committee and disbursement requires town meeting approval.

Fair Housing Law

From MA Attorney General: “State and federal law prohibit discrimination in the sale and rental of housing by property owners, landlords, property managers, mortgage lenders, and real estate agents. These fair housing laws make it unlawful to discriminate based on: race, color, national origin, gender, gender identity, sexual orientation, disability, ancestry, genetic information, marital status, veteran or active military status, age, familial status (i.e., children), and source of income (i.e., Section 8 voucher).” State and federal fair housing law applies to affordable housing production.

Housing Production Plan (HPP)

From DHCD: “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.”

A local HPP must include required sections that describe the demographics of the local community, its existing housing supply, as well as forecasting its overall affordable housing needs. It also includes a potential project pipeline at the time it is written. A HPP is a community snapshot with a road map, not a binding contract. Potential project locations included in the pipeline may or may not materialize for various reasons, and new sites may emerge. The point is for communities to define their demographics, existing housing supply and needs, and to think ahead to help shape public and private affordable housing production based on demographic analysis.

The HPP regulation is contained in 760 CMR 56.03(4).

Inclusionary Zoning

A local bylaw requirement in a growing number of municipalities that requires new construction and major rehabilitation projects to include defined numbers of affordable units. Some Inclusionary Zoning bylaws allow for a Payment-In-Lieu instead of providing units. In Lancaster, a Payment-in-Lieu is currently allowed for ownership units as calculated in the bylaw. The Payment-in-Lieu is paid to the Affordable Housing Trust by statute and must be used for local affordable housing production.

Lancaster residents approved the Inclusionary Zoning bylaw at Annual Town Meeting in 2021. It is included in Chapter 220 (Zoning) as Section 220-8.8.

Local Action Unit (LAU)

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 when approved by DHCD, meet the requirements for inclusion on the Subsidized Housing Inventory (SHI).

MA Department of Housing and Community Development (DHCD)

A state-wide agency charged with oversight of “funding and resources to help people in Massachusetts live affordably and safely.” DHCD is part of the Executive Office of Housing and Economic Development reporting to the Governor.

Monitoring Agent

A certified entity responsible for ensuring a property remains in compliance with its affordable deed restrictions, including Affirmative Fair Housing Marketing Plans and lottery selection. Examples of assigned monitoring agents include CHAPA, DHCD, MetroWest Collaborative Development, and others.

Safe Harbor

Safe Harbor is the term used by DHCD to denote the local affordable housing inventory is compliant with M.G.L. Chapter 40B. This means the ratio of eligible, deed-restricted affordable units is greater than 10% of the community’s year-round housing units. DHCD issues a formal letter of record to the city or town indicating Safe Harbor compliance.

Subsidized Housing Inventory (SHI)

As defined by the MA Department of Housing and Community Development (DHCD), SHI is the official measure of a community's stock of low- and moderate-income housing for the purposes of M.G.L. Chapter 40B, the Comprehensive Permit Law. While housing developed under Chapter 40B is eligible for inclusion on the inventory, many other types of housing also qualify to count toward a community's affordable housing stock.

FAQs ABOUT AFFORDABLE HOUSING AND SHI

How are new affordable units added to SHI?

It depends. If the units are **Local Action Units** (“LAUs”), they are added to the SHI when DHCD receives and approves an application jointly signed and submitted by the Chairs of the Affordable Housing Trust and Select Board. Examples of LAUs include two units as part of the Special Permit issued for Harbor Classic Homes (Route 70/Lunenburg Road), a local Habitat for Humanity project (Carter Street), and units built under Lancaster’s new Inclusionary Zoning bylaw (including a re-development on Main Street). If the units are part of a **Chapter 40B** development, they are added to the SHI when DHCD receives and approves a copy of the Comprehensive Permit issued by the Zoning Board of Appeals.¹ Examples of 40B units include the SHI units at Blue Heron Pond and Lancaster Woods.

¹ From Chief Counsel, DHCD, April 25, 2022 “Pursuant to DHCD regulations at 760 CMR 56.03(2)(c), if more than one year elapses between the date of issuance of the Comprehensive Permit (or zoning approval under M.G.L. c.40A or completion of plan review under M.G.L. c.40R), and issuance of the building permit(s), units are no longer eligible to be counted on the SHI until such time as the building permits are issued. Furthermore, said regulations state that if more than 18 months elapse between issuance of the building permits 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. DHCD has generally removed units from the SHI (providing a unit listing of ‘0’) based on such time lapses.”

Can affordable units be removed from SHI?

Short answer: in the past, yes. Going forward, no.

Explanation: DHCD's affordability deed-rider used until recently contained a loophole that allowed affordable units to be transacted at market rate to non-income eligible households if an income-eligible party was not identified within a specified timeframe. This loophole was recently closed. Under DHCD's revised deed-rider, affordable units may be transacted with non-income eligible households, but only at the income-eligible sales price or rental rate, as applicable. As properties are sold and leased going forward, they are subject to the new deed-rider terms.

Additionally, almost all of Lancaster's SHI is listed in perpetuity, meaning there is no expiration date. There is one exception: Shaker Village is a 40B project on Meditation Lane that was approved with an expiration date, meaning its affordability will expire in 2033. The project originally contained 5 affordable units, however one unit lost affordability due to foreclosure in 2010. The remaining four will lose affordability in 2033.

What is a Housing Production Plan?

The term Housing Production Plan (HPP) can be found under "Definitions" above.

How long is an Approved HPP valid?

From DHCD: "A Housing Production Plan 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."

What is the difference between Approval and Certification of a HPP?

From DHCD: "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 regulation and accompanying Guidelines. 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 approval."

Does Lancaster have a HPP? Is it approved and/or certified?

Lancaster has a valid HPP which was approved by DHCD on March 11, 2019. The HPP is valid until March 10, 2024. Lancaster's HPP may receive a one year certification if the community has produced 0.5% of year-round housing units or two years if it has produced 1.0%.

Who lives in affordable housing?

Short answer: people we see every day in Lancaster and other American towns – including our neighbors, municipal employees, professional service providers, relatives, and friends all live in affordable housing.

Explanation: Eligible individuals and families are approved under fair housing laws by a certified monitoring agent after meeting application requirements, including tax return verification. Most often, the Applicant(s) will be placed on multiple waitlists due to the severe lack of affordable units in Massachusetts.

Eligible households include all ages, professions, and backgrounds: single individuals, children and families, young people and seniors, municipal workers in schools, libraries, and town offices; local professional employees, and more.

Affordable housing units are frequently mixed with market-rate housing and are often required to be indistinguishable on the exterior and interior. Units may be ownership or rentals and can be single-family homes, duplexes and triplexes, and multi-family apartments. Property settings may be exclusively residential or mixed-use. In other words, it is often unknown to the public that a unit is affordable and that the resident is income eligible.