

GUIDELINES

Updated December 2014

G.L. C.40B COMPREHENSIVE PERMIT PROJECTS

SUBSIDIZED HOUSING INVENTORY

Regulatory Authority: see 760 CMR 56.00



VI. Local Initiative Program (LIP)

A. Introduction

The Local Initiative Program (LIP) is a state housing program that was established to give cities and towns more flexibility in their efforts to provide low and moderate-income housing. It is administered by the Department of Housing and Community Development (DHCD or "the Department"). These guidelines provide a basis for the operation of the LIP and guidance to local public officials, housing developers, and other interested parties.

M.G.L. Chapter 40B, sections 20-23 (also known as Chapter 774 of the Acts of 1969 or as the Comprehensive Permit Law) created a process for granting "comprehensive permits" for the construction of subsidized low or moderate income housing. These permits streamline the development process by consolidating local permitting. They may supersede various local requirements and regulations, including zoning, and are granted on a case-by-case basis by local zoning boards of appeal following a public hearing. In cities and towns where less than ten percent of the housing units is low or moderate income housing, the denial of a comprehensive permit application or the imposition of conditions that render a proposed development uneconomic may generally be appealed to the state Housing Appeals Committee.

In April 1989, the Report of the Special [Legislative] Commission Relative to the Implementation of Low or Moderate Income Housing Provisions recommended that additional housing subsidy programs be implemented, including programs providing for subsidies through program services and technical assistance. Pursuant to this recommendation and the Department's mandate as the Commonwealth's principal agency "to provide ...open housing opportunity" and "to fund and advance the programs of open and adequate housing for all citizens of the Commonwealth..." (M.G.L. c. 23B §3), the Department established the LIP in which the Commonwealth works with municipalities and developers to create Low or Moderate Income Housing. The Commonwealth provides services and technical assistance as a subsidy for creation, maintenance and preservation of this Low and Moderate Income Housing. The program provides a Subsidy through extensive technical assistance and other services in the development, operation, and management of housing supported by local government that will serve households below 80 percent of the area median income. Any project that expects to seek financing from DHCD or another Subsidizing Agency, **must apply to the funding program for a Determination of Project Eligibility** and not to LIP.

Two types of housing are supported by the program: Local Initiative Projects, which are developed through the *comprehensive permit process* authorized by M.G.L. Chapter 40B, and Local Action Units, *which are developed through a city or town's zoning or permit issuance process*. All low- and moderate-income units developed through LIP and meeting all regulatory requirements are eligible for inclusion on the Subsidized Housing Inventory (SHI).

1. Sustainable Development Principles

The Commonwealth has established ten Sustainable Development Principles. Each Comprehensive Permit Project application shall be evaluated for consistency with these principles. The Department also encourages Developers to incorporate "green building" elements into its Project. See the *Commonwealth's Sustainable Development Principles*, at <http://www.mass.gov/hed/community/planning/smart-growth.html>.

If DHCD determines that a proposed project does not adequately address sustainable principles, the developer and community will be notified and they may submit necessary revisions or withdraw the application.

2. Consistency with Local Housing Needs

The purpose of low- or moderate-income housing development programs is the creation of housing. There is a critical need in the Commonwealth for all types of housing, particularly family and special needs housing for low- and moderate-income households. LIP encourages the development of such housing. LIP approval may be granted for age-restricted housing upon a showing of actual need and marketability within the municipality. At the discretion of DHCD, such approval may be withheld (i) if other age-restricted housing units in the community, which have been issued a Determination of Project Eligibility or which have been otherwise approved by the community remain unbuilt or unsold, or (ii) if the proposed age-restricted units, in context with the municipality's other recent housing efforts, are unresponsive to needs for family housing.

B. Comprehensive Permit Projects

1. Description

Comprehensive Permit Projects must meet the requirements set out in G.L. c. 40B and in the regulations at 760 CMR 56.00. In addition, the Project must have the written support of the Chief Executive Officer. The Department also encourages Developers and municipalities to consult with the local housing partnership, if any, and provide evidence of the partnership's support.

2. Application Fee

Fees will be charged for Comprehensive Permit Projects to cover part of the administrative costs incurred by DHCD, as set forth in the application. These fees will be reduced for non-profit developers and for housing developed by public agencies and municipalities. Checks must be made payable to the Department of Housing and Community Development.

DHCD reserves the right to reject LIP applications from those applicants who have failed to meet material conditions of a Regulatory Agreement for a prior project related to any Project for which DHCD is the Subsidizing Agency, or have made material misrepresentations to DHCD in prior project eligibility applications.

In addition, LIP applicants must be current with respect to obligations for all other state housing programs. DHCD has agreed to promptly notify the other 40B Subsidizing Agencies if any development entity for which DHCD has made a determination of Project Eligibility is not, after reasonable notice and an opportunity to cure, in compliance with its Chapter 40B regulatory agreement or other Chapter 40B reporting or other obligations under the applicable housing subsidy program.

Such development entities and any affiliates of such development entities (including, without limitation, entities with a common principal) shall be suspended from further participation in the Chapter 40B approval process of all of the Subsidizing Agencies.

3. Application Process

a. Application Content

An application for approval of a Comprehensive Permit Project must be submitted on a DHCD form. LIP applications are available on the agency website at www.mass.gov/dhcd; type in "LIP comprehensive permit application" in the search field. Applications shall include the materials required by 760 CMR 56.04 as well as:

- (1) A letter of support signed by the Chief Executive Officer of the municipality. DHCD expects local public officials to act in good faith and expects local support for housing proposed under the LIP not to be unreasonably withheld. The purpose of LIP is premised on the fact that a municipality and a developer are working in concert on a project that meets the community's needs. If a project changes substantially during the course of the permitting process, such that it is no longer consistent with that which was approved by the chief executive officer and DHCD, DHCD reserves the right to request a letter from the chief executive officer stating that the project remains locally supported as a condition of final approval.
- (2) A signed letter of interest from a construction lender.
- (3) A site plan showing the contours of the site and the footprint of all proposed buildings, roads, parking and other improvements.
- (4) Front and rear elevations for each building and sample floor plans for each unit type.
- (5) A description of the proposed units by size, type, number of bedrooms, location within the project, and proposed rents or sales prices.
- (6) A financial pro forma based on a per square foot price. Rental developments should use the State's OneStop Application (Sections 3 and 4). Links to information on OneStop and downloadable forms, including the Application, can be found at www.mhlc.com.
- (7) A brief description of existing site conditions, and any permits that will be required.
- (8) The summary section of a Phase 1 21E report and proposed efforts to mitigate any environmental impacts, if applicable.
- (9) An Affirmative Fair Housing Marketing Plan consistent with the requirements of these Guidelines (see Part III).
- (10) If the Developer is other than a nonprofit corporation or public agency, certification that it shall comply with the requirements related to Limited Dividend entities as set forth in 760 CMR 56.00 and these Guidelines (see Section IV.A).
- (11) For age-restricted housing, generally, a marketing study that demonstrates both an understanding of the region's demographics and particular strategies necessary to attract buyers to both market and affordable units, including:
 - (a) the need for this type of housing in the applicable HUD region;
 - (b) the availability of buyers for both the market and affordable units in the development; and

- (c) the status of similar projects serving the 55 and Over market in the area (e.g. number proposed and/or under construction, rate of vacancy/occupancy, etc.).
- (12) An agreement to execute DHCD model documents (see section 9 below).
- (13) Applicants for rental developments of more than 10 units must complete portions of the OneStop Application also; refer to the LIP Comprehensive Permit Application for additional information. Links to information on OneStop and downloadable forms, including the Application, can be found at www.mhic.com.
- b. Consultation with Local Housing Partnership
- The Department also encourages the Developer to consult with the local housing partnership, if any, and submit a letter of support from that entity.
- c. Site Visit
- Upon receipt of an application, and determination that it adequately addresses Sustainable Development Principles, DHCD will schedule a site visit. The purpose of this visit is to determine whether the project seems consistent with the basic requirements of the LIP and to identify, for the community's benefit, any unusual problems with the site or proposed development.
- d. Project Eligibility Letter

If the proposed Project meets the requirements of LIP, DHCD will issue a Determination of Project Eligibility, which is a prerequisite to an application to a zoning board of appeals for a comprehensive permit. DHCD will endeavor to process routine applications with 60 days of receipt of a complete application.

4. Design and Construction Standards

a. Exterior Appearance

All low and moderate income housing units developed through the LIP shall be indistinguishable from market-rate units as viewed from the exterior unless the project has an approved alternative development plan (see discussion below). Units shall contain complete living facilities including a stove, kitchen cabinets, plumbing fixtures, a refrigerator, microwaves, and access to laundry facilities.

b. Units

- (1) With respect to units for the elderly and/or within an age-restricted Project, Developers are encouraged to consider unit designs in which master bedrooms and bathrooms are located on the first floor.
- (2) All bedrooms must meet state sanitary code requirements for the accommodation of two or more persons (100 square feet minimum).
- (3) In addition, all low- and moderate-income units shall meet the following minimum square footage requirements and bathroom requirements:
 - 1 bedroom - 700 square feet\ 1 bath
 - 2 bedrooms - 900 square feet\ 1 bath

- 3 bedrooms - 1200 square feet\ 1 & 1/2 baths
- 4 bedrooms - 1400 square feet\ 2 baths

c. Code Compliance

Housing developed through the program must comply with the State Building Code, the State Sanitary Code, with other state building and environmental regulations, and (to the degree not exempted by a comprehensive permit) with all applicable local codes, ordinances and bylaws.

d. Distribution of Affordable Units

Affordable units must be proportionately distributed throughout a Project, in terms of both location and unit size/type. The following are two examples of acceptable unit mix scenarios for hypothetical projects:

	Total Units	Affordable Units	Market Rate Units
Project A	16	Two 2BRs @ 950 s.f. Two 3BRs @ 1200 s.f. Total Affordable Units: 4	Six 2BRs @ 950 s.f. Six 3BRs @ 1200 s.f. Total market Rate Units: 12
Project B	50	Five 1BRs @ 750 s.f. Five 2BRs @ 900 s.f. Three 2BRs @ 1100 s.f. Total Affordable Units: 13	Fifteen 1BRs @ 750 s.f. Fifteen 2BRs @ 900 s.f. Seven 2BRs @ 1100 s.f. Total Market Rate Units: 37

e. Alternative Development Plans

In exceptional circumstances, the Associate Director for Housing Development may allow a waiver if there is a good reason (other than finances) for failure to meet the design criteria of the LIP. An "Alternative Development Plan" approval would be based on DHCD's evaluation of the reason for variation from the LIP Guidelines.

DHCD will evaluate the project as a whole before approving an "alternative development plan." The developer considering an "alternative development plan" designation should notify LIP staff and the municipality as soon as possible. DHCD may provide recommendations on possible modifications to the project design if DHCD does not grant an "alternative development plan" designation.

5. Income and Asset Limits

Tenants and homebuyers must be Income Eligible Households.

a. Timeliness of Documentation of Household Eligibility

- (1) For rental units, documents required to determine that a household is an Income Eligible Household and to determine continuing eligibility upon lease renewal, should be current within 60 days of the request for such documentation, and need not be current within 60 days of lease date or lease renewal date.

- (2) For homeownership units, documents required to determine that a household is an Income Eligible Household and therefore qualified to participate in a lottery should be current within 60 days of the lottery deadline and shall be updated to be current within 60 days of the purchase closing date.

b. Income

With respect to income, LIP follows HUD requirements and guidance established pursuant to 24 CFR 5.609. See, also, Appendix II.2 for additional information.

c. Assets

With respect to assets in connection with homeownership developments, see Section II.A of these Guidelines.

For additional assistance, call LIP staff at 617-573-1300.

6. Maximum Sale Prices and Rents

a. General

In addition to the requirements set forth in Section II.A, Subsidized Housing Inventory, LIP applies the following standards.

- (1) LIP establishes rents and purchase prices that enable a range of eligible households to obtain housing without spending an excessive percentage of their income on housing costs. Area median incomes are based on annual HUD determinations for Metropolitan Statistical areas (MSAs) and non-metropolitan counties based on household size. Charts showing limits for adjusted family income by applicable region and household size are available at the Department's website: www.mass.gov/dhcd.
- (2) **Applicants for affordable units must meet the program income limits in effect at the time they apply for a unit and must continue to meet the program income limits in effect at the time when they actually purchase a unit.**
- (3) DHCD sets maximum sale prices and rents based on certain assumptions about the size of the family most likely to occupy the unit. As a result, the initial maximum sale price or rent is calculated as affordable to a household with a number of household members equal to the number of bedrooms in a unit plus one. For instance, a two-bedroom unit would be priced to be affordable to a household of three, and a three-bedroom unit to be affordable to a household of four.

b. Homeownership

- (1) Sales Prices - Sale prices of LIP units are set so that a household earning 70% of area median income would not expend more than 30% of income for the cost of purchasing the housing. By setting sale prices at what is affordable to a household earning **70%** of the median family income adjusted for household size, the resulting "window of opportunity" enables more households to qualify for a LIP unit. See, also, the limitation on the total housing cost at VI.E.1(a)(5).

The following chart is an example of how the maximum sales price is calculated:

Example - Determining the Maximum Sale Price		
Housing Cost		
Sales Price		\$156,600
5% Down Payment		\$7,830
Mortgage		\$148,770
Interest Rate*		5.00%
Amortization		30 years
Monthly P&I Payments		\$798.63
Tax Rate		\$13.04
Monthly Property Tax		\$170
Monthly Hazard Insurance		\$52
Monthly PMI		\$97
Monthly HOA Fees (if applicable)		\$125
Monthly Housing Costs:		\$1,243
Household Income		
# of Bedrooms		2
Sample Household Size		3
80% of Area Median Income for a 3-person household		\$58,500/year
Target Housing Cost (80% AMI)		\$17,556/year \$1,463/month
10% Window		\$51,188
Target Housing Cost (70% AMI)		\$15,360/year \$1,280/month

Comments: Sample affordable sale price for a 2-bedroom condo using the applicable (Boston-CA-Quincy MSA/HMFA) regional 2012 income limit adjusted to the appropriate target household size (i.e., 3-person) and assuming the local 2012 tax rate of \$13.04 and a time-sensitive interest rate of 5% (minimum of a quarter percent above the latest prevailing fixed 30-year rate as listed on Freddie Mac’s interest rate survey). For sample purposes only, the price assumes an initial affordable condo fee of \$125/month. Please be aware that this is only an estimate being provided for planning/feasibility purposes and that actual affordable sales price limits must be reviewed and approved by the applicable subsidy program/subsidizing agency.

(2) Homeownership Association/Condominium Association Fees

- (a) DHCD will review condominium fee estimates as submitted by the applicant and establish a maximum initial condominium fee as part of the calculation of maximum sale price.
- (b) For condominium units, the percentage interests assigned to the LIP units must conform to the approved condominium fees, which may require a lower percentage interest being assigned to those units as compared with market-rate units. DHCD will review the Schedule of Beneficial Interests in the Master Deed to confirm that LIP units have been assigned percentage interests in the condominium that correspond to the approved condominium fees.
- (c) Condominium projects with extraordinary on-going costs (such as the cost of on-site wastewater treatment plants, elevators, parking garages, etc.) must reflect the cost of operating and maintaining such facilities in their condominium budgets (including replacement reserves).

c. Rental

- (1) Rents - are calculated at what is affordable to a household earning 80% of the area median family income adjusted for household size. The LIP application must specify whether the proposed rent has been determined with some or all utilities or with a utility allowance for some or all utilities.

The following chart demonstrates LIP maximum rent calculations for a project located in the Barnstable Town MSA in 2012:

Calculation of Maximum Rent (all utilities included in rent)				
Barnstable Town MSA	Household Size (# of BR +1)	80% of Adjusted Median Family Income	Monthly Income	Maximum Rent (30% of monthly income)
2BR Unit	3	58,500	\$4,875	\$1,462
3BR Unit	4	\$65,000	\$5,417	\$1,625

- (2) Tenants Who Become Over-Income – Generally, see Section II.A.2.b(3). For developments with “fixed” rather than “floating” LIP units: If, after initial occupancy, the income of a tenant of a LIP unit increases and exceeds the maximum allowable income at the time of annual income determination, the unit will be deemed a LIP unit so long as the unit continues to be rent-restricted and the tenant’s income does not exceed 140% of the maximum allowable income. If the tenant’s income exceeds 140% of the maximum income at the time of annual income determination, the unit will be deemed a LIP unit until the tenant’s one-year lease term expires. When the over-income tenant voluntarily vacates the unit and when the unit is again rented to an eligible tenant, the unit will be deemed a LIP unit and included in the Subsidized Housing Inventory upon the municipality’s application to DHCD.

7. Lease Provisions

The owner shall enter into a lease with each tenant for a minimum term of one year. The lease shall provide that the tenant shall not be evicted for any reason other than a substantial violation of a material provision of the lease. The lease shall be subject to DHCD approval and should include the following:

- a. Tenant shall be given a minimum of 60 days’ written notice that a lease will not be renewed.
- b. Tenant shall furnish annual information sufficient to determine and document continued compliance with income eligibility requirements.
- c. Tenant shall furnish the names and the number of people in the household and their relationship to one another annually and whenever a change of household occurs.

8. Determination of Project Eligibility

a. Requirement

The Determination of Project Eligibility is a prerequisite to application for a Comprehensive Permit for the Project from the municipality’s Zoning Board of Appeals. After review of the LIP Comprehensive Permit Application, DHCD may issue a Determination of Project Eligibility.

b. DHCD Findings

DHCD must make the following findings in order to issue such a determination:

- (1) The application meets the requirements specified in 760 CMR 56.04(4).
- (2) The proposed project appears generally eligible under the requirements of the LIP, subject to final program review and approval.
- (3) The proposed site plan is appropriate in the context of the surrounding area and taking into account previous municipal action to meet affordable housing needs, and the housing design is appropriate for the site.
- (4) The proposed project appears financially feasible in the context of the local housing market.

- (5) The initial pro forma for the project appears financially feasible on the basis of estimated development costs and revenues.
- (6) The Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization.
- (7) The Applicant controls the site.
- (8) For age-restricted housing, that the market study demonstrates need and marketability within the municipality.

c. Term

A Determination of Project Eligibility will be effective for two years from date of issuance unless otherwise stated therein.

d. Amending the Determination of Project Eligibility

- (1) Material Change - Any material changes in any of the conditions of a Determination of Project Eligibility (e.g., a change in the development team, the number of units, unit mix, size, design, location, extension of the term of the Determination of Project Eligibility, proposed sale of the project, etc.) REQUIRE that the Determination be amended. DHCD shall be notified immediately if either the Developer or the municipality anticipates any material change in the terms of the initial Determination of Project Eligibility.
- (2) Local Approval - The Developer must secure concurrence of the chief executive officer for the proposed change. DHCD will not issue an amended Determination without such local approval, unless it is unreasonably withheld, and without compliance with these requirements.
- (3) DHCD Review - DHCD may perform an additional site visit, meet with representatives of the municipality and the Developer, and/or request additional financial information, revised site plans, etc., prior to acting on a requested amendment.
- (4) Final Approval Withheld - Final approval may be withheld if the Project is not consistent with the Determination of Project Eligibility.

9. Regulatory Agreement and Use Restrictions

a. Purpose

The purpose of the Regulatory Agreement is to memorialize the rights and responsibilities of the parties, including the provisions that qualify a Developer as a limited dividend entity under c.40B, if applicable. The Regulatory Agreement also provides for monitoring of the project throughout the term of affordability.

b. Preparation/Execution/Recording

Once a Comprehensive Permit is final, a developer shall forward a copy to LIP staff at DHCD. DHCD will then begin the process of preparation of a Regulatory Agreement, which also shall serve as final written approval for the Project. A Regulatory Agreement for each project will be executed by DHCD, the municipality, and the Developer and recorded at the Registry of Deeds or filed with the Registry District of the Land Court.

c. Model Form

DHCD has model regulatory agreements for ownership and rental projects. The model agreement must be executed in the absence of exceptional circumstances. DHCD has adopted the deed rider endorsed by Fannie Mae for use in all LIP homeownership projects. Except for changes in these documents approved by DHCD for the LIP as a whole, these legal documents should not be substantially modified for specific projects.

Any modifications to the model documents proposed by a developer or municipality must be shown in redlining against the model documents when submitted to DHCD for review. Any modifications to the LIP model documents require approval by DHCD.

d. Term of Affordability

The term of affordability for the Project generally should be the longest period permitted by law. The model LIP Regulatory Agreement and Deed Rider, which constitute "affordable housing restrictions" as defined in G.L. c.184 §§ 31 and 32, provide for affordability in perpetuity. A shorter term of affordability will be approved only upon a showing that a longer term is infeasible or not in the public interest. The term of affordability for LIP purposes will in all cases be no less than the term specified in a comprehensive or special permit issued for the project, many of which require perpetual affordability. Note that for some comprehensive permit projects, Massachusetts law requires a project to remain affordable as long as it continues to benefit from the Comprehensive Permit (i.e., could not be built under by-right zoning).

e. Municipal Responsibilities

The premise of the LIP is that DHCD and municipalities are working together to create affordable housing. It is the Department's expectation that municipalities will work with DHCD to fulfill the obligations outlined in a project's Regulatory Agreement.

- (1) Annual Monitoring - The municipality, or its designee, is named in the deed rider as the monitoring agent (along with DHCD). Municipal responsibilities include annual monitoring and certification to DHCD that:
 - (a) tenants in affordable rental units meet income limits and the project has been maintained in a safe and sanitary condition consistent with the LIP Guidelines and the recorded Regulatory Agreement, or
 - (b) for homeownership units, that LIP units continue to serve as owners' principal residences; and that any LIP units that have been resold during the prior two years have been resold in compliance with LIP requirements.
- (2) Property Tax Assessments – with respect to for-sale units, additional local responsibilities include adherence to the Appellate Tax Board's 1999 ruling in *Truehart, et al v. Board of Assessors of the Town of Montague*, in which the ATB determined that the restricted, below-market value of a unit is the value of the unit which should be used for real estate tax purposes.

C. **Local Action Units**

1. Description

Local Action Units (LAU) reflect a program component that gives communities the opportunity to include housing units on the state's Subsidized Housing Inventory (SHI) that are being built **without a Comprehensive Permit but that meet LIP criteria and are suitable for inclusion in LIP**. Such units must be built pursuant to a local action such as a zoning provision, a condition of a variance or special permit issued by the planning board or zoning board of appeals, an agreement between the town and a Developer to convert and rehabilitate municipal buildings into housing, the donation of municipally-owned land, or the use of local funds to develop or write down housing units.

While communities are developing many innovative strategies to expand their supply of affordable housing, only units meeting the following criteria will be approved as LAU and, as a consequence of their inclusion in LIP, be added to the SHI for the community:

- a. they have resulted from city or town action or approval;
- b. they meet the requirements for SHI eligibility as set forth at Section II.A of these Guidelines; and,
- c. except for the requirements related to receiving a Comprehensive Permit, **they otherwise meet the requirements for LIP units set out in Section II of the LIP Guidelines.**

2. Application

DHCD's application form for LAU is available on the DHCD web site: www.mass.gov/dhcd, (type in "LIP Local Action Unit application" in the search field. DHCD expects to process routine applications within 60 days. Local Action Units application requirements include the majority of the Comprehensive Permit procedures of the previous section. Specifically, Local Action Units applications must include the following sections of Part VI. B.3.a (1), (3) – (5), (9), and (11) – (13); and B.4-7 and 9 (see pp.VI-3,4).

There is no application fee for LAU applications.

In order to ensure that locally-developed units will meet LIP standards for LAUs, DHCD encourages communities to discuss their projects with LIP staff *prior* to submitting an application. LIP staff will identify any areas of concern.

3. Local Action Requirement

To receive LAU approval, Local Action Units must result from city or town action or approval and typically involve new construction, building conversion, adaptive re-use or substantial rehabilitation. LAUs cannot be developed with a comprehensive permit (for such projects see "Comprehensive Permit Projects").

The following types of actions will generally be sufficient to satisfy the Local Action requirement provided that the municipal actions or approvals are conditioned, as a matter of record, upon the provision of low- or moderate-income housing:

- a. Zoning-based approval, particularly inclusionary zoning provisions and special permits for affordable housing;

- b. Substantial financial assistance from funds raised, appropriated or administered by the city or town; or
- c. Provision of land or buildings that are owned or acquired by the city or town and conveyed at a substantial discount from their fair market value.

D. Accessory Apartments

1. General

The creation of accessory housing units within existing owner-occupied homes is a way to increase the supply and diversity of housing types. An accessory unit provides a housing opportunity for those in need of rental housing.

In order to have accessory apartments added to the Subsidized Housing Inventory, they must receive Local Action Unit (LAU) approval and meet the same basic requirements as other units qualifying for LAU approval:

- a. they have resulted from city or town action or approval;
- b. are subject to recorded use restriction in a form approved by DHCD, that has a term of not less than 15 years; and,
- c. except for the requirements related to receiving a Comprehensive Permit, they otherwise meet the requirements for LIP units set out in Section B of the LIP Guidelines.

2. Application

a. Form/Requirements

DHCD's application form for accessory apartments is available on the DHCD web site: www.mass.gov/dhcd, (type in "LIP Accessory Apartment application" in the search field, select the first result, and then select "Accessory Apartment Application"). There is no application fee.

Applications shall include:

- (1) Accessory Apartments application requirements include the majority of the Comprehensive Permit procedures. Specifically, Local Action Units applications must include the following sections of "B – Comprehensive Permits": 3a(1), (3)-(5), (9), and (11)-(13); see pp. VI-3 and 4.
- (2) A letter of support signed by the chief executive officer of the municipality.
- (3) An Affirmative Fair Housing Marketing Plan
- (4) Designation of a Local Project Administrator (LPA) for all accessory apartments. The LPA is an individual or entity that is responsible for oversight of the units. This could be a local official, a local housing partnership board member or staff member, the director of an area housing non-profit organization, or another appropriate person meeting DHCD approval.
- (5) A schedule of maximum rent for each accessory apartment.

(6) A proposed tenant application form and plan for processing of applications.

(7) A plan for annual verification of tenants' income.

b. Local Housing Partnership

The Department also encourages the Developer to consult with the local housing partnership, if any, and submit a letter of support from that entity.

After DHCD has approved an application, a municipality shall submit additional information for each accessory apartment created. DHCD will approve each accessory apartment that meets all program standards.

3. Local Action Requirement

a. General

To meet the requirement of local action, a municipality shall have enacted a zoning ordinance or bylaw that allows for the creation of accessory apartments for low- or moderate-income households. Units submitted to DHCD will have received zoning approval under the ordinance or bylaw.

b. Minimum Requirements

While the specific features of such ordinances or bylaws may vary considerably from one municipality to the next, each one shall, at a minimum, allow for the creation of accessory apartments that meet and are consistent with the LAU eligibility standards specified herein. No mandatory requirements applying to accessory apartments authorized under the ordinance or bylaw shall conflict with the LIP requirements.

c. Prohibited Provisions

Examples of ordinance or bylaw provisions that would prohibit approval under LIP and eligibility for the Subsidized Housing Inventory include:

- (1) Allowing affordable accessory dwelling units to be rented to family members.
- (2) Allowing affordable accessory apartments to be rented to households earning more than 80% of area median income.
- (3) A requirement that all accessory dwelling units shall be restricted to residents of the municipality.
- (4) Any provision in conflict with applicable fair housing laws.

d. Technical Assistance

Municipalities contemplating such an ordinance or bylaw may submit a draft to DHCD for compliance review prior to final local approval. DHCD, through provision of technical assistance, will review the draft submission and provide feedback regarding changes needed to ensure that units meet LIP standards. DHCD's review will be limited to noting any provisions that might conflict with LIP requirements.

4. Tenant Eligibility

a. Family Members Prohibited

No family member of the unit owner may be selected by the owner for an accessory apartment. Family member is defined as: a parent, a son, a daughter, an uncle, an aunt, a niece, a nephew, a grandparent and/or a sibling.

b. Income and Asset Limits

- (1) Tenants' household income shall not exceed 80% of the household income adjusted for actual household size, as determined by HUD. A municipality may set lower limits.
- (2) Certification of income eligibility will be made by the LPA. The LPA will review documentation (e.g., recent tax returns, pay stubs, affidavits, etc.) in order to certify such eligibility. The LPA may contact DHCD to request technical assistance in reviewing the eligibility of prospective tenants.
- (3) Information on an application shall be verified by the LPA. Any post-occupancy change in a household must be reported to the property owner and LPA immediately.

5. Affirmative Fair Housing Marketing

a. General

Accessory apartments shall be subject to the same affirmative fair marketing/non-discrimination policies as other LAUs. There shall be a specific prohibition of discrimination on the basis of race, creed, color, sex, age, disability, marital status, familial status, veteran status, sexual orientation, national origin or any other basis prohibited by law in the renting of units.

b. Goal

The goal of affirmative fair housing efforts is to expand housing opportunities for low and moderate income households that are protected under fair housing laws and are less likely to apply for housing in the area. Such efforts include marketing to minority households so that a percentage of minority tenancy in affordable accessory apartments in the area is at least equal to the percentage of minority households in the applicable HUD MSA region.

c. Affirmative Fair Housing and Marketing and Resident Selection Plan

The affirmative fair marketing and resident selection plan must describe the planned advertising and outreach. The affirmative fair housing marketing and resident selection plan must specifically address advertising and outreach to minority households.

See Section III for additional guidance.

- (1) Outreach - The affirmative fair marketing plan should describe the outreach planned by the LPA for media outlets such as newspapers/radio/local access television. It should list community-based organizations that will receive notice of availability of the affordable units, such as community development corporations, housing authorities, places of worship, and not-for-profit organizations, as well as any local employers.

- (2) Minimum Advertising Period - Initial advertising for affordable accessory apartments shall be conducted by the LPA over a period of at least 60 days.
- (3) Wait List - The plan shall also include the establishment and maintenance of a waiting list of *qualified* households applying to rent accessory apartments. This "Ready Renters List" may be retained and used to fill vacant units and periodically updated. Applicants on the List shall have their eligibility verified again at the time a unit is offered to them. The Ready Renters List shall be supplemented as needed, but at least annually, through ongoing outreach efforts. The LPA shall establish and maintain the Ready Renters List.

d. Annual Data Collection

While consistency with regional racial minority percentages is a goal as opposed to a minimum requirement, the LPA shall collect data annually regarding the number of minority households renting accessory apartments.

e. Failure to Apply Good Faith Efforts

DHCD may suspend or revoke the eligibility of units based upon a community's inadequate efforts and progress relative to this goal.

f. Tenant Selection

- (1) Step 1 - The owner of an affordable accessory apartment provides written notice of unit availability to LPA and requests referral of one or more applicants.
- (2) Step 2 - Within 5 business days, the LPA refers the top appropriately-sized household or households on the Ready Renters List to the owner, no more than three at any one time.
- (3) Step 3 - The owner shall meet the referred applicant(s) and show the unit. Referred applicants must be given no fewer than 10 business days to view the unit. The owner may select any of the referred applicants or may request a new referral of applicants. Non-selected applicants will return to the top of the Ready Renters List.
- (4) Step 4 - The owner shall enter into a one-year lease, satisfactory to the LPA, with the selected applicant.
- (5) Rejected applicants - Upon request of the LPA, the owner shall specify in writing a substantial nondiscriminatory reason for having rejected an applicant.

6. Rents; Lease

a. Initial Rent

Rents for accessory apartments shall be calculated in the same way as other LIP rental units (see Section B.6 of these LIP Guidelines).

b. Utility Costs

All utilities shall be included in the rent or, if utilities are separately metered, they may be paid by the tenant and an amount equivalent to a Section 8 utility allowance shall be deducted from the

maximum allowable rent. The LPA shall secure the amount of the appropriate Section 8 utility allowance from the local/regional housing authority.

c. Rent Increases

The property owner may not increase the rent without the prior approval of the LPA and DHCD even if the initial rent is lower than the maximum allowable LIP rent. An increase will be allowed only in proportion to growth in median household income as determined by HUD.

d. Lease Provisions

Leases for accessory apartments shall conform to the requirements of Section B.7 of these LIP Guidelines.

7. Use Restrictions

a. Requirement/Enforceability

Property owners shall agree to execute and the LPA shall record an affordable housing restriction for LIP-approved accessory apartment units. The restriction shall be binding on and enforceable against any person claiming an interest in the property

b. Form

LIP accessory apartment units shall be secured using DHCD's form of "Regulatory Agreement for Affordable Accessory Apartment Projects", which shall be signed by the homeowner, the Municipality, and DHCD.

c. Early Termination of Restriction

In certain circumstances, DHCD will approve accessory apartment programs that allow a use restriction to terminate early or to be revocable by the owner. Notwithstanding the early termination of a use restriction, in all cases, the owner must provide an existing tenant at least 60 days prior written notice that his or her lease will not be renewed.

- (1) **Transfer of the Property** - Restrictions that either terminate automatically or are revocable by the owner upon transfer of the property. If the restriction terminates and is not renewed by the new owner, the municipality must notify DHCD. The unit will no longer be deemed a Local Action Unit and will be removed from the Subsidized Housing Inventory unless the new owner obtains municipal approval to rent the accessory apartment and enters into an affordable housing restriction in the form approved by DHCD.
- (2) **Voluntary Termination** - Restrictions that allow the owner to voluntarily terminate the restriction and cancel a special permit at the end of a tenant's lease term. The municipality may specify that such a voluntary termination may occur only after the owner has rented the accessory apartment to eligible tenants for a minimum number of years. The municipality must notify DHCD that the restriction has been voluntarily terminated, and the unit will no longer be deemed a Local Action Unit and will be removed from the Subsidized Housing Inventory.

8. Municipal Responsibilities

a. Information to Homeowners

The LPA shall inform participating homeowners of their obligations and responsibilities with respect to the program. Homeowners shall be given, and acknowledge in writing, their understanding of an information package including but not limited to the following items:

- (1) An overall description of the program, its goals and homeowner responsibilities;
- (2) Materials about fair housing and anti-discrimination laws;
- (3) Information as to notification, marketing, and tenant selection requirements; and
- (4) Information regarding occupancy requirements, use restrictions and the resale fee (see E.2).

b. Monitoring

The municipality, or its designee, is named in the deed rider as the monitoring agent (along with DHCD). The monitoring agent shall monitor LIP-approved Accessory Apartments on a biennial basis to verify their continued affordability and compliance with all income and occupancy restrictions contained in the affordable housing restriction.

(3) Reporting/Records

By March 15th of each year, the LPA shall prepare an annual report (as of December 31st of the preceding year) summarizing the eligibility of tenants in LIP-approved accessory apartments and documenting rents being charged. In addition to rent and income verification, the annual report shall provide information on the number of minority households housed, the number of non-local residents housed, and the composition of the waiting list. DHCD may request substantiation by supporting documentation.

The monitoring agent must retain annual recertification materials for a minimum of five years.

(May 2013 Update: deleted section on Age Restricted Housing as it reiterated requirements contained in Part II.)

E. Initial Unit Sales, Resales and Refinancing

1. Initial Sale

a. Requirements of Mortgage Financing

Prior to the sale of a unit, DHCD will review and approve the terms of the buyer's mortgage financing. DHCD requires mortgage loans for LIP units to meet the following minimum standards:

- (1) Be a fully amortizing fixed rate mortgage with a down payment of at least 3%, at least half of which must come from the buyer's own funds.
- (2) Be made by an institutional lender. Project sponsors are encouraged to work with local banks to provide competitive financing to potential first-time homebuyers.

- (3) Have a fixed interest rate through the full term of the mortgage that is a current fair market interest rate.
- (4) No more than 2 points.
- (5) Monthly housing (inclusive of principal, interest, property taxes, hazard insurance, private mortgage insurance and condominium or homeowner association fees) may not exceed 38% of their monthly income for the mortgage.
- (6) Non-household members shall not be permitted as co-signers of the mortgage.

b. DHCD Closing Documents

Before the initial sale of an affordable LIP unit, a deed rider and Resale Price Certificate shall be secured from DHCD.

- (1) When an eligible buyer is found, DHCD requires the following ***no less than 2 weeks*** before the loan closing date:
 - (a) A copy of the LOAN COMMITMENT LETTER from the buyer's lender including interest rate, points, length of loan, and annual percentage rate.
 - (b) A copy of the signed PURCHASE AND SALE AGREEMENT for the unit.
 - (c) The LIP Disclosure Form signed by the buyer.
 - (d) Contact information for the loan CLOSING ATTORNEY including name, address, phone, fax numbers and email address.
- (2) DHCD will provide its documents to buyer's closing attorney for closing. The closing attorney should submit a copy of all recorded DHCD documents to: LIP, 100 Cambridge Street, Suite 300, Boston, MA 02114.
- (3) The Resale Price Certificate must be recorded at the Registry of Deeds along with the deed and the LIP Deed Rider.
- (4) Deed Reference to Deed Rider - The deed shall specifically reference the LIP Deed Rider by including language such as, "This conveyance is subject to the affordable housing deed rider attached hereto."

3. Resales

Note: DHCD shall not approve the transfer of LIP units to trusts.

a. Owner Notice

When the owner of a LIP unit is ready to sell, the owner must give written notice to the community and to DHCD as provided for in the use restriction. The deed rider contains strict timelines and it is imperative that, once notified of a LIP resale, the municipality acts swiftly to locate an income-eligible buyer.

b. Municipal Responsibilities

- (1) Resale Plan - Each municipality should have a resale plan in place for LIP units.
- (2) Ready-Buyer List - The municipality should create and maintain a list of income-eligible potential buyers. This type of list could be created by compiling a list of lottery applicants for an affordable development who were not chosen as buyers. This list becomes obsolete 24 months after the prior lottery. The municipality may then create a new "Ready Buyer List" through the use of a lottery process and after conducting affirmative fair marketing. This process must be pre-approved by DHCD.
- (3) Resale Fee - A 2% resale fee will be added to the universal deed rider for all new LIP units. The resale fee will allow for payment for the cost of marketing and reselling the LIP unit. The municipality can elect to handle resales itself or contract with another qualified entity on its behalf.

(e) Capital Improvements

The LIP universal Deed Rider allows for the cost of **pre-approved** capital improvements to be added to the resale price of the unit so long as the resale price remains affordable as per the terms of the Deed Rider.

(f) Steps for LIP Unit Resale

- (1) Property Owner Notifies Local Community and DHCD - The property owner shall submit written notice of their intention to sell and a copy of their Deed Rider to the Monitoring Agent, which will be DHCD and any other entity identified in the Deed Rider as a Monitoring Agent. The property owner's written notice should include their name, the property address, a phone number where they can be reached during the day, and the name and phone number of the person responsible for showing and answering questions about the home.
- (2) Maximum Resale Price - After receiving notification, the Monitoring Agent will calculate the Maximum Resale Price which the owner may receive on the sale of the property and will provide written notice to the owner of the Maximum Resale Price. The Monitoring Agent has 90 days in which to sell the home to an eligible buyer. The Monitoring Agent may extend the 90-day period if the owner fails to cooperate in the resale efforts.

PLEASE NOTE: older LIP deed riders use a discount rate formula to set the maximum resale price. This method multiplies the home's current appraised value by the discount rate specified in the LIP deed rider. Many of these LIP Deed Riders set an alternative maximum resale price at what a low- or moderate-income household can afford. The current model Deed Rider uses a maximum resale price multiplier, which ties increases in resale prices to the increases in median income.

- (3) Marketing the Unit - During the 90-day marketing period the Monitoring Agent should offer the unit to the potential buyers on its list, in order. DHCD will post information about the unit on its web page.
- (4) New Buyer Eligibility - The new buyer shall be income and asset eligible under the LIP program and subject to the resale provisions of the recorded deed rider and the buyer's mortgage loan must meet the requirements of E.1 of these LIP Guidelines. Documentation

verifying the buyer's income, assets, and mortgage terms should be mailed or faxed to DHCD.

- (5) DHCD Closing Documents – After the new buyer has been qualified by the Monitoring Agent(s), the buyer's closing attorney then contacts DHCD's paralegal to obtain closing documents.

(g) Eligible Buyer is Not Located

- (1) For units with the LIP "Universal Deed Rider", if an eligible buyer is not located during the 90-day marketing period the Monitoring Agent or municipality may purchase the property. After an additional 30 days if neither the Monitoring Agent nor the municipality purchases the property, the home may be sold without regard to the income level of the buyer. If a LIP unit is conveyed to an ineligible buyer, the price **may not exceed** the Maximum Resale Price, a LIP Deed Rider must be executed and recorded, and if more than one ineligible purchaser is found, first preference must be given to households earning between 80% and 120% of the area median income adjusted for household size.
- (2) For units with older forms of LIP deed rider, if a unit is conveyed to an ineligible buyer, the unit must be sold for its unrestricted fair market value, the sale proceeds in excess of the Maximum Resale Price are paid to the municipality, and the unit is released from the LIP restrictions.

(h) Death of Unit Owner

A transfer by will or by an executor or administrator of the owner's estate to the owner's spouse will not trigger the resale or transfer restrictions in the Deed Rider provided that:

- (1) the executor or administrator within 90 days of his/her appointment has given DHCD notice of the devise or inheritance of the unit; and
- (2) the owner's spouse intends to continue to use the unit as a principal residence. Any other person who is an heir, legatee, or devisee of the unit owner must demonstrate to DHCD's satisfaction within the 90-day period that he/she is an eligible purchaser, as defined in the Deed Rider; otherwise that person must transfer the unit in accordance with the Deed Rider.

3. Refinancing

a. Review by DHCD

- (1) Request - Owners of LIP units must submit a copy of their Deed Rider and a written request to refinance to the municipality **and** to DHCD. The property owner's written request should include:
- (a) their name, property address, a phone number where they can be reached during the day;
- (b) the amount of the refinance or second mortgage requested and the full name of the lending institution; and
- (c) the name and contact number of the closing attorney.

- (2) Appraisal - *Homeowners with Deed Riders other than the universal Deed Rider must also submit a fair market appraisal of their home.* The appraisal must be performed by a licensed residential appraiser and may be no older than 120 days past its completion date.
- (3) Commitment Letter - The property owner must also submit a copy of the commitment letter from the lender, including the amount of the refinance or second mortgage, the interest rate, points, and term of the loan (i.e. 15-yr, 30-yr).
- (4) Consent to Refinance - After approval of the refinance request by the local community **and** DHCD, DHCD will prepare the "Consent to Refinance" form for the closing attorney.

b. Requirements of Mortgage Financing

The proposed new first or second mortgage shall conform to the requirements of E.1 of these LIP Guidelines as well as the following:

- (1) For 1st mortgage refinancing - The loan amount cannot exceed 97% of the Maximum Resale Price, as determined by DHCD
- (2) For 2nd mortgage financing - The combined amount of the first and second mortgages cannot exceed 97% of the Maximum Resale Price, as determined by DHCD