

## Affordable Housing, Chapter 40B and the Weston Housing Production Plan

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Chapter [40B, §20-23](#) is a state statute, enacted in 1969, to promote affordable housing. In 2010 Weston voted 57-43% to support 40B (state vote was 58-42).

In a municipality such as [Weston, where less than 10%](#) of the housing is dedicated as affordable, a developer can apply for a [Comprehensive Permit](#) from the Zoning Board of Appeals in order to construct housing where 20-25% of the units will be affordable. Under the Comprehensive permit Developers are not required to abide by the local zoning bylaw including density, setback, use and height requirements, as long as “*the project does not create health, safety, planning or open space issues sufficient to outweigh the local need for affordable housing*”.

### 40B Rules and Definitions

**10% affordable housing** is tracked on the [Subsidized Housing Inventory \(SHI\)](#) and is based on the permanent housing stock. In order to be counted on the Subsidized Housing Inventory housing must be:

- Subsidized by an eligible state or federal program or approved by a [subsidizing state agency](#).
- At least 25% of the units must be affordable to those earning at or below [80% Area Median Income \(AMI\)](#) or 20% must be affordable to those earning at or below [50% AMI](#).
- Subject to a long-term deed restriction limiting occupancy to income eligible households.
- Subject to an Affirmative Fair Housing Marketing Plan

*Weston has 3,952 permanent housing units, with 149 (3.77%) being affordable. The shortfall is 246-units, with likely more needed after the 2020 census.*

*The AMI for Weston is based on the [Boston-Cambridge-Quincy Metropolitan Area](#).*

***If a 40B development is rental then all units count toward the SHI. In a for sale development only the affordable units count (20-25% of the project). The economics for rentals favor large projects; smaller projects tend to be for sale.***

*To meet Weston’s shortfall 246 rental units would be needed as opposed to +/-2000 in the case of ownership. Distributing units in smaller developments throughout Weston there would mean many more units overall.*

### [Comprehensive Permits](#) – A Comprehensive Permit..

- Is meant to take the place of all other local approvals, such as the Planning Board
- Can be denied, **but the applicant can appeal to the State [Housing Appeals Committee \(HAC\)](#).**
- Can be conditioned by the ZBA, but again the applicant can appeal.

*In the past 3 years Weston has received Comprehensive Permit applications for over 550 units, including the following hostile 40Bs.*

- 255 Merriam – 10 Units, 2 Affordable; for sale; approved by ZBA; under appeal by neighbors
- 269 North – 16 Units, 4 Affordable: rental; approved by ZBA: under appeal by owners
- 104 Boston Post Road – 150 Units; 38 affordable; denied by ZBA; under appeal by owners

### **Safe Harbors – A comprehensive permit can be denied and the decision upheld by the HAC if**

- The municipality has 10% or more of its housing stock counted in the SHI.
- The municipality has 1-1/2% of the land area zoned for commercial, industrial or residential in use for affordable housing. The municipality has a certified [Housing Production Plan](#) and increased its units on the SHI by .75% over one year or 1.5% over two years.
- The project is over 200 units.

*Weston has a certified Housing Production Plan. For safe harbor Weston would need to produce 20 units per year. The HPP found that the land areas safe harbor was not readily achievable in Weston.*

*The neighboring towns of Bedford, Sudbury, Concord and Lexington have all achieved safe harbor; Wayland and Wellesley have not. Both are facing multiple hostile 40B applications.*

More information, such as the Subsidized Housing Inventory and the Regulations for [Comprehensive Permits \(760 CMR 56\)](#), can be found on the [DHCD website](#).