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## MEMORANDUM

Date: December 15, 2022

TO: City Council

FROM: Jonah Temple, Deputy City Solicitor  
Jennifer Caira, Deputy Director, Planning & Development Department

SUBJECT: Response to 40B Safe Harbor Memo Questions

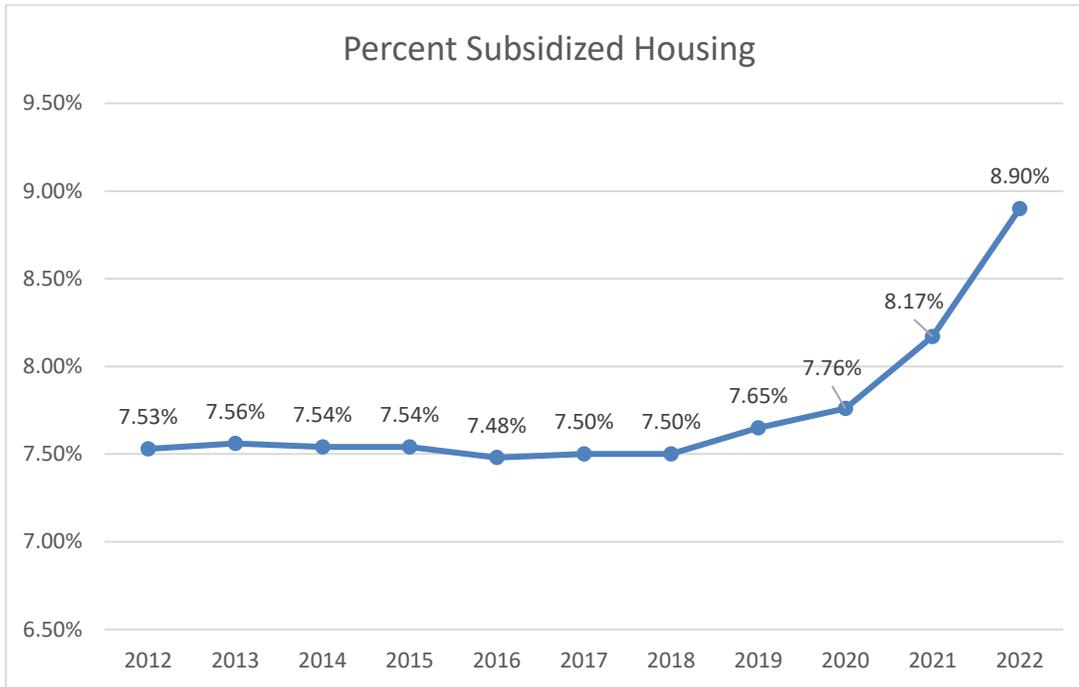
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This memo provides a response from the Planning and Law departments regarding the questions and comments from City Councilors in response to the 40B safe harbor update memo submitted to the Zoning Board of Appeals on

*1. Chart of our percentage of SHI housing in Newton over the last ten years. Tracking our progress towards meeting our SHI goal is very important. Therefore, we would like to see a chart that shows what percentage of housing was considered SHI each year since 2012 (and if the information was not calculated in a particular year, please explain why). Since the methodology for making these calculations has changed over time, please note the changes as well. Please provide a similar chart for the land area analysis.*

Response:

The official calculation of Newton's Subsidized Housing Inventory (SHI) is compiled and issued by the Department of Housing and Community Development (DHCD). Here is a chart showing the percent of subsidized housing since 2012.



A detailed discussion of the City’s progress towards the 40B statutory minima, including SHI eligible units and the 1.5% land area calculation can be found in recent memos [here](#).

2. *“Missing” SHI units. Are there individual units and/or entire buildings in the city that meet the definition of affordable but are not included in the SHI inventory? If so, why are they not included and is there anything that can be done to make them eligible for inclusion?*

Response:

Planning and Law staff did an extensive audit of the City’s SHI inventory several years ago. At this point we are aware of just a handful of older units that are affordable but are not eligible to be included in the SHI inventory. This is because they do not meet the DHCD guidelines due to a lack of subsidizing agency, lack of marketing plan, and/or because a lottery was not held. Staff are tracking these units and will pursue SHI inclusion upon unit turnover if possible. There are not any entire buildings missing from the SHI inventory and the number of “missing” units would not affect the total calculation.

3. *What can be done to speed up the LAU approval process for projects approved by the City Council? What is the earliest date when we can apply for LAU approval for these projects? If we are not applying on the earliest possible date, why not? How many LAU units are “pending” today?*

Response:

The standard practice for the City is to apply for local action unit (LAU) approval (jointly with the project developer) sometime after commencement of construction but prior to completion and marketing of any units. The application requires the finalized project details, including a final Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP). Such a plan cannot be finalized well in advance of the actual marketing of the project, which typically doesn’t commence until 6-9 months out from occupancy.

DHCD will not approve such projects if the rental and sales numbers are not as close to accurate as possible, and that cannot happen when a project is still 1+ years out from occupancy. For new units to then be added to the SHI the municipality must submit a Request for New Units Form. The form requires the submittal of the project's Special Permit, building permit, the local action unit approval from DHCD, the approved AFHMP, as well as a listing of the issued occupancy permits. Special Permit projects are typically partially occupied when they are added to the SHI.

As of the most recent calculation the City had 292 eligible units that have received a Special Permit but do not yet have local action unit approval.

*4. Please clarify why the number of units in the city listed on the Assessors database may differ from the number of units listed in your memorandum.*

Response:

While Assessing data is irrelevant for purposes of the SHI, the discrepancy is based on a different basis for counting units and different definitions of housing units used by the U.S. Census Bureau, which is the count that must be used for the SHI. For example, there are differences in the treatment and counting of accessory units, elderly housing, and group homes. The Assessing data is also from a different point in time than the census data.

*5. What will be the effect of achieving the 10% and/or 1.5 % safe harbor levels on our eligibility to require that all new construction and major renovations be electric?*

Response:

In order to be one of the ten municipalities to receive approval from the Department of Energy Resources (DOER) for participation in a pilot program requiring that all new construction and major renovations be all-electric, Newton must either: (i) meet the 10% housing affordability safe harbor/threshold or (ii) have approved a zoning ordinance that provides for at least one district of reasonable size in which multi-family housing is permitted. If Newton fails to achieve either within 18 months of the effective date of the climate law that established the pilot program (February 2024) then its application for approval will expire, be deemed void, and substitute application will be approved.

*6. If we achieve the 10% and/or 1.5% 40B safe harbor levels, but then drop below one or both of those levels in subsequent years, will we still be able to require electrification in new construction and major renovation projects?*

Response:

As set forth in the answer above, the 1.5% safe harbor is not relevant to the all-electric pilot program. If the City achieves the 10% safe harbor and receives approval for the pilot program on that basis, it is not clear from the law whether would happen if the City subsequently falls below that threshold. The City is awaiting further guidance and issuance of regulations from DOER on this issue, as well as other details concerning the pilot program and approval process.

*7. What effect, if any, will reaching the 10% and/or 1.5 % safe harbor levels have on our obligations to comply with the new MBTA communities zoning requirement?*

Response:

None.

*8. Why is this information only updated when a new 40B application is filed? This is information that Newton should maintain "in real time" and post prominently on our website.*

Response:

The City tracks its inventory of subsidized housing and calculates the current status whenever required by the ZBA in connection with a new 40B applications. Calculations have also been updated annually recently. Given the nature of the calculation, "real time" information would neither be practical or possible to provide.