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**Barney S. Heath**  
Director

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## MEMORANDUM

Date: July 25, 2025

TO: Zoning Board of Appeals Members

FROM: Jonah Temple, Deputy City Solicitor  
Barney Heath, Director, Planning & Development  
Jennifer Caira, Deputy Director, Planning & Development Department  
Katie Whewell, Chief Planner for Current Planning

CC: Mayor Ruthanne Fuller  
Jonathan Yeo, Chief Operating Officer  
City Council Members

SUBJECT: Update on Chapter 40B Safe Harbor Status

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Newton reached the Chapter 40B 10% housing affordability safe harbor for the first time on January 8, 2024.

On July 8, 2025, Newton dropped below the 10% threshold and is presently at 9.72%.

An up to date list of SHI eligible properties can be found online [here](#). Prior Safe Harbor updates can be found [here](#). The City updates the memo and calculation, including an update to both the 10% housing affordability and the 1.5% land area calculation, with all future 40B application.

The City has received a copy of the Project Eligibility application for a new 40B development at 38 Crafts Street. If the subsidizing agency, MassHousing, approves the project eligibility application the applicant can then file for the 40B with the Zoning Board of Appeals. It is anticipated that this project may submit a 40B application sometime this fall. More information on the 38 Crafts Street application can be found [here](#). At that time, the City will update the 40B calculation again.

## The Housing Unit Minimum (10%) Safe Harbor

- The housing unit minimum safe harbor available to the City is achieved when Newton’s Subsidized Housing Inventory (SHI) Eligible Housing units exceed 10% of its total housing units. The 10% calculation requires dividing the total number of housing units that are inventoried or eligible to be inventoried on the City’s SHI (the *numerator*) by the total number of year-round housing units in the City (the *denominator*). The total number of housing units used for this calculation is the number reported in the most recent federal (decennial) census.
- The Executive Office of Housing and Livable Communities (EOHLC) provided an updated SHI with the 2020 year-round housing units on June 29, 2023. According to the 2020 Census, Newton has 33,116 year-round housing units.

### 10% Calculation

- The City’s current percentage of SHI Eligible Housing units equals 9.72%.

$$\text{Calculation} = \frac{3,219 \text{ SHI Eligible Housing units}}{33,116 \text{ total year-round housing units}} = 9.72\%$$

- The City can count the housing units officially inventoried on the most recent SHI published by EOHLC along with those units that are considered SHI eligible per EOHLC regulations.
- For 40B projects approved by the ZBA, SHI eligibility begins on the date that the comprehensive permit is issued and filed with the City Clerk. Thereafter, 40B projects that have received approval lose SHI eligibility if a building permit is not issued within one year of receiving local permitting approval—though the project will regain eligibility after a building permit is issued. Once a building permit is issued the units are considered SHI eligible again for a period of 18 months. Units that receive a final certificate of occupancy (CO) during that period will be permanently counted, but units without a CO after 18 months lose eligibility again and cannot be counted until the final CO is issued.
- For special permit projects approved by the City Council, SHI eligibility does not begin until the project receives approval from EOHLC. Under EOHLC regulations, affordable units created through the special permit process are called “Local Action Units” (“LAU”) and require approval by EOHLC, which is known as “LAU Approval.” The standard practice for the City is to apply for LAU Approval (jointly with the project developer) sometime after commencement of construction but prior to completion and marketing of any units.
- Newton achieved Safe Harbor Status when the building permit was issued for the 292 units at Newton Crossing (formerly Dunstan East) at 1185 Washington Street in West Newton. As Newton Crossing has been under construction for over 18 months now, without issuance of a final certificate of occupancy, the units are not currently SHI eligible and cannot be counted at this time, resulting in Newton dropping below the 10% safe harbor threshold. Construction at Newton Crossing is expected to continue through the end of 2026; however, a final certificate of occupancy cannot be issued until all permits have been closed out and all mitigation, on- and off-site, has been completed.