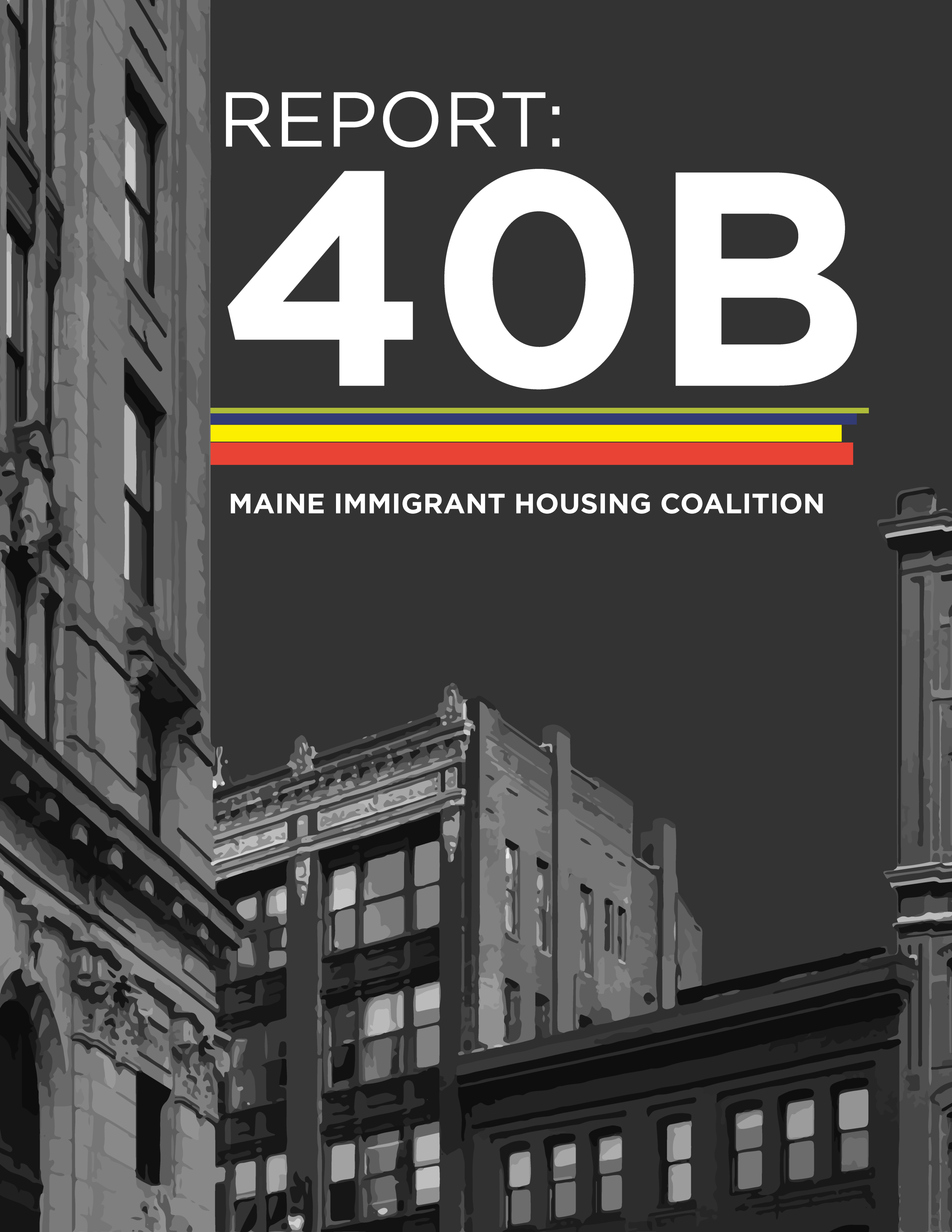
REPORT: 40B

MAINE IMMIGRANT HOUSING COALITION



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"Too often, where people live determines what opportunities they have in life.... In this country, of all countries, a person's zip code shouldn't decide their destiny. We don't guarantee equal outcomes, but we do strive to guarantee an equal shot at opportunity — in every neighborhood, for every American."

— President Barack Obama*

*Office of Press Secretary, "Weekly Address: Making Our Communities Stronger through Fair Housing," Press Release. July 11, 2015.

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EXECUTIVE SUMMARY

The Immigrant Housing Coalition embarked on this research to help identify some of the challenges in the affordable housing arena and collaborate with other interested parties to help address identifiable challenges. This report is the first step to learn more about housing and affordable housing policy in Maine. As such, we have identified a policy gap in affordable housing development in Maine compared to our southern New England neighbors.

Affordable housing in Maine is funded through ad hoc bond proposals that reflect the politics of the day. Our neighbors to the south have shown us that a lot can be gained when the state takes a leadership role and develops policy and funding for consistency around affordable housing. Massachusetts, Connecticut and Rhode Island each have Affordable Housing Comprehensive Permitting Statutes (AHCPS) specifically designed to address affordable housing in those states.

An AHCPS legalizes housing that developers can build more densely than municipal zoning by-laws permit per acre, if such a municipality does not meet certain thresholds of affordable housing stock and/or amount of the land area currently developed for affordable housing, especially in areas which may practice exclusionary zoning. As a result, there is consistency in affordable housing development across the states, as opposed to only in certain zones within urban centers. The state of Maine can take a lead in creating a policy for consistency and increase funding for affordable housing to spur economic growth and give Mainers access to equal opportunity to live where they desire. While no singular policy or legislation can be seen as a cure-all, a Comprehensive Permitting Statute is consistent with other affordable housing measures and can facilitate their implementation.

Moreover, an AHCPS will allow for the equitable distribution of affordable housing to communities throughout the region so that no neighborhood is significantly overrepresented and opportunity is available to all, regardless of income.

RECOMMENDATIONS

Municipalities need to be proactive in encouraging affordable housing developments that suit their vision. Cities have learned resistance to change is not the answer to spur economic growth and diversify tax bases, particularly because low income people are not only consumers but entrepreneurs, and are essential to the workforce.

1. Maine needs the legislative equivalent of 40B tailored to our local needs to increase affordable housing stock in the state.
2. The Real Estate Transfer Fund (HOME FUND) should be reserved for affordable housing development — not to be used to fill budget shortfalls by politicians.
3. Make permanent the Maine Affordable Housing Tax Credit, instead of letting it expire by 2028 (MAHTC).
4. Transition affordable housing development from being low income focused to mix income development, with local government taking the lead role.
5. Take proactive steps to retain and maintain the USDA section 515 housing in rural Maine before mortgage maturity.

METHODOLOGY

The research team started with the question: **What is Maine's affordable housing policy?** To answer this question, we looked into how affordable housing is funded in Maine, and whether there is a statute that addresses affordable housing development. All of our data is secondary data. We looked at Massachusetts, Connecticut and Rhode Island in how they have addressed affordable housing challenges in their respective states.

The selection of the data used in this report tries to answer the question we started with. This report is not comprehensive in that it focuses on affordable housing development in Maine. We included case studies for the 40B statute in Massachusetts, completed by Tuft University to dispel some of the myths regarding affordable housing development.

INTRODUCTION

Maine has been on the verge of constantly forming an affordable housing commission, since the 1980s, whenever political leadership felt pressure from the middle class to act due to home prices increasing. The results of the commission always concluded in recommendations and issuance of bonds for affordable housing development.

As a result, Maine is not faring well in terms of affordable housing units available for occupancy for people who need it. Maine has to change course if it is going to afford its residents an opportunity for equal access to live in the community of their choice, eliminate low income enclaves versus opportunity neighborhoods, and narrow income inequality gaps.

A home is not only a place to raise a family, but in most cases the determinant of where children access education. For so long education was considered the equalizer in this country and it is our collective responsibility to afford the next generation the same opportunity to succeed. Housing is an investment in oneself and the community at large. By taking the necessary steps to facilitate affordable housing in Maine, the state is investing in its future and unlocking economic development and innovation. Money that is saved from housing expenses can be spent on health care, food, transportation, education, clothes, and recreation, all which help make our local economy viable.

It is time for the people of Maine to demand more from its political leaders to address affordable housing shortages in the state.

In a city like Portland, whose medium income is lower than the AMI but whose market rate housing costs are well above it, the problem is particularly acute; but the problem is widespread across many municipalities across the state. And the situation is all the more urgent when job growth is considered.

Maine has a severe labor shortage in a number of key sectors, making it difficult for Maine to attract employers, while the ones they do attract tend to raise housing prices, as supply of existing stock cannot keep up with demand. As a result, Cumberland County has seen significant growth in population over the last 50 years, but that growth is restricted to surrounding towns, while Portland’s population in that time period has been essentially flat.

The overall trend has been toward smaller households, both for new construction and existing stock, making it increasingly difficult to raise a family in Portland. This situation is made more acute by zoning restrictions — such as minimum lot size — in some surrounding towns that restrict the ability to build housing with an affordable element.

A Comprehensive Permitting Statute will achieve a consistent housing policy across the state and will relieve local municipalities from the burden of setting policy, zoning, and approving projects with an affordable housing component.

The 129 Legislature passed the Maine Affordable Housing Tax Credit law with an allocation of $10 million a year for the next eight years. This is a step in the right direction, but more needs to be done. **We need a Comprehensive Permitting Law in Maine to ensure affordable housing development in Maine does not create enclaves of low income people versus opportunity neighborhoods.**

Maine's need for affordable housing is only going to increase (because of the 2012 federal introduction of Rental Assistance Demonstration, or RAD) the federal government, housing and Auburn development resources are shifting. Federal policy funding, shifted from developing and maintaining properties to assisting developers through housing choice vouchers, means that public housing as we know it is ending.

The shift in policy is discharging the federal government responsibilities in developing and maintaining properties long term but also to concede that redlining in housing had racialized public housing policy and poisoned the public debate. In any case, federal funding is not reliable or adequate to meet our needs in Maine.

An Affordable Housing Permitting Statute will legalize housing so that developers can build more densely than municipal zoning by-laws permit per acre, if such a municipality does not meet certain thresholds of affordable housing stock and/or amount of the land area currently developed for affordable housing. This is especially the case where certain municipalities might use exclusionary zoning (such as large minimum lot size) to outlaw housing that would be built at an affordable level.

Furthermore, an Affordable Housing Permitting Statute should be compatible with other policies that enable affordable housing, such as elimination of parking restrictions, formation of housing land trusts, limited equity condos and co-ops, transit oriented development, and co-housing.

The result will be greater opportunity for a greater number of Maine residents regardless of zip code.

1. STATE OF CURRENT HOUSING STOCK IN MAINE

(AKA NEEDS)

MAINE COMPREHENSIVE HOUSING AFFORDABILITY STRATEGY 2012-2016 (ACS)

TABLE 1 makes the case for why housing policy in Maine needs to change. The status quo is producing disparities that are not tolerable in a decent society. Homeowners in Maine, who are making 80% or less of the Housing Area Median Family Income (HAMFI), total 133,905, and an additional 110,650 renters who fall under the same income bracket pay more for housing, depriving them of the ability to afford other life necessities.

Please consider the following income categories for context:

Income less than or = 30% of HAMFI is defined as **Extremely Low income**

Income less than or = 50% of HAMFI is defined as **Very Low income**

Income less than or = 80% of HAMFI is defined as **Low income**

Extremely low income, very low income, and low income as a group are all considered to be “housing burdened,” because they are forgoing other necessities in life by spending a disproportionate amount of their income on housing. Far too many households are spending over half of their income towards housing at the expense of health care, child care, transportation, food and clothing, and educational necessities, to say nothing of recreation and other leisure activities which relax the mind and enrich the soul. What this data is telling us is that half of the state population is stagnated economically and can barely withstand economc or environmental disasters, or even a pandemic.

Over 40% of Maine’s 1.3 million population may be considered as housing burdened. Study after study have indicated:

> “When low-income families are able to move to neighborhoods that foster mobility, the benefits are clear: the children perform much better academically than their peers in high-poverty neighborhoods; their average annual earnings as adults increase by 31 percent; they are more likely to attend college.”

INCOME DISTRIBUTION OVERVIEW	OWNERS	RENTERS	TOTAL
Household income >/= 30% of HAMFI*	27,540	44,300	71,840
Household Income 30% — 50% of HAMFI	39,795	32,540	72,335
Household income 50 — 80% of HAMFI	66,570	33,810	1000,380
Household income 80 — 100% of HAMFI	43,705	14,710	58,415
Household Income > 100% of HAMFI	216,355	31,785	248,140
TOTAL	393,965	157,145	551,110

*Housing Area Median Family Income

TABLE 1: Legislation is needed to increase affordable housing in Maine to stabilize housing prices and give every family in Maine an opportunity for a decent life in the community of their choice.

Public policy, more often than not, can determine public and private investment, and since the status quo got us here, it is not too late to change course to create equal opportunity for Maine families. Ad hoc seasonal bond funding for affordable housing can supplement, rather than be the means, to address the affordable housing needs in Maine.

What **TABLE 1** also tells us is that as Maine families' income increases, they are more likely to purchase a home rather than rent. For example, low income groups own homes at twice the rate of extremely low income groups. Increasing supply of affordable housing will translate into improved quality of life and better economic mobility opportunity for many families.

TABLE 2: The chart below illustrates the direct federal assistance in helping Maine families as of 2018.

FEDERAL RENTAL ASSISTANCE	FAMILIES ASSISTED
House Choice Voucher	11,700
Section 8 Project Based	7,800
USDA Rental Assistance	5,900
Public Housing	3,800
Supportive Disable and Elderly	900

Source: Center on Budget and Policy Priority, 2018

Federal rental assistance in Maine helped 52,700 people afford to rent a decent place to live in 2018. Seniors, families with children, or people with disabilities represent 76% of all federal rental assistance in Maine.

Another program that requires special attention is the United States Department of Agriculture Program 515, which helps finance rural affordable rental apartments. The mortgages of this program are maturing, meaning its affordability restrictions are ending as the mortgages matures, leaving families with limited options for affordable housing.

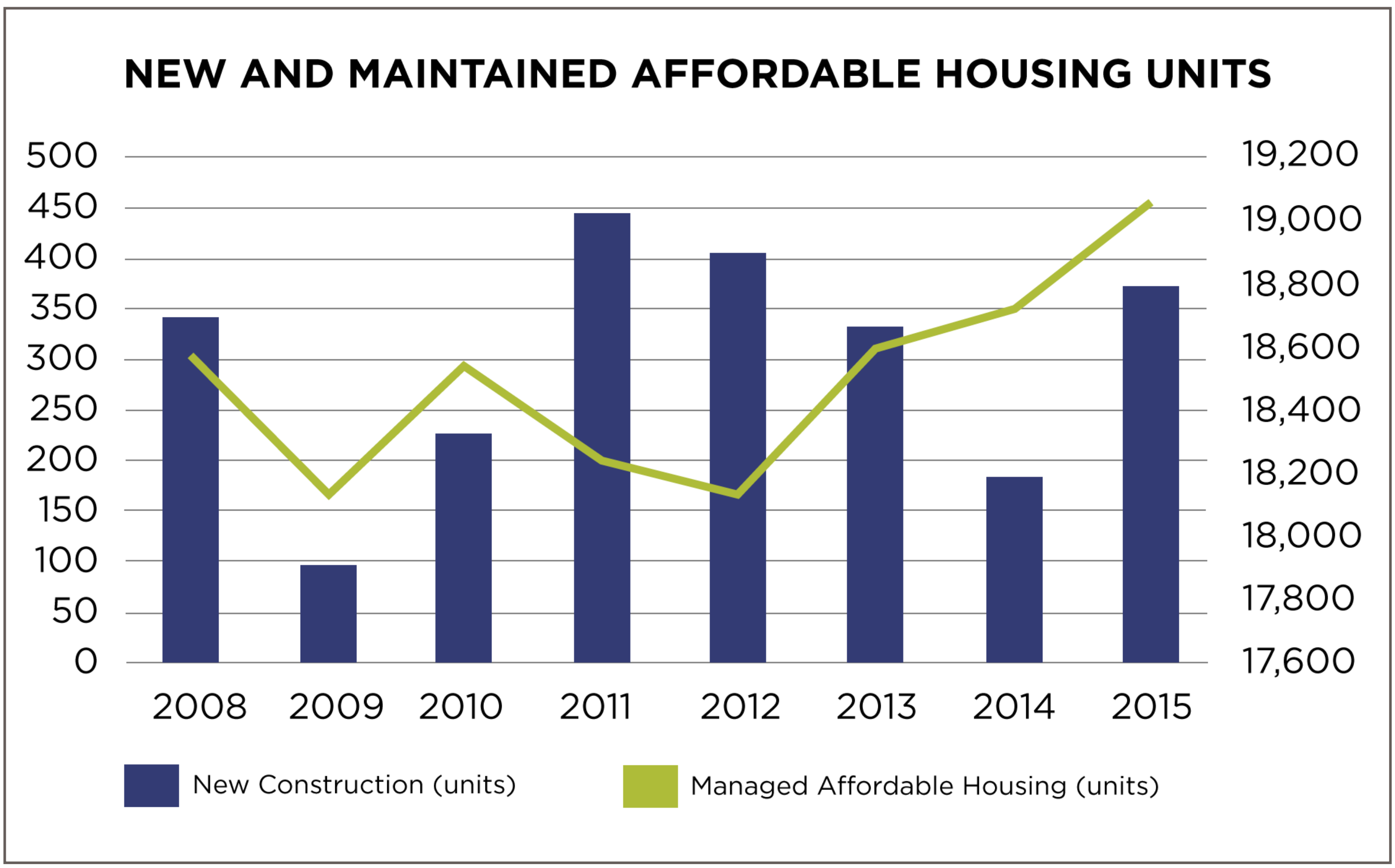
In Maine, there are 6,200 section 515 units with rental assistance; 2,500 are projected to leave the program by 2030. There are no incentives for private developers to purchase and maintain these properties affordably, so the state needs to allocate funding to purchase these properties and turn them over to local public housing authorities or nonprofits housing organizations to maintain them.

Since the federal government policy toward public housing changed to Rental Assistance Demonstration (RAD) in 2012, current public housing units numbers are not going up but rather going down. The transition to Rental Assistance Demonstration means that more investment is needed in the affordable housing field, because mixed income development limits what is affordable to limited income families. The RAD model is sound, but it has its limitations.

In the previous model, 100% of the investment goes to public housing units for limited income. In the mixed income model, the developer determines how many units are limited income based on the economics of the overall development.

Rural Maine had already lost 194 rental units from USDA section 515 program between September 2017 — September 2018. It will be irresponsible to allow more affordable housing to mature to fair market value at a time when demand for affordable housing is on the rise in Maine.

TABLE 3: Below is a chart from MaineHousing, illustrating the number of affordable units currently under management and new construction between 2008-2015.



Source: MaineHousing

Based on **TABLE 3**, affordable housing construction peaked between 2011 through 2012, and recovered in 2015, but not to the previous peak. Maine has a little bit over 19,000 affordable units under management, but we have 12,000 families on the waiting list, not counting those new households affected by COVID-19 and the shut down of the economy. Investment in affordable housing will lead us out of the current economic crisis.

Between 2009-2015, affordable housing construction averaged 343 units per year, totaling 2,063 according to MaineHousing. **At this rate of construction, it will take 36 years to clear the current waiting list for affordable housing in Maine**. Increasing funding to affordable housing is one of the tools, but what we are proposing is the Maine Comprehensive Permitting Statue model after 40B to set the stage for improving the affordable housing development climate in the state. We are not asking the state of Maine to take a leap of faith but rather enact legislation that had a track record in increasing affordable housing development in Massachusetts, Connecticut, and Rhode Island.

The data shows that affordable housing funded by LIHTC housed half of Eligible Low Income (ELI) households. Several factors contributed to the need not being met, including: number of units that are ready for occupancy, locations of the properties versus where the ELI population happens to exist, but also marketing of the properties to families who are eligible and change in family income. The data below will illustrate the point.

Unfortunately, fewer than 48% of LIHTC units are occupied by ELI households (U.S. Department of Housing and Urban Development (HUD), 2016a). Since 1992, less than 44% of rental homes funded by HOME have been initially occupied by ELI households (HUD, 2016b). And in 2014 and 2015, 23% and 27% of new rental units receiving AHP funding were affordable to ELI households (Federal Housing Finance Agency (FHFA), 2015; FHFA, 2016).

Community convenings across multiple demographics have repeatedly identified issues of housing affordability and the lack of affordable housing options for low and medium income people.

BARRIERS TO BUILDING AFFORDABLE HOUSING IN MAINE

A. Key Legislative barriers to affordable housing:

1. State rules that inhibit the construction of new affordable housing units or the renovation of existing buildings.
2. Local regulations that inhibit the construction of new affordable housing units or the renovation of existing buildings. (Please see the specific list below.)
3. Zoning or zoning practices that create barriers.
4. Land use regulations. (Ex: minimum lot size, minimum setbacks, designated growth areas, requirements for off-street parking, open space, and with rehab, change of use, mixed use, etc.)
5. Laws pertaining to municipal impact fees, as allowed under Title 30-A, section 4354.
6. Laws pertaining to municipal moratoria on development permits, as allowed under Title 30-A, section 4356.
7. Laws pertaining to municipal rate of growth ordinances, as allowed under Title 30-A, section 4314.
8. Barriers to the creation of affordable rental housing, including the unavailability of deposit assistance, in areas of the state where rental housing is unaffordable.
9. Barriers to the construction or availability of affordable housing for:
   - Veterans
   - Seniors
   - Retirees
   - Persons with disabilities
   - Homeless persons

B. Financial barriers[1]:

1. Infrastructure costs. (Ex: Access to water, sewer, roads.)
2. Cost and limitation of buildable land, especially in high demand areas.
3. Development costs/fees. (Ex: legal, layered financing, engineering, environmental studies, architectural drawings, impact fees.)
4. Limitations on accessory dwelling units.
5. Density limitations.
6. Permanent affordability issues.
7. Desire for status quo at the community level.
8. Limited capacity to review development plans.
9. Requirements/costs regarding rehab of historic buildings. (Note: ADA regulations are only a barrier regarding 2nd floors, including in downtowns.)

1 As identified by the CPAC Subcommittee

C. Housing Barriers and Recommendations Report (December 17, 2003)

1. Conflicting regulations. (Ex: Between building and fire codes and Historic Preservation requirement.)
2. Zoning ordinances that are decades old and have only undergone piecemeal revisions. (Note: Some feel that zoning regulations are a barrier by their nature.)
3. Parking requirements.
4. Difficulty in funding limited equity co-ops and condos.
5. Lack of alternative land use models. (Ex: Community land trusts, ground leases, rights of first refusal)
6. Lack of public transportation network to get people to jobs.
7. Lack of access to services for special needs populations.
8. Local requirements. (Ex: Such as planting trees per number of units developed or contributing equal amount to 'tree fund,' or building parks and trails for the neighborhood.)
9. Issues related to creating housing for veterans: (a) Land on VA properties can only be leased, not purchased, and cannot be leased for long enough periods of time — both of which are disincentives to developers; (b) MSHA can't lend/grant for veterans-only projects (or any other single subpopulation per both federal & state regs); (c) private developers cannot directly lease property owned by the VA.
10. Towns and communities with attitudes that resist change in land use regulations, or the perception among elected officials that their constituent will resist change.
11. Some experience untimely communication and other difficulties with the Maine State Housing Authority, which result in delayed production or rehabilitation of affordable housing, and/or increased costs to the approved project.
12. Lack of capacity building funds being provided upfront should be money granted to help develop the project — not given after it has been built.
13. Need municipality-dictated design standards targeted for affordable housing.
14. Need new language useful to framing the issue.
15. New developers are hard to attract because the learning curve is so steep regarding federal, state, local financing/building programs and regulations.
16. Rent and security deposit collections of up to 2 months.
17. Cost and lack of availability of buildable land is a HUGE barrier, which prohibits reasonable development from moving forward. In many cases, the land shortages are in large part artificial and a result of zoning.
18. Exclusionary Zoning.

2. SUMMARY OF AFFORDABLE HOUSING STATUTES IN NEW ENGLAND

Affordable Housing Statutes in Massachusetts, Connecticut, and Rhode Island

	Massachusetts	Connecticut	Rhode Island
Affordable Housing Statute	The Comprehensive Permit Act (40B). Enacted 1969.	The Affordable Housing Land Use Appeals Act. 8-30g. Enacted 1989	Comprehensive Housing Production and Rehabilitation Act of 2004 (R.I.G.L. 45-53-4)
Mandate	10% of the housing stock in each municipality be affordable or 1.5% of land.	10% of the housing stock in each municipality are affordalbe.	10% of the housing stock in each municipality are affordable.
Mandate	In the event affordable housing development is not approved, the municipality has the burden of proved during the appeal process.	In the event affordable housing development is not approved, the municipality has the burden of proved during the appeal process.	In the event affordable housing development application is not approved, the municipality has the burden of proved during the appeal process.
Examptation	Affordable housing development plan for 2 years.	Cities can apply for moratorium for 4 years.	25% deed restricted to less than 120% AMI.
Mandate	20-25% of the units are deed restricted to below 80% AMI for perpetuity,	Housing that received government assistance to construct or rehabilitate low and moderate income housing or housing occpupied by individuals receiving rental assistance. Set aside development: a development in which for at least 40 years after initial occupancy, at least 30% of the unites are deed restricted. 1. Specifically, at least 15% of the unites must be deed restricted to households earning 60% or less of the area median income (SMI), whichever is less. 2. 15% of the unites by be deed restricted to households earning 80% or less of the AMI or SMI, whichever is less. 40 years deed restriction.	
Housing Developed Under Affordable Housing Statute	70,000	5,000 plus 10,000 affordable market rate housing.	
Funding	Federal/state and local public funding.	Federal/state and local public funding.	Federal/State and local public funding.
Certification by LiHTC Funding Agency Before Applying for Development Permit	Required.	Required.	Required.

MASSACHUSETTS COMPREHENSIVE PERMITTING LAW (40B)

Summary of 40B:

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 allows developers of affordable housing to override certain aspects of municipal zoning by-laws and other requirements.

Developers can build more densely than municipal zoning by-laws permit per acre, if such a municipality has less than 10% of affordable housing stock or 1.5% of the land area not developed for affordable housing.

(Safe-harbor) Affordable Housing Plan approved by designated authority grant municipalities waivers for two years.

Qualification for Chapter 40B:

- Letter of project eligibility under a state or federal housing program.
- 25% of the units must be restricted to 80% of AMI or less, while 20% restricted to 50% or less of AMI.
- Developer agrees to 20% maximum profit for sale or 10% profit for rental units.

Local Review Process:

- Public hearing required within 30 days of the receipt of application from developer.
- Public hearing to last no more than six months.
- Decision issued within 45 days after ending of public hearing.
- Developer can appeal the decision if it make the finding makes the development economically infeasible .

Eligible residents must earn up to 80% of the AMI to qualify:

- 20% of the units restricted to 50% of AMI long term.
- 25% of the units restricted to under 80% of the AMI long term.

CONNECTICUT

The 8-30g statue in Connecticut is identical to 40B in Massachusetts. It requires that municipalities have at least 10% of the housing stock or 1.5% of the land mass be affordable housing. Municipalities can produce affordable housing plans with the approval of the affordable housing board stating how many affordable units the city can develop and based on the projections when it intends to meet the mandate.

A developer who is participating in this process is required to reserve 20-25% of the units to be affordable to individuals making below 60% and 80% of the AMI, respectively. Municipalities can deny affordable housing development applications if it can prove the development is going to present public health risk or safety. 40B has been legitimized in Massachusetts, and the state high court has ruled that any affordable housing units developed through 40B have to be preserved as affordable for perpetuity.

Courts in Connecticut have ruled in favor of municipalities when cities were able to prove substantial objections that are detrimental to public safety and health. Municipalities can also qualify for a four years moratorium by developing smaller, eligible housing.

The Connecticut Affordable Housing Statute 8-30g has produced about 5,000 affordable homes and 10,000 additional modestly priced apartments. This number looks small because 31 municipalities in Connecticut were exempt from the law when it went into effect; these cities already met or exceeded the 10% threshold.

OPPOSITION TO CHAPTER 40B

The status quo has had an institutional authority and constituency. Communities often perceive affordable housing projects as increasing density and diversity of residents, changes that can be perceived as negative. Real estate is an investment that has the benefit of providing a safe and warm place to raise a family. Race and socio-economic factors have been the driver of local land use ordinances and continue to present.

Those opposed to increasing density and diversity may package their concern in familiar terms, such as: loss of local control, impact on services, drop in housing value, and stigma of having low income people as neighbors.

Unfortunately, several attitudes are all too prevalent:

- Municipalities do not appreciate loss of control during the development approval process.
- More importantly, the back end cost stemming from the influx of new residents and demand for services.
- Affordable housing stigma with its association to low-income housing.
- Residents fear affordable housing development will drive down housing prices in their neighborhood.
- Increase in traffic.

Any modification like 40B adopted in other states, especially in New England, does not sidestep the local approval process, but rather streamlines it to reduce costs associated with lack of predictability and uncertainty in the approval process. All the local zoning processes and permits are adhered to and completed within a tight schedule.

The approval process cannot be used to drive up costs that would make the development infeasible, but the application can be denied if it is going to become a health risk to the public. The burden of proof for affordable housing application denial is on the municipality during the appeal process to justify its decision.

WHY 40B AND WHY NOW?

Maine does not have a comprehensive permitting law. This makes it harder to develop affordable housing if there is always fierce opposition to density and affordable housing.

40B has 50 years of history in Massachusetts, and it is now the law in Connecticut and Rhode Island. It creates a predictable housing development process and eliminates uncertainty, which reduces cost.

It also established a minimum standard for each municipality to meet the needs of its low income residents. **Now is the best time to pass an affordable housing statute in Maine to spur development**, especially since the federal government is shifting resources away from property development to subsidies through RAD.

How is Chapter 40B different from other affordable housing programs?

- 40B has no subsidy or state budget allocation.
- The developer absorbs a share of the costs of overall financing the affordable portion of the project.
- The market rate units will compensate for the affordable units.
- Streamlining local development process rather than overriding them.
- Establish minimum standards for each municipality for affordable housing.
- Municipalities becomes proactive in the affordable housing market.
- Increase affordable housing units and spur economic growth.
- Reduce environmental footprint on our ecosystem.
- Affordable housing units under 40B are preserved for perpetuity.
- Increase data driven development and reduce politics.
- Allows for low income people to remain in communities of their choosing.
- Reduces the burden of local municipalities of crafting that portion of their affordable housing policy.

3. OVERVIEW OF AFFORDABLE HOUSING PROGRAMS IN MAINE

Maine has had the Affordable Housing Tax Increment Financing (AHTIF) program since 2003, which offers municipalities a flexibility in designating certain areas to receive financing for affordable housing purposes. The AHTIF statute at 30-A M.R.S.A. 5245-5250-G sets out the required elements of an AHFIT district and its affordable housing development program.

Key requirements include:

- At least 25% of the district area must be suitable for residential use, and development within the district must be primarily residential.
- At least 33% of the housing units in the AHTIF district must be for households earning no more than 120% of area median income.
- The affordability of rental units must be maintained for at least 30 years, and the affordability of homeownership units must be maintained for at least 10 years.

Maine State Historic Rehabilitation Tax Credit Program includes the following:

1. The substantial rehabilitation credits 25% state credit for any rehabilitation that also qualifies for the 20% federal credit. The rehabilitation must meet all the requirements of the federal tax incentive program.
2. The Small Project Rehabilitation Credit 25% of state credit for the rehabilitation of certified historic structures with certified qualified rehabilitation expenditures of between $50,000 and $250,000. This credit is available to entities that do not claim the federal rehabilitation credit. Applicants must meet all federal tax code qualifications except the substantial rehabilitation requirement.
3. The Affordable Housing Rehabilitation Credit increases the state substantial rehabilitation credit and small project rehabilitation credit are increased currently to 33%, if the rehabilitation project results in the creation of at least 50% of the aggregate square feet of the completed housing creates new affordable housing; or at least 33% of the aggregate square feet of the completed project creates new affordable housing.

MAINE AFFORDABLE HOUSING TAX CREDIT (MAHTC) 2020

The tax credit will be allocated within eight years from 2021-2028 in an increment of $10 million a year:

- Restricted covenant 60% of the units to be rented to tenants making at or below 50% of AMI and the project is eligible to 4% Federal LIHTC.
- If the development project is financed using tax exempt bonds, the allocation is equal to the Federal LIHTC. For non-bond finance housing development projects, MAHTC is 50% of qualified basis up to 500,000 for a single project.
- No more than 20% of the credit can be used for projects that are not tax exempt financing.
- Affordability must be maintained for 45 years from the day of placement in service.

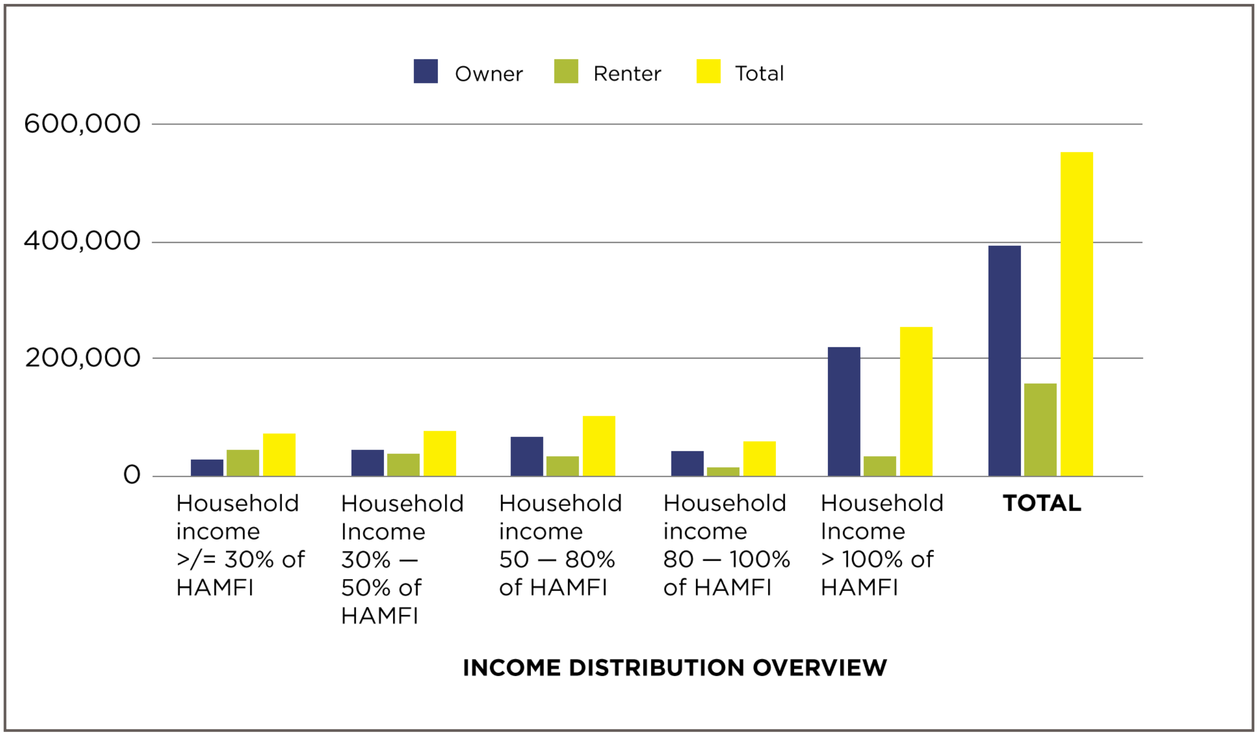


TABLE 4: Income Distribution Overview in Maine

BENEFITS FOR MAINE AND ITS COMMUNITIES

- Fewer households paying more than 30% on housing will be able to spend additional income in the economy.
- Development of a work force based on a secure and stable population in depressed and underserved areas and where labor demand is high.
- Provide opportunities for families who otherwise will not afford to find decent housing.
- Access to resources (such as schools, jobs, health care, child care, and high speed internet connections for low income residents) are all predictor of better outcomes.
- Mixed income developments under 8-30g have been a success with none of the ills opponents predicted.
- Densely designed multifamily buildings are environmentally sound and energy saving even without green, sustainability features.

4. CASE STUDIES:
EXAMPLES OF SELECTED 40B DEVELOPMENT PROJECTS IN MASSACHUSETTS

Tufts University chose four development projects to represent both rental and homeownership developments, and ranged in size from 9 to 300 units based on their sizes, nature of the development and the kind of opposition mobilized against it. The following developments chosen for this report were located within 30 miles from the city of Boston: the Preserve in Walpole, Kayla's House Development in Newton, Hastings Village in Wellesley, and Dickson Meadow in Weston.

The following were the complaints raised either by municipal officials, neighbors, or organized groups to oppose each of the proposed developments:

- Municipal service capacity and adequacy (Ex: schools, water, sewer and emergency services.)
- Density.
- Neighborhood change.
- Environmental impacts.
- Health and safety.
- Property values.
- Preservation of open space.

THE PRESERVE AT WALPOLE, MA

The city of Walpole relies on its residential tax based and state aid to provide services to its residents. The American Community Survey (ACS 2005-2007) estimates a median household income of $90,736 and a median home value of $442,800. Before the construction of the Preserve apartments in 2005, Walpole was at 2% of its 10% affordable housing stock, based on a 40B requirement. The Preserve raised the city affordable housing stock to 5.4% after its completion. The city of Walpole had a population of 22,824, occupying 20.53 square miles of land. The median household income was $74,757, with total housing units of 8,229, and 85.1% of the housing are owner occupied. The town is located one mile from Gillette Stadium.

Massachusetts Resources:
https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/report-de_genova-et-al.pdf

TABLE 5: Points of Contentions in Walpole, MA

	COMMUNITY CONCERNS	RESULTS AFTER THE FACT
SCHOOL IMPACT	Influx of 260-564 new students. Need to hire 13 new teachers. Increase in students would bring the district "into a state of crisis."	90 students (2008-2009). 1.5 ELL positions created. The numbers were significantly lower and the district seems to have managed it well.
SEWER AND WATER	Sewer system would fail under increased demand. The Preserve would consume 200,000 gallons of water per day. Infrastructure improvements could not be made before the development was completed.	Demand was remedied by pump system. Average consumption was 35,000 gallons per day (2008). All improvements were completed by 2004, before the project was completed.
EMERGENCY SERVICE AND PEDESTRIAN SAFETY	Response times due to distance from center of town and increased time during stadium events. Insufficient water pressure for firefighting. Lack of sidewalks at The Preserve.	No major incidents. Stadium pays for police and fire at The Preserve during events. Other tests showed sufficient pressure. No problems experienced No incidences and sidewalks were not required for other commercial and market-rate developments.
INCONSISTENCY WITH COMMUNITY PLANNING	Loss of 42 acres that could have gone to economic development. Loss of commercial tax revenue.	Town advertised many opportunities and spaces for commercial development after construction. The Preserve generates approximately $371,000 in tax revenue per year.

KAYLA'S HOUSING AT NEWTON, MA

Newton, MA is located six miles west of Boston. Newton median household income is $86,052, compared to $50,502 for Massachusetts.

Kayla's House Development is in mixed-use 1 zone, directly adjacent to a single residential 3 zone. The development is a hybrid of rental and owner occupied dwellings, totaling nine units.

Five of the units are designated for single mothers earning less than $24,000 per year, and one of the homeowner condos was designated for first time home buyers making less than $56,000 per year.

The market rate units were to sell for $425,000, and first time home buyers for $256,000. Newton zoning at the time of the application could allow for a maximum of .73 units per acre.

TABLE 6: Points of Contentions in Newton, MA

	COMMUNITY CONCERNS	RESULTS AFTER THE FACT
COMMUNITY PROCESS	City of Newton provided developer with financial support before the community is approached about the proposed development.	City of Newton inserted strong recommendations for developers to elicit community input early in future 40B permitting process.
NEIGHBORHOOD CHANGE	Fears that transitional housing would bring wayward women, dangerous men, drug addicts, and delinquent children.	Kayla's House residents keep to themselves. Neighborhood residents have largely accepted these residents.
ENVIRONMENT PUBLIC HEALTH	Noise and air pollution would adversely impact the health of incoming residents. Construction would detract from green buffer zones between industrial and residential areas.	No subsequent complaints regarding the environment and public health have been reported the the Newton Health Department. Additional tree screening was added to appease an abutter. ZBA required developer to agree to landscaping approvals and yearly upkeep.
TRAFFIC	The density of the proposed development would bring too much additional traffic to a poorly maintained portion of the street between two blind turns.	Christina street has experienced almost half as many traffic accidents from 2003-2007 than the period 1996-2000.
EXPERIENCE OF DEVELOPER	The developer's lack of experience in building market rate units.	ZBA granted the comprehensive permit with 34 stipulations, among them requiring the contractor to have 15 years experience and at least 10 low and moderate income housing projects in their portfolio.

HASTINGS VILLAGE AT WELLESLEY, MA

The town of **Wellesley, MA** is located 13 miles west of Boston, consisting of approximately 26,000 residents. It is a desirable place to live among people with the means. It has a renowned public school system. Median home price is $910,900 and consistently ranks among the wealthiest towns in Massachusetts, according to American Community Survey (ACS 2007). Affordability is an issue, because even the city employees cannot afford to live in Wellesley, according to *Wellesley Townsman*, a local newspaper.

Although Wellesley has not complied with the 40B requirement for each municipality to have at least 10% of the housing stock affordable, its leaders had affordable housing development plans in place emphasizing preservation of single family homes and avoiding urban scale development projects.

In 1994, developer Logan Huffman of Eastland Partners submitted a plan to build mixed income housing called Hasting Village, consisting of 87 units. The Wellesley's Zoning Board of Appeals rejected the application citing density and environmental contamination concerns. Eastland Partners reduced the project to 52 units and appealed the decision to the State Housing Appeal Committee. The plan was approved by the State Housing Appeal Committee under a 40B permit. The neighbors appealed to the State Superior Court, which ruled in favor of the developer. After six years of battle, the Eastland Partners were granted building permit for Hasting Village in 2002.

Below in **TABLE 7** are the main points of contentions during the permitting process and the outcome after three years of occupancy.

	COMMUNITY CONCERNS	**RESULTS AFTER THE FACT**
TRAFFIC	The addition of residential units will increase the volume of traffic coming off Route 9 causing potential safety issues and increasing threat of accidents.	No increase in accidents.
ENVIRONMENTAL IMPACTS	The building footprint would impact runoff from the development into the town water supply, causing potential for contamination.	No known impacts.
INFRASTRUCTURE INPMACTS	Existing sewer lines could not accommodate the additional output from a dense development.	No known impacts.
DEVELOPER'S TRACK RECORD	The developer would not follow through on project or create a shoddy development that might be an eyesore.	Development looks nice and is well-maintained.
PROPERTY VALUES	The addition of a dense development of rental housing units would decrease the property values of abutting properties.	Property values have not been affected.

TABLE 7: Points of Contentions in Wellesley, MA

DICKSON MEADOW AT WESTON, MA

Weston is a quaint and scenic suburb of Boston, located 12 miles west of the city. This largely residential community is one of the wealthiest in the state. with a population of 11,469 and median income of $201,200. Residents are proud of Weston's reputable schools and beautiful homes in quiet and well-maintained neighborhoods. Another of Weston's distinct features is its 60+ miles of hiking and horseback riding trails, golf courses, parks, ball fields, and other carefully preserved open space.

Edward and Priscilla Dickson donated 10.8 acres of land to the Community Builders, Inc, an experienced affordable housing developer to build a mix income housing development. The site of the new development has been undeveloped next to a single family residential neighborhood. This neighborhood is zoned for a single family home with 60,000 sq. ft. minimum sized lots.

The key objectives of the advisory committee were to build 6 affordable homes in a mixed income community, in total 18 single family homes. Twelve of the homes were to be sold at market rate to supplement the affordable units income and balance the community. It also required preservation of as many trees and open spaces as possible.

The opposition lobbied the city to purchase the donated land so that the size of the development could be scaled down. The opposition is concerned about the site plan density, preservation of trees, open space, building architecture and other similar matters. **TABLE 8** highlights points of contentions, concerns and the outcome after 3 years of occupancy.

TABLE 8: Points of Contentions in Weston, MA

	COMMUNITY CONCERNS	RESULTS AFTER THE FACT
DENSITY	Too many units land area.	18 units built on 10.8 acres, as proposed. No direct negative impacts found.
OPEN SPACE	Development would destroy open space that should be preserved.	Homes replaced some open space. 2.5 acres of development site was preserved as conservation land.
SITE PLAN, ARCHITECTURE AND IMPACT ON SURROUNDING LAND	Unsafe road design. Inadequate septic and drainage systems. Risk of poor quality or unattractive construction and landscaping. Development would not fit into the neighborhood. Problems with development or unappealing aesthetics could lessen surrounding property values.	No reported problems with road design, septic and drainage systems, building construction or landscaping. Town residents report the development fitting into its surroundings. No known impact on surrounding property values.

As the four case studies illustrate, from the Preserve at Walpole to Kayla's Housing at Newton, or Hastings Village at Wellesley to Dickson Meadow at Weston, the opposition raised concerns that were intended to stop affordable housing to be built within these localities. At the end of the process, 40B prevailed; all these projects were completed, although some took longer than others. The 40B statute works without demising local control.

5. CONCLUSIONS AND RECOMMENDATIONS

Lessons learned from these experience includes:

- Municipalities need to be proactive in encouraging affordable housing developments that suit their vision, rather than waiting to wage a fight against 40B.
- Well planned small affordable housing development, in line with 40B statutory requirement, may be the better option for some municipalities.
- Cities have learned that resisting change is not the answer to spur economic growth and diversify tax based.
- Low income people are not only consumers but entrepreneurial, and are essential to the workforce.

The architectural design of any built environment is to physically separate and inhibit access to some properties' landscape, while providing access and comfort to others mostly along income lines. Nothing can illustrate this point more than housing. It is the basic building block of the family unit in society.

Access to housing has never been front and center as it is today, especially in the middle of a pandemic, and yet resources are lacking to ensure our residents are afforded the opportunity to access decent housing. We have exclusionary zoning in the state of Maine. Exclusionary zoning is when the housing development permit process is channeled through the lenses of few professionals and well organized at the expense of the residents who will benefit from such development.

We need inclusive zoning to eliminate barriers or otherwise to afford every resident an opportunity for success.

RECOMMENDATIONS:

1. Maine needs the legislative equivalent of 40B, tailored to our local needs to increase affordable housing stock in the state.
2. The Real Estate Transfer Fund (HOME FUND) should be reserved for affordable housing development — not to be used to fill budget shortfalls by politicians.
3. Make permanent the Maine Affordable Housing Tax Credit, instead of letting it expire by 2028 (MAHTC).
4. Transition affordable housing development from being low income focus to mix income development, with local government taking the lead role. The Federal government is getting out of property ownership through RAD, and it is time for the state and local government to take the lead, instead of abandoning the space to the private market. Having state and local governments investing in developing properties will reduce the constant circle of government subsidies to developers, while the need outpace properties coming online.
5. Take proactive steps to retain and maintain the USDA section 515 housing in rural Maine before mortgage maturity.

APPENDIX

A. DEFINITIONS & ACRONYMS

SHI: Subsidized Housing Inventory

Affordable housing: Decent, safe, and sanitary living accommodations that are affordable to lower income households and moderate income households, in accord with the following provisions. Owner-occupied housing unit is "Affordable" to a household if the unit's expected sales price is reasonably anticipated to result in monthly housing costs (including mortgage principal and interest payments, mortgage insurance costs, homeowners' insurance costs, real estate taxes, and basic utility and energy costs) that do not exceed 28% to 33% of the household's gross monthly income. Determination of mortgage amounts and payments are to be based on down payment rates and interest rates generally available to lower and moderate income households.

A renter: Occupied housing unit is "affordable" to a household if the unit's monthly housing costs (including rent and basic utility and energy costs) do not exceed 28% to 33% of the household's gross monthly income.

Lower income household: A household with a gross income less than or equal to 80% of the applicable MSA/County median income. Lower income households include both very low income households and low income household. A "low income household" is a household with a gross income over 50%, but less than or equal to 80%, of the applicable MSA/County median income.

Very low income household: A household with a gross income less than or equal to 50% of the applicable MSA/County median income.

Moderate income household: A household with a gross income over 80%, but less than or equal to 150%, of the applicable MSA/County median income.

Applicable MSA/County median income: The median family income most recently published by the U.S. Department of Housing and Urban Development for the federally-designated Metropolitan Statistical Area (MSA) or County (non-MSA part) in which the housing unit is located. Where appropriate to use of this definition, median family income may be adjusted for family size.

A household's gross income: Includes the income of all household members from all sources.

Use regulation: Controls the type of development that is permitted on a given property. Most often, use regulations discourage multifamily housing. Use regulations may prohibit a property owner from building a home in favor of other types of development or in favor of other types of development or in favor of no development at all. Urban growth boundaries provide an example of the latter[2].

Density regulation: Limits the height of a building, which has the effect of limiting the number of total housing units in a development. This occurs even in urban metropolises such as Washington, D.C., where property owners living on highly valuable swaths of land in the district are prohibited from building more than three-story town homes. Density regulations may also impose minimum lot sizes, which limit the number of housing units in a geographic area[3].

Design regulation: Governs everything from the color of building materials to architectural features and landscaping. Design regulations often stray into the minutiae of development[4].

Preservation regulation: Limits updates of enlargements of existing development. The goal is usually to preserve historical or notable architectural characteristics. These occur at both the local and federal levels through the National Historic Preservation Act[5].

Process regulation: Subjects development to a discretionary approval process wherein planning officials scrutinize property owners' plans, usually for conformity to the zoning ordinance and adjacent development. This process delays the construction of new development and adds substantial uncertainty. Some cities also cap annual building permits[6].

Quality regulation: Limits the supply of older or defective housing, which raises the quality of housing stock overall. This may be disadvantageous to individuals looking for low-cost housing because it limits the supply of such properties[7].

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“Affordable housing development” means a proposed housing development which is (A) assisted housing, or (B) a set-aside development;

“Affordable housing application” means any application made to a commission in connection with an affordable housing development by a person who proposes to develop such affordable housing.

“Assisted housing” means housing which is receiving, or will receive, financial assistance under any governmental program for the construction or substantial rehabilitation of low and moderate income housing, and any housing occupied by persons receiving rental assistance under chapter 319uu or Section 1437f of Title 42 of the United States Code;

“Commission” means a zoning commission, planning commission, planning and zoning commission, zoning board of appeals or municipal agency exercising zoning or planning authority.

“Municipality” means any town, city or borough, whether consolidated or unconsolidated.

“Set-aside development” means a development in which not less than thirty per cent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least 40 after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay 30% or less of their annual income, where such income is less than or equal to 80% of the median income. In a set-aside development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than 15% of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to 60% of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to 80% of the median income.

“Median income” means, after adjustments for family size, the lesser of the state median income or the area median income for the area in which the municipality containing the affordable housing development is located, as determined by the United States Department of Housing and Urban Development.

“Commissioner” means the Commissioner of Housing[8].

8. Affordable Housing Land Use Appeals, Chapter 126a.
https://www.cga.ct.gov/current/pub/chap_126a.htm#sec_8-30g

B. OTHER TABLES FOR REFERENCE

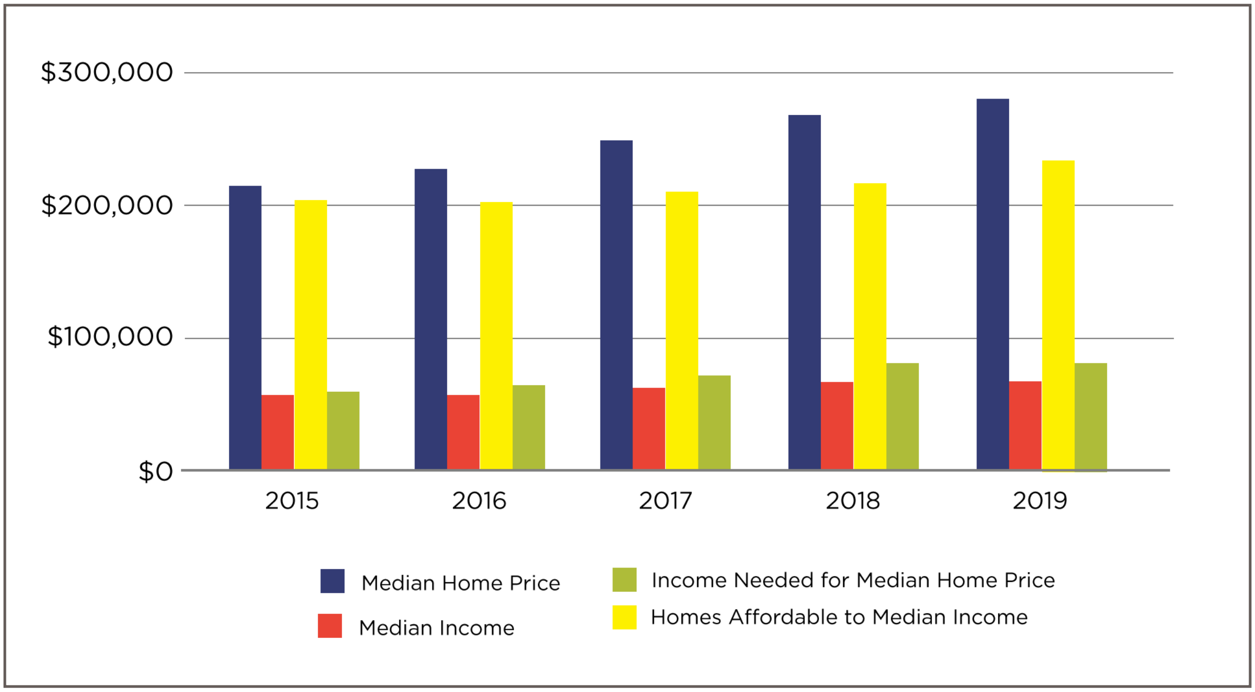

TABLE 9: CD 1 Housing Prices Verses Income

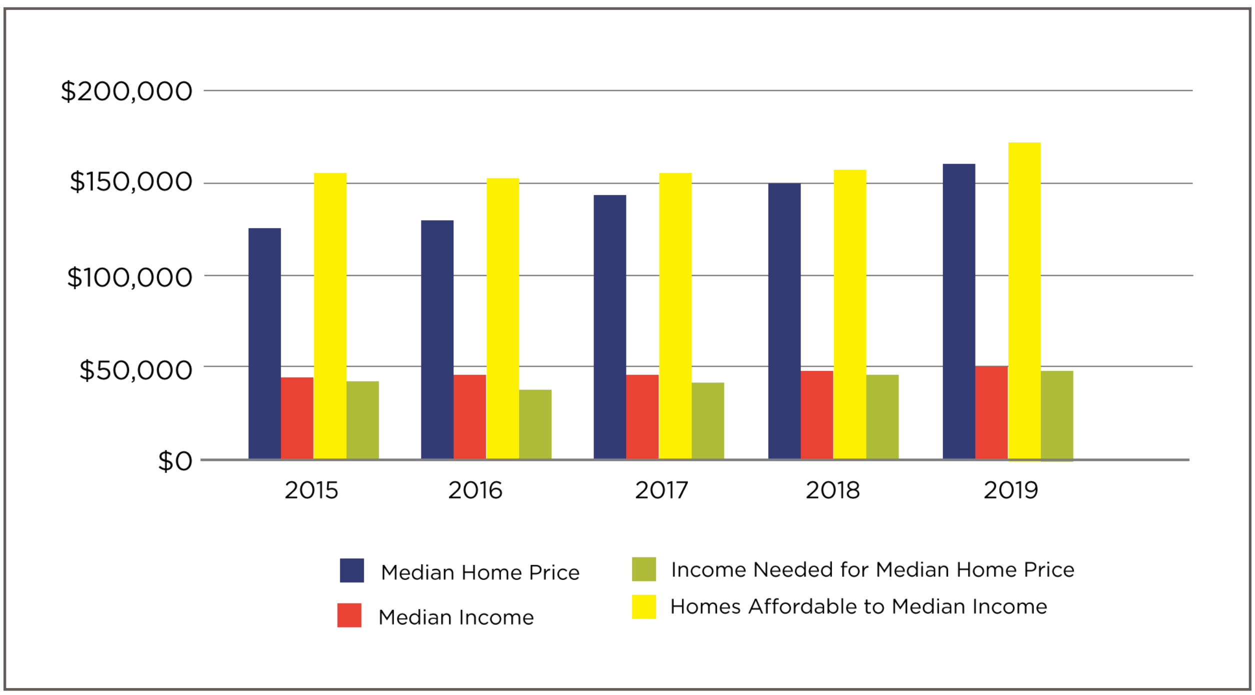

TABLE 10: CD 2 Housing Prices Verses Income

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"Maine has to change course if it is going to afford its residents an opportunity for **equal access** to live in the community of their choice, eliminate low income enclaves versus opportunity neighborhoods, and narrow income inequality gaps."

— Report: 40B