

Affordable Housing Planning and Appeal Act (AHPAA)

FREQUENTLY ASKED QUESTIONS (FAQ)

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Document Purpose

In 2003, the Illinois General Assembly passed the Affordable Housing Planning and Appeal Act (AHPAA) ([310 ILCS 67/](#)) to address the shortage of affordable, accessible, safe, and sanitary housing in communities across Illinois. To help Non-Exempt Local Governments (NELGs) understand the AHPAA and its implications for their communities, this FAQ was compiled to answer commonly asked questions. The information to follow is also included as Appendix A in the “2023 Non-Exempt Local Government Handbook” published by IHDA, and available on IHDA’s [website](#). Given changes to the AHPAA in 2023, IHDA highly recommends NELGs review both this FAQ and the corresponding 2023 Handbook to fully understand AHPAA and its requirements.

For additional information, please email AHPAA@ihda.org.

Frequently Asked Questions (FAQ)

1) Can a Non-Exempt Local Government appeal their exemption status?

The State Housing Appeals Board has the authority to review the legitimacy of exemption status, but only in the case of an Appellant’s housing appeal related to that community. If a Non-Exempt Local Government wishes to submit information that may affect their exemption status in the eyes of the State Housing Appeals Board, then they may submit those materials to IHDA for the State Housing Appeals Board, as records to be reviewed at the time of an appeal.

2) Why are Metropolitan Statistical Area figures for median household income used for some places and county figures for other places?

The AHPAA statute specifies affordability calculations be based on the median household income (MHI) of the applicable Metropolitan Statistical Area (MSA(s)) data where available, and county data where MSA level data is not available. The U.S. Office of Management and Budget (OMB) regularly publishes guidance on the definitions and delineations of MSAs, and that information is adopted by the U.S. Census Bureau and various federal funding sources for use in their programming. The AHPAA was written to accommodate MSA data to ensure that areas of population concentration with a high degree of economic and social integration are treated as a whole. Areas for which county data were used are generally rural in nature. For the 2023 AHPAA Local Government Exemption Determination Cycle, IHDA used MSA delineations for Illinois released by OMB in March 2020. These OMB delineations are accessible on the Census [website](#).

3) Does the count of affordable units in a local government reflect the number of households currently paying more than 30% of income?

No. The analysis undertaken during the AHPAA-mandated Local Government Exemption Determination Process compares the cost of home buying (at 80% MHI) or renting (at 60% MHI) in a given community, using the area’s (MSA or county level) median household income, and cross compares against the total count of local housing units available to both owners and renters to determine counts of units which would be considered affordable per the Act. Information utilized in the analysis is based on household level responses to the U.S. Census Bureau’s, American Community Survey (ACS) 5-Year Estimates.

4) What is the State Housing Appeals Board?

Under the AHPAA, the State Housing Appeals Board (SHAB) was established to hear and deliver outcomes based on petitions by Appellants for review of the evidence, facts, and circumstances surrounding a Non-

Exempt Local Government's decision to deny or approve with conditions, an application for affordable housing development. The SHAB consists of seven members:

- A retired circuit judge, a retired appellate judge, a current or retired administrative law judge, or a practicing or retired attorney with experience in the area of land use law or related field, who shall act as chairperson,
- 4 members selected from among the following categories:
 - County or municipal zoning board of appeals members
 - County or municipal planning board members
 - A mayor or municipal council or board member
 - A county board member
- An affordable housing developer
- An affordable housing advocate

IHDA's Chairperson serves as an ex-officio member.

5) Who is an "Appellant"?

The Act dictates an "Appellant", one who can file an appeal before the SHAB, as being one of the following:

- The affordable housing developer of the proposed affordable housing development.
- A person who would be eligible to apply for residency in the proposed affordable housing development.
- A housing organization whose geographic focus area includes the municipality, or county if in an unincorporated area, where the proposed affordable housing development is located.

6) How does an appellant file an appeal with the State Housing Appeals Board (SHAB)?

An Appellant wishing to file an appeal should send a complete package with all materials identified in the AHPAA and the SHAB administrative rules to IHDA's Strategic Planning and Reporting Department (SPAR), addressed as follows:

Illinois Housing Development Authority
ATTN: SPAR
RE: State Housing Appeals Board (SHAB)
111 E. Wacker Drive, Ste. 1000
Chicago, IL 60601

7) Are municipalities required to own the affordable housing developed within their borders?

No. A Non-Exempt Local Government is not expected to own or manage affordable housing to comply No. A Non-Exempt Local Government is not expected to own or manage affordable housing to comply with the AHPAA. However, the planning requirements of the AHPAA suggest that municipalities can and are encouraged to help facilitate affordable housing development by providing local incentives, some of which may involve municipally created nonprofit ownership or management of a property (e.g., a community land trust under an inclusionary housing program or a Community Housing Development Organization (CHDO) under a HOME program). Public support of an affordable housing development may be more appropriate in the form of a property donation or waiver of local development building and permit fees. In addition, nonprofits, and affiliates of Public Housing Authorities (PHAs) have also developed and managed affordable housing properties in Illinois.

8) To comply with the AHPAA statute, is a particular type of affordable housing necessary?

No. The type of affordable housing provided within a community is strictly a local decision. Neither IHDA nor the AHPAA require or prefer a particular type of affordable housing to comply with the law. Municipalities may decide to encourage affordable rental housing, affordable homeownership programs, or alternative types of housing tenure. In some cases, changes to local zoning and building codes may attract developers able to build housing without any subsidies or restrictions, and market them to residents at a price which is affordable per the AHPAA.

9) Are municipalities required to change zoning ordinances to comply with the AHPAA?

No. The AHPAA statute does not intend to dictate or override local zoning ordinances and building codes. Compliance does not necessarily require a change in either zoning or building codes (nor density, design, or unit type requirements). The AHPAA includes consideration of non-appealable local government requirements these being defined as all essential requirements that protect the public health and safety, including any local building, electrical fire, or plumbing code requirements or those requirements that are critical to the protection or preservation of the environment.

For compliance with the AHPAA, some communities may choose to utilize incentive programs, such as the establishment of an inclusionary zoning ordinance or other development incentives, and they may choose to modify local zoning ordinances to accommodate for affordable housing developments, but these are not required.

10) Are municipalities required to be involved with private real estate transactions?

No. Compliance with the AHPAA does not require municipal participation in private transactions. Unless a municipality chooses to become involved indirectly with private real estate transactions by establishing a community land trust (though community land can be established as a separate legal entity), there are no statutory requirements that necessitate municipal participation in real estate transactions beyond the approval of an affordable housing plan. Municipalities and counties are encouraged to participate in such projects financially, when feasible, via local CDBG and/or HOME Program funding and other local options, e.g., TIF Districts, waiver of development fees, etc. Also, approval and support of projects with affordable housing components such as LIHTC projects is encouraged.

11) To comply with the AHPAA statute, are municipalities required to develop property designated as parkland or open space?

No. The purpose of the AHPAA is to strongly encourage local planning strategies that foster the development of affordable housing. The law is not intended to dictate the type or location of affordable housing to be developed or to dictate land use in communities. While the AHPAA asks communities to consider surplus publicly owned properties as locations for potential affordable housing developments, it does not mandate the repurposing of already utilized public lands.

12) How are communities with little available land (“built out”) going to comply with the law?

The AHPAA does not force communities to categorically accept new developments that include affordable housing. In fact, this law may have minimal practical impact on communities which are already “built out”. Communities with little available undeveloped land could choose the option of 15% of all new development and redevelopment as a set-aside for affordable housing. The law simply provides that as a community continues to grow or redevelop, it should work to include some moderately priced housing,

making it possible for those who work in and serve the community to afford to live there. Rehabilitation of existing housing and maintaining already present affordability are other options.

13) Will development of affordable housing in a municipality give it future “exempt” status?

This question does not have an easy answer for several reasons which are listed below. Still, it should be remembered the AHPAA generally does encourage all communities, Exempt and Non-Exempt alike, to undertake robust measures in support of affordable housing development, in addition to measures to preserve existing community affordability.

First, the AHPAA Local Government Exemption Determination Process does not identify individual housing units which are in fact affordable, it instead uses U.S. Census data among other sources, to calculate a generalized understanding of what portion of the total housing stock in a community would be considered affordable per the AHPAA. This portion of affordably priced housing is known as an “affordable housing share”. For would be low- and moderate-income homeowners and renters looking to reside in the community, an affordable housing share represents the hypothetical scope of the home purchase or rental unit options which are accessible among the total local year-round occupied housing stock.

Second, data utilized in the Exemption Determination analysis is based on household level responses to the U.S. Census Bureau’s, American Community Survey (ACS). This data is only as good as the quality of the individual responses collected. Additionally, as Census Bureau estimates are collected on an ongoing basis, total counts of housing in each community will change with time based on the flow of development/redevelopment, and the survey participant responses.

Third, is the understanding of how the Census Bureau defines a housing unit. Per the AHPAA, data used to determine community affordability includes total year-round “housing units” as provided by the U.S. Census. Per the U.S. Census, a housing unit is defined as:

- A house, an apartment, a mobile home or trailer, a group of rooms, or a single room occupied as separate living quarters, or if vacant, intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other individuals in the building, and which have direct access from outside the building or through a common hall. For vacant units, the criteria of separateness and direct access are applied to the intended occupants whenever possible.¹

Not included in the total counts of housing units in communities as provided by the U.S. Census, and not used during the Exemption Determination Process, are dwelling places classed as “Group Quarters”, which the U.S. Census defines as:

- A group quarters is a place where people live or stay, in a group living arrangement, that is owned or managed by an entity or organization providing housing and/or services for the residents.
- This is not a typical household-type living arrangement. These services may include custodial or medical care as well as other types of assistance, and residency is commonly restricted to those receiving these services. People living in group quarters are usually not related to each other.

¹ United States Census Bureau Glossary, Definition of “Housing Unit”, Accessed 11/08/2023, <https://www.census.gov/glossary/>.

- Group quarters include such places as college residence halls, residential treatment centers, skilled nursing facilities, group homes, military barracks, correctional facilities, and workers' dormitories.²

14) Are municipalities with home rule authority exempt from AHPAA?

Home rule units are not categorically exempt from AHPAA. A municipality's status as a home rule unit has no direct bearing on the municipality's AHPAA exemption status. Pursuant to 310 ILCS 67/70, a unit of local government, including a home rule unit, may not regulate the activities described in AHPAA in a manner more restrictive than the regulation of those activities by the State. Said section also expressly states that it is a limitation under the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the state.

15) What happens if a non-exempt local government fails to submit an affordable housing plan to the Illinois Housing Development Authority?

The Illinois Housing Development Authority is required by law to notify any such local government that the local government is in violation of State law. In addition, the Illinois Housing Development Authority may notify the Office of the Attorney General.

16) What happens if a non-exempt local government submits an affordable housing plan to the Illinois Housing Development Authority, but it is deemed to be out of substantial compliance?

The Illinois Housing Development Authority is required by law to notify any such local government that the local government is in violation of State law. In addition, the Illinois Housing Development Authority may notify the Office of the Attorney General.

17) Under what circumstances might the Illinois Housing Development Authority decide to notify the Office of the Attorney General?

Any such decision will be made on a case-by-case basis depending on the facts and circumstances. It is unlikely that the Authority would report Non-Exempt Local Governments making good faith efforts to comply. However, Non-Exempt Local Governments who fail to submit a plan or who submit a plan that was not prepared in good faith should expect to be reported.

18) What can the Illinois Attorney General do?

The Attorney General may seek to enforce the act via an action for mandamus or injunction or by means of other appropriate relief.

² Ibid.