

# Affordable Housing Planning and Appeal Act (AHPAA)

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2023 NON-EXEMPT LOCAL GOVERNMENT HANDBOOK

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ILLINOIS HOUSING DEVELOPMENT AUTHORITY  
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## Executive Summary

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. Since its initial passage, the AHPAA has been amended on several occasions, most recently in 2025 through Public Act 104-0319.

Rising home prices and monthly rental payments were an issue at the time of the Act's passage in 2003. This situation has persisted, leading to challenges in households finding housing near to their places of employment, and for retirees to continue to reside in their preferred communities.

As listed below, the AHPAA established several processes and requirements to address affordability across Illinois. Named as the administering agency in the law, the Illinois Housing Development Authority (IHDA) oversees collecting and distributing information on the AHPAA. This handbook was developed to accompany the "2023 Report of Non-Exempt Local Governments" and the "2023 Statewide Report on Local Government Affordability" and is a reference tool for communities to understand AHPAA's processes and requirements.

### Basics of the AHPAA

The AHPAA established a process for IHDA to identify communities with shortages of local housing stock available at an amount which would be affordable to:

- Homebuyers at 80% of the median household income in the applicable county or Metropolitan Statistical Area (MSA); and
- Renters at 60% of the median household income in the applicable county or MSA.

Determining a community's housing affordability percentage under the AHPAA is done by first tallying the total number of year-round occupied housing units available to owners and renters at amounts which would be considered affordable per the AHPAA requirements and then dividing that amount against the community's total count of year-round occupied housing units. This in turn generates a percentage referred to in this handbook and other AHPAA materials as an "Affordable Housing Share".

For more comprehensive information on the AHPAA affordability determination process, including data sources, a more detailed calculation methodology and examples, see the Exemption Determination Process section starting on Page 5.

AHPAA also identifies two types of communities based on each community's Affordable Housing Share, Exempt and Non-Exempt Local Governments (NELGs).

- **Exempt Local Governments** are those which:
  - Must be an incorporated local government (county, town, village, city, etc.) with a population below 1,000 persons; or
  - Must have a portion of its total year-round occupied housing stock considered affordable (per AHPAA's requirements), which is equal to or greater than 10%.
- **Non-Exempt Local Governments** are those which:

- Must be an incorporated local government (county, town, village, city, etc.) with a population of at least 1,000 persons; and
- Must have a portion of its total year-round occupied housing stock considered affordable that is below 10%.

Per the AHPAA, IHDA must determine individual local government Affordable Housing Shares, and then publish which local governments in Illinois are **Exempt** and **Non-Exempt**; also referred to as the “**Exemption Determination Process**.” First published in 2004, updated statewide affordability listings were not available again until 2013. This resulted from data availability limitations tied to the use of the U.S. Census Bureau Decennial Census, as required under the AHPAA, until a legislative change to the AHPAA in 2013 made it possible to use more up to date Census data. Presently, IHDA uses American Community Survey (ACS) data provided by the U.S. Census Bureau to publish the updated Exempt and Non-Exempt listings every 5 years.

For the 2023 AHPAA update cycle, local government affordability information can be found in the corresponding “2023 Statewide Report on Local Government Affordability”, and the “2023 Report of Non-Exempt Local Governments”. These documents are accessible on the IHDA [website](#).

Local governments deemed **Non-Exempt** under the law are required to adopt and submit an **affordable housing plan** to IHDA which meets the AHPAA requirements, (see plan requirements starting on page 14). Communities which have already submitted a plan to IHDA because they were previously identified as NELGs are allowed to update their plans, locally adopt the updated version, and then submit the revised version to IHDA.

Corresponding to the **Exemption Determination Process** and **affordable housing plan** creation processes is the **State Housing Appeals Board (SHAB)**, which was established by the AHPAA to hear appeals from appellants (e.g., affordable housing developers, eligible residents of the proposed building(s), or local housing organizations) who believe an affordable housing development was unfairly denied or given unreasonable conditions upon its tentative approval by Non-Exempt Local Governments during the local development approval process. For the SHAB to consider an appeal, the Non-Exempt Local Government must have denied approval of a project with an affordable housing component or granted an approval with conditions that make the proposed project infeasible. At the time of this handbook’s publication, no appeals had been filed for SHAB review.

In the following sections of this handbook, more detail is provided to explain AHPAA’s purpose, mechanics, and implications for Non-Exempt Local Governments. Wherever possible, references and links to additional information and resources have been provided.

Should you have questions beyond those which can be directly answered by either this handbook or corresponding AHPAA resources published by IHDA, please email [AHPAA@ihda.org](mailto:AHPAA@ihda.org).

## Affordable Housing Planning and Appeal Act: Exemption Determination Process

An Affordable Housing Share is the percentage of a local government's total year-round occupied housing stock considered "affordable" per the definitions and requirements of the AHPAA. At its most basic, a local government's Affordable Housing Share (if less than 10%), and in consideration of its total population (1,000 persons or greater), determines if the community is subject to AHPAA's housing plan requirements. These communities are known as **Non-Exempt Local Governments (NELGs)**. IHDA refers to its routine calculation of local government Affordable Housing Shares and NELG identification as the "Local Government Exemption Determination Process" or the "Exemption Determination Process".

The AHPAA outlines a general process for determining the individual local governments that are required to adopt and submit a housing plan. Per the statute, the Exemption Determination Process must be completed by IHDA at least once every five years. While the Act explicitly states certain aspects of the process, other implicit steps must be taken to complete the calculation that facilitates the determination of an Affordable Housing Share. This handbook, and especially this section, are intended to clarify steps taken by IHDA during the Exemption Determination Process.

### Statutory Requirements

Within the AHPAA there are two main sections which guide the determination of local government exemption status: Sections **15** and **20**. Relevant portions of these sections are provided below.

**Section 15 (310 ILCS 67/15)** provides definitions necessary for administration of the Act, some of which directly affect the Exemption Determination Process. Please note, while it was not explicitly defined in Section 15, a definition has been included for "Non-Exempt Local Government" as it is integral to the operation and administration of the AHPAA. Relevant definitions from the AHPAA are included below (emphasis added):

- "Affordable housing" means housing that has a value or cost or rental amount that is within the means of a household that may occupy moderate-income or low-income housing. **In the case of owner-occupied dwelling units**, housing that is affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit. **In the case of dwelling units for rent**, housing that is affordable means housing for which the rent and utilities constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit. In the case of dwelling units for rent, the costs of any required parking, maintenance, or landlord-imposed fees are to be included in the calculation of affordable housing if available from the U.S. Census Bureau.
- "Area median household income" means the median household income, adjusted for family size for applicable income limit areas as determined annually by the [U.S.] Department of Housing and Urban Development under Section 8 of the United States Housing Act of 1937.
- "Exempt Local Government" means any local government in which at least 10% of its total year-round housing units are affordable, as determined by IHDA in accordance with Section 20, or any municipality with a population under 1,000.
- "Non-Exempt Local Government" is not defined in the Act, however, it means any local government that does not meet the definition of an Exempt Local Government, i.e., a local

government in which less than 10% of its total year-round housing units are affordable, as determined by IHDA accordance with Section 20 and has a population of 1,000 persons or greater.

- Non-Exempt Local Governments must prepare affordable housing plans which meet the requirements of Section 25 the AHPAA and provide them to IHDA for review and approval following local adoption.
- "Household" means the person or persons occupying a dwelling unit.
- "Local government" means a county or municipality.

**Section 20 (310 ILCS 67/20)** describes fundamental requirements and steps which IHDA must observe in the Exemption Determination Process, including:

- At a minimum of once every 5 years, IHDA must determine which local governments in Illinois are Exempt and Non-Exempt under the AHPAA. This shall be done by using the most recent data from the U.S. Census Bureau and other relevant sources.
- For each local government, IHDA must identify the total number of year-round housing units.
- IHDA must also inventory within each local government, the total counts of both owner-occupied and rental units considered affordable per the definitions and requirements in the AHPAA.
  - Per Section 20, the inventory of units must include consideration of owner-occupied units at 80% of the median household income in the applicable county or MSA, and renter occupied units at 60% of the median household income in the applicable county or MSA.
- Following the inventory of units considered affordable for owners and renters, IHDA must sum the two figures to generate a total count of affordable units in the local government.
- IHDA must then divide the sum of the total units considered affordable under the Act against the total count of year-round housing units in the local government and then multiply the result by 100 to generate a percentage of affordable housing units within the local government. This percentage is the Affordable Housing Share.

Example of Calculating the Affordable Housing Share for the Village of Ihdapolis

- 1,771 affordable owner-occupied units
- 2,097 affordable rental units
- Owner occupied units + rental units = 3,868 affordable units
- $3,868 \text{ affordable housing units} / 10,401 \text{ year-round occupied housing units} = 0.372$
- $0.372 \times 100 = \mathbf{37.2\%}$  affordable housing share

For a more detailed example of the calculation process mandated by Section 20, see the Determining a Local Government's Share of Affordable Housing Units & Exemption Status section, starting on page 11.

## Identifying Data Sources

The language in Sections 15 and 20 of the AHPAA provides a framework for completing the Exemption Determination Process, but it does not provide details on which datasets or data products IHDA is required to use beyond a mandate to use the most recent data from the U.S. Census Bureau and other relevant sources. For example, IHDA first published AHPAA affordability and NELG listings in 2004. However, updated listings were not available again until 2013 because of data availability limitations tied to using the U.S. Census Bureau's, Decennial Census datasets, as required at the time by the AHPAA. In 2013, statutory revisions allowed the use of more up-to-date Census data products beyond the Decennial Census. **Presently, IHDA primarily uses the U.S. Census Bureau, American Community Survey (ACS) 5-Year Estimates data to publish the Exempt and Non-Exempt listings on a 5-year cycle.**

ACS 5-Year Estimates use is preferred as nearly all the data points required for the Exemption Determination Process are available within the dataset. Additionally, ACS 5-Year Estimates have smaller margins of error than ACS 1-Year Estimates, and they include increased statistical reliability for smaller geographic areas and small population groups (which is relevant to the AHPAA for rural and non-metro communities within Illinois).<sup>1</sup> IHDA used the 2017-2021 5-year Estimates as the primary Census data to conduct the 2023 Local Government Exemption Determination Process, as it was the most recent ACS 5-Year Estimates dataset.

Furthermore, while Section 20(b) mandates the use of data from the U.S. Census Bureau and other relevant sources, it does not explicitly identify all the individual data fields needed to complete the Exemption Determination process. To address this concern, the following three sections of this Handbook were created. First is an explanation of several overarching questions and considerations for how to use the selected data. The second and third sections link key terms in the AHPAA with data fields available in the Census and other sources.

## Notes Concerning Geography and Data

In the AHPAA, considerations of geography and its impacts on administration surface in many areas. Most importantly in Section 15 within definitions of certain relevant terms, and then again in Section 20 which lists the steps necessary for performing the Local Government Exemption Determination Process. Because geography plays such an integral part in the AHPAA, the following were prepared to explain AHPAA's requirements of geography and measures taken by IHDA to fulfill the requirements:

- **Understanding Local Governments:** Section 15 of the AHPAA defines "Local Government" to mean either an Illinois county or municipality. County level data for Illinois is easily found within the Census. However, for municipalities, it is important to understand the concept of "place" and how it relates to Census data products. This is because many Census data products organize data for smaller geographies such as "municipalities" into datasets under the "place" label.

Given that municipal and local government incorporation laws and practices vary by state and territory, the Census generally understands a "place" to be a concentration of population with a locally recognized name, that is seen as not being part of another place. Places are recognized as having set boundaries, though they may or may not be legally prescribed via incorporation under

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<sup>1</sup>United States Census Bureau, "American Community Survey Information Guide", Issued October 2017, page 12. [https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS\\_Information\\_Guide.pdf](https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS_Information_Guide.pdf)

state law. Places may or may not have a functioning government.<sup>2</sup> Essentially, there are two Census definitions which are relevant to the AHPAA when looking at Census place data:

- Incorporated Places: which are legally incorporated under state law, have a legally defined boundary, and an active functioning governmental structure. Examples include incorporated cities, towns, villages, etc.<sup>3</sup>
- Census Designated Places (CDPs): which are a statistical equivalent of incorporated places and represent unincorporated communities that do not have a legally defined boundary or an active functioning governmental structure. Examples of CDPs include unincorporated communities, planned communities, military installments, university towns, resort towns, etc.
  - A single location cannot be part of both an incorporated place and a CDP.<sup>4</sup>

When sourcing municipal level data, IHDA uses Census Bureau place-based datasets with the understanding they contain information for all incorporated municipalities in Illinois as required by the AHPAA. Though part of place-based datasets, IHDA does not include Census Designated Places in the Exemption Determination Process because they are not incorporated municipalities as required by the AHPAA. Per Section 15, incorporated municipalities of less than 1,000 persons are also not included in the process. Parties interested in the affordability of unincorporated areas and municipalities under 1,000 in population should email [AHPAA@ihda.org](mailto:AHPAA@ihda.org) for more information.

Considering the above, data sourced from the U.S. Census Bureau for the 2023 Local Government Exemption Determination Process was collected at both Illinois county and place levels. The sole exception being median household income (MHI) which was collected at both county and Metropolitan Statistical Area (MSA) levels per the restrictions set forth in the AHPAA, Section 20.<sup>5</sup>

- **Municipal and County Jurisdictional Boundaries:** Numerous incorporated Illinois municipalities have territorial jurisdictions which cross county boundaries. This presents challenges in applying MHI data. For calculation purposes, Section 20 of the AHPAA requires MHI to be based on the county, or if applicable the MSA in which the municipality or county resides. To enable calculation of local government Affordable Housing Shares, municipal jurisdictions were analyzed to assign a primary county and MSA (if applicable). Land coverage within the jurisdictions was calculated for each county of which they are part, with the largest constituent share being used to assign a primary county or MSA to the municipality, to determine the median household income.

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<sup>2</sup> United States Census Bureau, "Geographic Areas Reference Manual", Chapter 9, Places, accessed 10/25/2023, <https://www2.census.gov/geo/pdfs/reference/GARM/Ch9GARM.pdf>.

<sup>3</sup> "Census Designated Places", Accessed 10/25/2023, <https://www.census.gov/programs-surveys/bas/information/cdp.html#:~:text=Examples%20of%20CDPs%20include%20unincorporated,incorporated%20place%20and%20a%20CDP.>

<sup>4</sup> Ibid.

<sup>5</sup> Metropolitan Statistical Areas are delineated by the U.S. Office of Management and Budget (OMB). For 2023's Exemption Determination process, IHDA used boundary delineations released in 2020. A map can be found here: [https://www2.census.gov/programs-surveys/metro-micro/reference-maps/2020/state-maps/17\\_Illinois\\_2020.pdf](https://www2.census.gov/programs-surveys/metro-micro/reference-maps/2020/state-maps/17_Illinois_2020.pdf)

## U.S. Census Bureau Data

Accounting for geography, the following data fields included in the U.S. Census Bureau's, 2017-2021 American Community Survey (ACS) 5-Year Estimates, were identified for use in the 2023 Local Government Exemption Determination Process. These data are available at [data.census.gov](https://data.census.gov).

**Total Population:** In line with Section 15 of the AHPAA, total population counts for all incorporated local governments in Illinois were included to facilitate IHDA's determination of local government exemption status. All incorporated municipalities of less than 1,000 persons are automatically exempt from the operations of the AHPAA. Unincorporated areas, which are represented as Census Designated Places are also not included. (ACS 5-Year Estimates: Table B01003, Total Population)

**Total Year-Round Housing Units:** As mandated by Section 20 of the AHPAA, an Affordable Housing Share must be determined for each local government. This is done by identifying the total count of year-round owner-occupied and rental housing units, deemed affordable under the AHPAA, and then dividing the sum against the total count of housing units in the local government. To avoid any concerns of inflating the true number of year-round housing units in each community (and thereby deflating its share of housing stock deemed affordable by AHPAA), only presently occupied owner and rental housing units were included during the Exemption Determination Process. Since seasonal and recreational housing units are classified as a type of vacant housing, they were also not considered in the process. (ACS 5-Year Estimates: Table DP04, Selected Housing Characteristics)

- **Owner-Occupied Housing Units:** In Table DP04, counts of owner-occupied housing units are organized across a range by estimated home "Value". These estimated values were used to determine how many of the owner-occupied housing units in each local government are "affordable" to potential homebuyers at or below 80% of the median household income. Only units presently occupied by homeowners are included in these estimates.
- **Rental Units:** In Table DP04, counts of renter occupied units are organized across a range by estimated "Gross Rent". These gross rent estimates were used to determine how many of the occupied rental units in each community would be affordable to a potential renter household at or below 60% of the median household income. Only units presently occupied by renters are included in these estimates. Units occupied by renters not paying rent were not included as affordable rental units by IHDA because the Census Bureau does not collect information on the terms of their occupancy.

**Median Real Estate Taxes Paid:** Section 15 defines an affordable owner-occupied dwelling unit as one "in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit." With counts of total owner-occupied housing units in the ACS presented in ranges by estimated home value, IHDA uses median real estate taxes paid within the local government's geography in the Exemption Determination Process to generate an "affordable purchase price" for would be homebuyers at or below 80% of MHI. With this purchase price, the count of affordable owner-occupied units can be determined for each local government. Vacant for-sale units are not included in the determination process because the U.S. Census Bureau does not collect information on their value. (ACS 5-Year Estimates: Table B25103, Mortgage Status by Median Real Estate Taxes Paid (Dollars)).

**Note:** In generating an “affordable home purchase price” homeowner insurance and condominium or association fee costs were not included because while the ACS collects this information, it does not provide it as discrete data for use like is done for median real estate taxes paid. Homeowner utility cost information was also not incorporated as the AHPAA does not include the data within its definition of affordable homeownership.

Median Household Income (MHI): Per requirements of Section 20(b)(i) and 20(b)(ii) of the AHPAA, MHI was collected for each county and Metropolitan Statistical Area (MSA) in the state. When appropriate the MHI for the applicable MSA was used and assigned to all local governments within that geography. For counties not considered part of an MSA, MHI for the county was used. For further information see Appendix A: Frequently Asked Questions (FAQ), starting on page 23. (ACS 5-Year Estimates: Table B19013, Estimated Median Household Income, Prior 12 Months)

#### Other Relevant Data Sources

Though most data necessary for the exemption determination process can be found in the American Community Survey, reliable information on home mortgage interest rates is not readily available via the ACS, which necessitates finding another viable source.

Mortgage Interest Rate: In line with Section 15 of the AHPAA, IHDA uses an assumed mortgage interest rate in the process to generate an “affordable home purchase price” for would be homebuyers at or below 80% of MHI. With this home purchase price, the count of affordable owner-occupied units can be determined for each local government. Because mortgage contract terms for the calculation of affordable owner-occupied units are not explicitly defined in the AHPAA, industry standards and academic literature were relied on. A fixed-rate, 30-year mortgage with a downpayment of 10% of the purchase price was chosen because research has shown those are the optimal terms for both low-income homebuyers and mortgage lenders with regards to the probability of negative home equity and default rates.<sup>6</sup> An average interest rate for the past five years (2018 - 2022) was computed using Primary Mortgage Market Survey data published by the Federal Home Loan Mortgage Corporation (Freddie Mac).<sup>7</sup> This interest rate, 3.98%, was assumed for the calculation of an “affordable purchase price” for owner occupied housing units.

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<sup>6</sup> John Y. Campbell and João F. Cocco. “A Model of Mortgage Default,” National Bureau of Economic Research Working Paper 17516, October 2011. Patrie Hendershott, Robert Hendershott, and James Shilling. “The Mortgage Finance Bubble: Causes and Corrections,” Journal of Housing Research, 2010. Tomasz Piskorski and Alexei Tchisty. “Stochastic House Appreciation and Optimal Mortgage Lending,” Review of Financial Studies, 2011.

<sup>7</sup> “Mortgage Rates, Primary Mortgage Market Survey<sup>®</sup>”, Freddie Mac, <https://www.freddiemac.com/pmms>

## Determining a Local Government's Share of Affordable Housing Units & Exemption Status

To demonstrate the steps IHDA undertakes when determining a local government's share of affordable housing units, and subsequent exemption status per the AHPAA statute, this section has been provided with an example of an Exempt Local Government as determined in 2023.

### Example of an Exempt Local Government

#### Village of Ihdaopolis

- County: Cook
- Population: 24,632
- Total Year-Round Occupied Housing Units: 10,401
  - Total Owner-Occupied Housing Units: 5,441
  - Occupied Units Paying Gross Rent: 4,877
- Median Household Income (MHI): \$78,790 (Chicago-Naperville-Elgin MSA)

#### Determining Ihdaopolis' Total Count of Affordable Owner-Occupied Units

An affordable home purchase price was determined for a hypothetical household at 80% or below of the median household income. The first step was determining an affordable monthly housing payment for this household.

$\$78,790 \text{ (MHI)} \times 80\% \times 30\% \text{ (portion of income affordable for housing)} / 12 = \mathbf{\$1,575.80}$  a month

Estimated median real estate taxes paid in Ihdaopolis were \$5,978, or \$498.17 per month. This amount was subtracted from \$1,575.80 to reach the final affordable monthly housing payment of **\$1,077.63**. Using the present value calculation typical for determining an affordable sales price in mortgage lending and assuming a 3.98% interest rate, a 30-year loan term and a 10% down payment of \$22,630.24, an affordable home purchase price in Ihdaopolis was determined to be **\$248,932.63**.

With this figure, the number of affordable owner-occupied units in Ihdaopolis can be counted from the total counts of owner-occupied units available at the below value ranges.

Total Owner-Occupied Units: 5,441

"Value" - Less than \$50,000: 19

"Value" - \$50,000 to \$99,999: 237

"Value" - \$100,000 to \$149,999: 310

"Value" - \$150,000 to \$199,999: 524

"Value" - \$200,000 to \$299,999: 1,392

"Value" - \$300,000 to \$499,999: 2,028

"Value" - \$500,000 to \$999,999: 883

"Value" - \$1,000,000 or more: 48

*Continued on next page.*

The affordable home purchase price in Ihdaopolis, \$248,932.63, falls within the \$200,000 to \$299,000 “Value” interval. The total number of units in lower intervals is 1,090. Since \$248,932.63 represents 48.93% of the \$200,000 to \$299,000 interval, an estimated 681.14 units within the interval have a “Value” below \$248,932.63. Adding the two figures produces a total of **1,771.14** affordable owner-occupied units in the Village of Ihdaopolis.

### **Determining Ihdaopolis’ Total Count of Affordable Renter-Occupied Units**

Next, an affordable monthly rent payment was determined for a hypothetical household at 60% of the MHI.

$\$78,790 \text{ (MHI)} \times 60\% \times 30\% \text{ (portion of income affordable for housing)} / 12 = \mathbf{\$1,181.85}$  a month.

With this figure, the number of affordable rental units in Ihdaopolis can be counted from the total counts of gross rent paying units available at the below ranges.

“Gross Rent” – Total Occupied Units Paying Rent: 4,877

“Gross Rent” – Less than \$500: 407

“Gross Rent” – \$500 to \$999: 739

“Gross Rent” – \$1,000 to \$1,499: 2,614

“Gross Rent” – \$1,500 to \$1,999: 768

“Gross Rent” – \$2,000 to \$2,499: 313

“Gross Rent” – \$2,500 to \$2,999: 26

“Gross Rent” – \$3,000 or more: 10

The affordable monthly rental payment amount in Ihdaopolis, \$1,181.85, falls within the \$1,000 to \$1,499 “Gross Rent” interval. The total number of units in lower intervals is 1,146. Since \$1,181.85 represents 36.37% of the \$1,000 to \$1,499 interval, an estimated 950.71 units of the 2,614 units within that interval have a “Gross Rent” below \$1,181.85. Adding the two figures produces a total of **2,096.71** affordable rental units in the Village of Ihdaopolis.

### **Determining Ihdaopolis’ Affordable Housing Share**

Having individually totaled owner-occupied units and rental units paying gross rent, which are classed as affordable in Ihdaopolis per the terms of the AHPAA, these totals were summed to generate a combined affordable housing figure of **3,868** housing units.

At this point the Affordable Housing Share of total units in Ihdaopolis was calculated.

$3,868 \text{ (affordable housing units)} / 10,401 \text{ (year-round occupied housing units)} = \mathbf{37.2\%}$

Because Ihdaopolis’ Affordable Housing Share under the 2023 Local Government Exemption Determination Process is 10% or greater, the Village is classed as **Exempt** from the requirements of the AHPAA.

## AHPAA Requirements Timeline

Following the Local Government Exemption Determination Process, IHDA will notify all incorporated municipalities in Illinois with 1,000 persons or greater, which have been found to have less than 10% of their total year-round occupied housing stock considered affordable per the terms of the AHPAA. These Non-Exempt Local Governments (NELGs) are subject to the Act's requirements, most notably in developing an affordable housing plan.<sup>8</sup> Details of plan requirements are provided in the next section.

Within 18 months from the date of notification of their Non-Exempt status, local governments must develop, adopt locally, and then submit to IHDA an affordable housing plan which meets the requirements of Section 25 of the AHPAA. Local governments which have been notified of Non-Exempt status under prior Exemption Determination cycles may revise their previously submitted affordable housing plans and resubmit them to IHDA.

All plans must be submitted to IHDA for review within 60 days after local adoption or revision. Please note that any affordable housing plan or revision to an existing plan shall not be adopted by the Non-Exempt Local Government until notice and opportunity for public hearing have first been provided. Following submission, IHDA will complete a review and provide a response to the NELG within 30 days of receipt of the plan.

To assist the NELGs, IHDA will host an informational meeting shortly after publishing the 2023 Local Government Exemption Determination listings and will be available on an ongoing basis to provide AHPAA related technical assistance.

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<sup>8</sup> For a full list of Non-Exempt Local Governments as determined in 2023, see Appendix :G 2023 Listing of AHPAA Non-Exempt Local Governments. Additionally, consider reviewing the corresponding *2023 Report of Non-Exempt Local Governments* and the companion *2023 Statewide Report on Local Government Affordability*, which were published by IHDA and available on its [website](#).

<b>AHPAA Affordable Housing Plan Timeline</b>	
Non-Exempt Community Notification	<b>12/14/2023</b>
Affordable Housing Plan Submission	On a rolling basis between <b>12/14/2023</b> and <b>6/14/2025</b> ( <i>must be submitted to IHDA within 60 days of local approval or revision</i> )
Final Submission Deadline: AHPAA Housing Plans	<b>6/14/2025</b> ( <i>18 months from Status notification – see above</i> )
IHDA Review of Submitted AHPAA Housing Plans	<b>On a Rolling Basis</b> ( <i>within 30 days of plan submission</i> )
Local Government Housing Plan Implementation Reports	<b>On a Rolling Basis</b> ( <i>no later than 4 years after local government’s adoption, or updating of a plan</i> )
IHDA Notice to the Attorney General of Non-Compliant Local Governments <sup>9</sup>	<b>1/31/2026</b> ( <i>by January 31 of the third year of the current affordable housing plan cycle</i> )

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<sup>9</sup> Update effective January 8, 2026 due to the change in Administrative Rules

## Affordable Housing Plan Requirements

The AHPAA was passed in 2003 by the Illinois General Assembly in recognition of the shortage of affordable, accessible, safe, and sanitary housing in the state. Under Section 25 of the AHPAA **only Non-Exempt Local Governments** are explicitly required to prepare and locally adopt affordable housing plans.

### What must be included in an Affordable Housing Plan?

Section 25 details the requirements of affordable housing plans prepared and then submitted to IHDA under the AHPAA. **Because of legislative changes in 2023 as a result of Public Act [103-0487](#), it is highly recommended all NELGs, both designated for the first time and previously designated, thoroughly review Section 25, as its requirements differ from what was effective under the last AHPAA Local Government Exemption Determination Cycle in 2018.**

Overall, the changes to Section 25 increased the number of mandatory minimum plan requirements from four to seven. Additionally, under requirement seven, there is a sub-provision, the inclusion of which is contingent on whether a local government is first time designated or previously designated as Non-Exempt. Given this contingency, Section 25's affordable housing plan requirements were broken out into the below sub-sections which apply individually to first time designated and previously designated local governments. Local governments are strongly advised to review the "2023 Report of Non-Exempt Local Governments" to verify their exemption status.<sup>10</sup>

### Requirements for First Time Designated Non-Exempt Local Governments

When preparing an AHPAA mandated affordable housing plan, local governments which have been designated as Non-Exempt for the first time must include the below, at a minimum, within their plans.

- 1) A statement of the total number of affordable housing units that are necessary to exempt the local government from the operation of the AHPAA as defined in Section 15 and Section 20.
- 2) An identification of lands within the jurisdiction that are most appropriate for the construction of affordable housing and of existing structures most appropriate for conversion to, or rehabilitation for, affordable housing, including a consideration of affordable housing for both owner-occupied dwelling units and dwelling units for rent, lands and structures of developers who have expressed a commitment to provide affordable housing, and lands and structures that are publicly or semi-publicly owned.
- 3) Incentives that local governments may provide for the purpose of attracting affordable housing to their jurisdictions.
- 4) A description of any housing market conditions, infrastructure limitations, local government ordinances, including zoning and land use ordinances, local government policies or practices that do not affirmatively further fair housing as defined in the federal Fair Housing Act, and other factors that may constrain the local government's ability to create and preserve affordable housing.
- 5) A plan or potential strategies to eliminate or mitigate the constraints identified in item 4.
- 6) One or more of the following goals:
  - a. A minimum of 15% of all new development or redevelopment within the local government that would be defined as affordable housing in the Act.

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<sup>10</sup> This report, along with the corresponding *2023 Statewide Report on Local Government Affordability* are available on the IHDA [website](#).

- b. A minimum of a 5-percentage point increase in the overall percentage of affordable housing within the jurisdiction, as described in sub-section (b) of Section 20 of the Act.<sup>11</sup>
  - c. Or a minimum of a total of 10% affordable housing within the jurisdiction as described in sub-section (b) of Section 20 of the Act.
- 7) Proposed timelines to commence, within the first 24 months after the date upon which the affordable housing plan was adopted, for actions to implement the components of the affordable housing plan.

To comply with the affordable housing plan requirements, no later than four years after adopting or updating an affordable housing plan the local government shall submit a report to IHDA summarizing actions taken to implement the current plan.

#### Requirements for Previously Designated Non-Exempt Local Governments

When preparing an AHPAA mandated affordable housing plan, local governments which have been previously designated as Non-Exempt must include the below, at a minimum, within their plans. Please note the bolded text within requirement seven, as this is a sub-provision which is only applicable to previously designated Non-Exempt Local Governments.

- 1) A statement of the total number of affordable housing units that are necessary to exempt the local government from the operation of the AHPAA as defined in Section 15 and Section 20.
- 2) An identification of lands within the jurisdiction that are most appropriate for the construction of affordable housing and of existing structures most appropriate for conversion to, or rehabilitation for, affordable housing, including a consideration of affordable housing for both owner-occupied dwelling units and dwelling units for rent, lands and structures of developers who have expressed a commitment to provide affordable housing, and lands and structures that are publicly or semi-publicly owned.
- 3) Incentives that local governments may provide for the purpose of attracting affordable housing to their jurisdictions.
- 4) A description of any housing market conditions, infrastructure limitations, local government ordinances, including zoning and land use ordinances, local government policies or practices that do not affirmatively further fair housing as defined in the federal Fair Housing Act, and other factors that may constrain the local government's ability to create and preserve affordable housing.
- 5) A plan or potential strategies to eliminate or mitigate the constraints identified in item 4.
- 6) One or more of the following goals:
  - a. A minimum of 15% of all new development or redevelopment within the local government that would be defined as affordable housing in the Act.
  - b. A minimum of a 5-percentage point increase in the overall percentage of affordable housing within the jurisdiction, as described in sub-section (b) of Section 20 of the Act.<sup>12</sup>
  - c. Or a minimum of a total of 10% affordable housing within the jurisdiction as described in sub-section (b) of Section 20 of the Act.
- 7) Proposed timelines to commence, within the first 24 months after the date upon which the affordable housing plan was adopted, for actions to implement the components of the affordable housing plan.

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<sup>11</sup> Section 20, sub-section (b) of the AHPAA references the required calculation process by which IHDA must determine the exemption status of individual local governments.

<sup>12</sup> Ibid.

**Local governments that have previously been determined as a Non-Exempt municipality and that have submitted an affordable housing plan shall also have to include a summary of actions taken to implement the previously submitted plan, as well as a summary of progress made toward achieving the goals of the plan.**

To comply with the affordable housing plan requirements, no later than 4 years after adopting or updating an affordable housing plan the local government shall submit a report to IHDA summarizing actions taken to implement the current plan.

## State Housing Appeals Board

In the AHPAA, Section 50 establishes the State Housing Appeals Board (SHAB) to hear all petitions for review filed under the Act, it lays out the SHAB's required membership, and requests IHDA to provide space, clerical, and other assistance as required by the Board. Directly corresponding with this, Section 30 details the process and requirements for filing appeals before the Board.

For more detailed information on the operations of the SHAB, what is required of appeals, and what to expect of potential outcomes of filing, consider reviewing the State Housing Appeals Board administrative rules at 47 Ill. Adm. Code Part 395, accessible on the Illinois General Assembly (ILGA) [website](#).

Following the adoption of Public Act [103-0487](#) in August 2023, the SHAB administrative rules were amended and approved by the Joint Committee on Administrative Rules ([JCAR](#)) in cooperation with IHDA, in January 2026 to account for modifications to Sections 30 and 50 of the AHPAA. This current, updated handbook reflects all processes and operations as required by the administrative rules effective as of January 8, 2026.

## Membership of the State Housing Appeals Board

Per Section 50 of the Act, the SHAB shall be constituted of seven members appointed by the Governor:

- 1) A retired Illinois circuit judge, a retired Illinois 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 the chairperson.
- 2) 4 members selected from among the following categories:<sup>13</sup>
  - a. County or municipal zoning board of appeals members
  - b. County or municipal planning board members
  - c. A mayor or municipal council or board member
  - d. A county board member
- 3) An affordable housing developer; and
- 4) An affordable housing advocate

In addition, the IHDA Chairperson, ex officio, shall serve as a non-voting member.

## Appeals to the State Housing Appeals Board

Section 30 of the AHPAA states Appellants may file an appeal to the SHAB of a decision by a Non-Exempt Local Government denying a proposed affordable housing development or approving an affordable housing development with conditions that in the Appellant's judgement render the provision of affordable housing infeasible.

### What is a Housing Appeal?

Under the AHPAA, a housing appeal functions as a formal petition by an Appellant, to the SHAB for a review of the evidence, facts, and circumstances surrounding a local government's decision to deny or approve with conditions, an application for affordable housing development. Appeals provide Appellants an opportunity to state their objections to the local government's decision, and to put forth a clear and concise statement of the relief being sought.

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<sup>13</sup> At least two of the appointments under this category shall be from Non-Exempt Local Governments

## Who Can File an Appeal?

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.

## Outcomes of Housing Appeals Before the SHAB

Appeals put before the SHAB have three potential outcomes based on the evidence presented and the matters officially noticed by the Board. Described in more detail below, they include dismissal, reversal of denials, and modification of the conditions of Local Government approval.

### Grounds for Dismissal of Appeals

Generally, appeals before the Board shall be dismissed if the following conditions are met:

- The local government was determined to be exempt from the AHPAA pursuant to Section 20(c); or
  - If applicable, the local government shall address allegations by the Appellant that the determination of Exempt status is incorrect.
- The local government has implemented its affordable housing plan and has met its goal as established in Section 25 of the AHPAA; or
- The reason for denying the application for affordable housing development, or for placing conditions upon the approval is a **Non-appealable Local Government Requirement**.
  - *Non-appealable local government requirements are “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.” Zoning, density, and bulk restrictions may count as Non-Appealable Local Government Requirements if the SHAB finds they qualify under the definition of Non-Appealable Local Government Requirements in Section 15 of the AHPAA.*

### Reversal of Denied Applications

The Appellant bears the burden of demonstrating that the approving authority unfairly denied approval of the affordable housing development. To meet this burden, the Appellant must prove that it is an eligible Appellant in accordance with AHPAA and, in circumstances that the affordable housing development was denied, demonstrate that:

- 1) The proposed affordable housing development complies with all non-appealable Local Government requirements and all relevant federal and State statutes and regulations. The Appellant must prove these elements with respect to only those aspects of the project that are in dispute; or
- 2) Non-appealable Local Government requirements or federal or State statutes or regulations have been applied differently to proposals that do not include affordable housing; or
- 3) The approving authority has a pattern of denying applications to develop affordable housing; or
- 4) The approving authority changed the zoning of an area regarding a specific affordable housing development that, but for the change in zoning, is otherwise able to proceed, or has a pattern of

changing zoning of an area in regards to affordable housing developments that, but for the change in zoning, are otherwise able to proceed; or

- 5) The approving authority unreasonably or intentionally delayed its decision regarding a specific affordable housing development that, but for the lack of timely decision by the approving authority, is otherwise able to proceed, or has a pattern of unreasonably or intentionally delaying its decisions on applications for affordable housing developments that, but for the lack of timely decisions of the approving authority, are otherwise able to proceed; or
- 6) IHDA's determination that the Local Government is exempt from the Act is incorrect based on the counting protocols set forth in Section 20 of the Act; or
- 7) The denial of the application for the affordable housing development was unfair because it otherwise inhibits the construction of affordable housing.

If the Board finds the Appellant has met the burden of proof, the Board will vacate the decision by the Local Government to deny the application for affordable housing development and will direct the Local Government to issue the appropriate permits to the affordable housing developer.

### **Conditions Imposed by the Local Government**

In the case of an approval with conditions, the Appellant bears the burden of demonstrating that the approving authority imposed unreasonable conditions on the proposed affordable housing development. To meet this burden, the affordable housing developer must prove the developer is an affordable housing developer that has proposed an affordable housing development. The Appellant shall also demonstrate:

- 1) The approving authority has generally not imposed unreasonable conditions on similar developments; or
- 2) The conditions are not necessary to further the asserted approving authority interest; or
- 3) Less costly conditions can be imposed on the proposed affordable housing development that sufficiently address the asserted approving authority's interest.

If the Board finds the Appellant has met the burden of proof, the Board will direct the Local Government to remove the conditions. Or, if the Board finds the conditions are unreasonable but can be modified to reasonably protect the health, safety, environmental design, open space, and other local concerns, the Board shall direct the Local Government to modify the conditions.

Additionally, the failure of a Local Government to submit an affordable housing plan as set forth in Section 25 of the Act shall not prevent an Appellant from filing an appeal with the Board. The Board may take into consideration the failure to submit an Affordable Housing Plan in connection with any appeal before the Board.

### [Requirements of Appeals to the State Housing Appeals Board](#)

Individual appeals to the SHAB are governed by Section 30 of the AHPAA. In proceedings before the Board, appellants bear the burden of demonstrating that the proposed affordable housing development has been

unfairly denied, or has unreasonable conditions placed upon it by the decision of the local government. In all hearings conducted before the Board, the standard of proof is preponderance of the evidence.<sup>14</sup>

Listed below are specific requirements of housing appeals, which were taken from the SHAB [administrative rules](#), effective as of January 8, 2026.

Since the AHPAA was amended by Public Act [103-0487](#) to broaden who could file an appeal against a Non-Exempt Local Government, as appropriate, the terms “developer” or “Affordable Housing Developer”, have been substituted in the following, with the now relevant term “Appellant(s)”.

The State Housing Appeals Board may hear appeals once the following conditions are met:

- A developer, believing there is a market for affordable housing in a Non-Exempt Local Government must come forward with a proposal that includes at least 20% of the dwelling units being subject to covenants or restrictions which require that the dwelling units be sold or rented at prices that preserve them as affordable housing for a period of at least 15 years, in the case of for-sale housing, and at least 30 years, in the case of rental housing.<sup>15</sup>
- The developer’s proposal must be denied or approved with conditions that rendered the project infeasible by the local government’s governing board.
- Per Section 395.305 of the rules, the Appellant must file an appeal with the State Housing Appeals Board within 45 days of the local government decision to deny an application for affordable housing development. Initial pleadings filed by the Appellant must include the following:
  - A clear and concise statement of the prior proceedings (related to the proposed development) before all approving authorities, including the date of notice of the decision that the Appellant is appealing.
  - A clear and concise statement of the Appellant’s objections to the approving authority’s decision, indicating why the Appellant believes the application to develop affordable housing was unfairly denied, which may include an appeal of IHDA’s determination of the exempt status of the local government as set forth in Section 395.401, or what conditions, if any, were imposed that the Appellant believes were unreasonable.
  - A clear and concise statement setting forth the relief sought.
  - The complete name and address of the Appellant for the purpose of service of papers in connection with the appeal.
  - The name and address of the attorney or attorneys representing the Appellant, if any.
  - A complete copy of the application for the affordable housing development, as it was submitted to the approving authority, including sufficient information to determine whether the proposal that is the subject of the appeal is affordable housing.

During the appeal process, the Appellant must provide evidence to the State Housing Appeals Board to satisfy the burden of proof as described earlier in this section.

Do note, while the above requirements pertain to an Appellant(s), the local government, or approving authority, has equal opportunity to present evidence and defend itself against claims made by the Appellant(s).

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<sup>14</sup> *Merriam-Webster.com Legal Dictionary*, s.v. “preponderance of the evidence,” accessed November 17, 2023, <https://www.merriam-webster.com/legal/preponderance%20of%20the%20evidence>.

<sup>15</sup> Reference Section 395.103 of the SHAB rules, specifically the definition of “Affordable Housing Development”.

### Timeline for Filing Appeals

Appeals to the SHAB may be filed by an Appellant(s) within 45 days after the decision by the approving authority, to either deny the application for affordable housing development, or to approve it, but with conditions deemed unreasonable by the Appellant.

The failure of a Non-Exempt Local Government to submit an affordable housing plan to IHDA, as required under Section 25 of the AHPAA shall not prevent an Appellant from filing an appeal with the SHAB. However, in the case of local governments which have been deemed Non-Exempt for the first time after January 1, 2024, Appellants may not file an appeal until 6 months after the local government has been notified of its Non-Exempt status.<sup>16</sup>

### Notice to the Attorney General

Under Section 395.401 (Exempt Status) of the SHAB administrative rules, the Illinois Housing Development Authority will provide notice to the Attorney General of all non-compliant local governments each year of that cycle by January 31 of the third year of the current affordable housing plan cycle.

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<sup>16</sup> Note: Prior to changes under Public Act 103-0487, appeals could not be filed against a first time Non-Exempt Local Government until 60 months after notification of its status.

## Appendices

Materials in the following appendices have been produced or gathered to assist Non-Exempt Local Governments with their understanding of the AHPAA. Should an NELG have any questions which are not answered by this handbook, its appendices, or corresponding AHPAA materials provided by IHDA, then reach out to IHDA’s Strategic Planning and Reporting Department (SPAR) at [AHPAA@ihda.org](mailto:AHPAA@ihda.org).

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## Appendix A: Frequently Asked Questions (FAQ)

### **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.

### **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](#).

### **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.

### **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 non-voting member.

**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.

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

Please see Section 395.301 of the SHAB Administrative Rules (Appendix F) for information regarding how to file an appeal.

**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 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.

**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.

**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.

**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.

**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.

**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.

**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.<sup>17</sup>

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.
- Group quarters include such places as college residence halls, residential treatment centers, skilled nursing facilities, group homes, military barracks, correctional facilities, and workers' dormitories.<sup>18</sup>

### **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.

### **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 is required to provide notice to the Attorney General by January 31 of the third year of the current affordable housing plan cycle of all non-compliant local governments each year of that cycle.<sup>19</sup>

### **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?**

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<sup>17</sup> United States Census Bureau Glossary, Definition of “Housing Unit”, Accessed 11/08/2023, <https://www.census.gov/glossary/>.

<sup>18</sup> Ibid.

<sup>19</sup> [47 Ill. Adm. Code 395.401\(b\)](#) (Source: Amended at 50 Ill. Reg. 1085, effective January 8, 2026)

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 is required to provide notice to the Attorney General by January 31 of the third year of the current affordable housing plan cycle of all non-compliant local governments each year of that cycle.<sup>19</sup>

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

In accordance with the administrative rules governing the State Housing Appeals Board as a body under the Affordable Housing Planning and Appeal Act, the Illinois Housing Development Authority is required to provide notice to the Attorney General by January 31 of the third year of the current affordable housing plan cycle of all non-compliant local governments each year of that cycle.<sup>19</sup>

Any non-exempt local government that is out of compliance at the time of the notification deadline outlined in the administrative rules and listed above will be included in the notice to the Attorney General. This includes non-exempt local governments that are out of compliance for not yet having submitted an affordable housing plan to the Illinois Housing Development Authority and those that have submitted an affordable housing plan that does not meet the minimum requirements of the AHPAA.

**What can the Illinois Attorney General do if a unit of local government is out of compliance?**

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

## Appendix B: Financial Assistance Available to Non-Exempt Local Governments

Local governments seeking to encourage affordable housing production to proactively increase the number of housing units classed as affordable per the AHPAA, have local planning and development tools at their disposal. Additionally, several federal and state funding sources are available for the creation or preservation of affordable housing.

### Local Government Planning Tools and Programming Options for Housing Development

Listed below are local planning and development options that communities may utilize to promote affordability:

- Zoning/land use designations and corresponding ordinances
- Reduction in Development Fees / Fee Waivers (building permit fees; planning fees; capital facilities fees; inspection fees; “tap-on” fees)
- Expedited Permitting for Affordable Housing
- Covenants
- Land Leases
- Community Land Trusts
- Deed Restrictions (on affordability)
- Use Restrictions
- Resale Restrictions
- Inclusionary Zoning (mandatory; voluntary; negotiated / ad hoc)
- Use of Public Funding (IHDA funds; federal funding; tax credits; assistance with local subsidies, such as CDBG or HOME)
- Planned Unit Development (PUD) ordinances

### Federal & State Resources for Housing Development

Discussed below are federal, state, and local resources that may be accessed for assistance by nonprofit developers, for-profit developers, and local governments for the creation and preservation of affordable housing:

**Community Development Block Grants (CDBG)** – CDBG funds are annual federal grants available on a formula basis to states, cities, and counties through the U.S. Department of Housing and Urban Development (HUD), to develop viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons. Certain housing activities constitute eligible uses, such as housing rehabilitation, land acquisition and homebuyer assistance.

For more information on CDBG, review this [link](#), as well as Appendix D of this handbook for a listing of CDBG and HOME Administrators.

**HOME Participating Jurisdictions and Consortium Funding** – Also funded through HUD, federal HOME funds are available via a formula grant to state and local government participating jurisdictions (PJs). HOME funds can be used for rental housing construction or rehabilitation as loans or grants, first-time homebuyer assistance, and rehabilitation assistance for homeowners. An annual portion of HOME funds (15%) is required to be set-aside for eligible Community Housing Development Organizations (CHDOs). All housing developed with HOME funds must serve income eligible households (limits are 80% AMI for homeowners

and renters, however the PJ has a responsibility to ensure that portfolio wide at least 90% of units have initial occupants that are 60% AMI or less). For more information on the HOME Program, review this [link](#).

IHDA is the designated agency to oversee HOME funds across the state of Illinois. IHDA can allocate HOME funds throughout the state but generally gives preference to areas which do not have their own local HOME funds as a PJ. Information on IHDA's HOME funds can be found the Authority's [website](#).

Please Note: HUD provides CDBG and HOME grant funds on a state, municipal, or county basis. See Appendix D of this handbook for a list of the local and county administrators.

**Bond Financing** – Tax-exempt, private activity bonds are a financing tool that can be applied to both single-family and multi-family housing programs. Tax-exempt bonds can be issued locally or by IHDA and may be utilized in combination with qualifying Low-Income Housing Tax Credit projects, as well as with HUD's Risk Sharing Insurance Program (which is administered by IHDA).

IHDA is a designated public agency authorized to issue bonds to finance affordable housing within the State of Illinois for home mortgages. Such financing is generally limited by the IRS Tax Code to first-time homebuyers (except targeted areas).

For more information on homebuyer programs at IHDA, please see [ihdamortgage.org](http://ihdamortgage.org).

**Tax Increment Financing (TIF) Districts** – TIF districts can be established by municipalities as a statutory financing tool to generate funds for economic development in a specific geography. Under the State's TIF law, when a municipality creates a TIF district, the amount of tax revenue the area currently generates is set as a baseline, which will serve as the amount that the local governmental taxing bodies will receive from that area for the life of the TIF, typically 23 years. As vacant, dilapidated, and underutilized properties are revitalized through development with TIF assistance, the value and tax revenue from those properties increases. The "increment" above the baseline is then captured and used solely for improvements and redevelopment activities in that TIF district.

There are currently many TIF districts within the state of Illinois. For more information on TIF in Illinois, consider reviewing the below links:

- [Illinois Tax Increment Association](#)
- [Illinois Municipal League TIF Resources](#)

**Illinois Housing Development Authority (IHDA)** – IHDA is the state's designated housing finance agency. Through IHDA financing, communities and developers can access many sources of funding and tax credits from both state and federal sources. IHDA's [website](#) is an excellent source of information, describing the purpose and application process for all our funding sources.

The Authority offers a large array of funding that can help communities in their quest to develop more affordable housing. Some of which are:

- **Low-Income Housing Tax Credits (LIHTC)** – Created by the U.S. Congress in 1986, the federal LIHTC program, promotes the development of affordable housing for low-income households. LIHTC is administered at a state level by housing finance agencies, (i.e., IHDA), and is the primary vehicle for affordable housing production in the United States. As a LIHTC administrator, IHDA is required to publish a Qualified Allocation Plan (QAP) that details how it intends to award tax credits. The

most current (2024-2025) QAP includes scoring incentives for targeted distribution of the tax credits. Two points are awarded to projects located in AHPAA NELGs. For more information, see IHDA's [website](#).

- **Illinois Affordable Housing Tax Credits (IAHTC) (State Donations Tax Credit)** – The credit encourages private investment in affordable housing by providing donors of qualified donations with a one-time tax credit on their Illinois state income tax equal to 50% of the value of the donation. The donor can choose to transfer the credits to the project, which creates additional project financing through syndication of the credits. This is an excellent source of gap financing for rental, homeowner and employer assisted housing projects being developed or operated by a nonprofit organization. Eligible units are between 50% -120% AMI levels, depending on the type of project/program. For more information see IHDA's [website](#).
- **Illinois Affordable Housing Trust Fund** – Funded through a portion of the real estate transfer tax, this State funding source assists in the development of affordable housing across the state. Eligible uses include acquisition, new construction, rehabilitation, and preservation of existing housing. For more information on the Trust Fund, see IHDA's Soft Funds resources on IHDA's [website](#).
- **National Housing Trust Fund** – This is a HUD-funded, IHDA-administered program, targeted to extremely low-income (30% AMI or below) renter households.
- **Multi-Family Financing** – IHDA offers a variety of financing options specific to multi-family housing developments. Through federal and state tax credits and tax-exempt financing, private capital is leveraged to produce housing for low- to moderate-income households across Illinois.
- **Single-Family Financing** - IHDA finances mortgages and offers down payment assistance through participating lenders, making it easier for low- and moderate-income families to qualify and afford a home. For more information, including how to find an IHDA approved lender, use this [link](#). Additionally, partnering with local nonprofit organizations and units of local government, IHDA offers home repair programs for low- to moderate-income homeowners. Forgivable loans are made to make necessary repairs and accessibility improvements that allow residents to stay in their homes. More information on IHDA's revitalization and repair resources is available on the Authority [website](#).

**Employer Assisted Housing (EAH)** – These programs (both national and statewide) encourage employers to invest in housing for their employees. An EAH program typically includes counseling about home buying and financing, direct financial assistance with downpayment and payments, rental housing assistance and/or a real estate investment. For more information on EAH programs as a strategy in the Chicago metro area, visit the Metropolitan Planning Council [website](#).

**Class 9 Property Tax Incentive (Cook County)** – This incentive is designed to encourage new development, rehabilitation, and long-term preservation of multi-family rental housing, affordable to low- and moderate-income households across Cook County by providing significant tax abatement to qualified properties. For more information visit the Cook County Assessor's Office [website](#).

**Federal Home Loan Bank (FHLB)** – Through the Affordable Housing Program (AHP) General Fund, FHLB member institutions partner with for- and not-for-profit developers, community organizations, units of

local government, public housing authorities, and tribal governments to apply for annual grants to subsidize the acquisition, new construction, and/or rehabilitation of affordable rental or owner-occupied housing for low- and moderate-income households. AHP subsidy is provided as a forgivable grant from the FHLB, through a member, to a project sponsor. For more information, visit the FHLB [website](#).

**Community Investment Corporation (CIC)** – CIC is a nonprofit corporation whose mission is to be a leading force in affordable housing and neighborhood revitalization through innovative financing, program, and policy leadership. CIC is a source of financing for the acquisition, rehabilitation, and preservation of affordable rental housing in Chicago neighborhoods and suburban communities. Please visit the CIC [website](#).

**Illinois Facilities Fund (IFF)** – A leading nonprofit community development financial institution (CDFI), IFF strengthens nonprofits and their communities through lending and real estate consulting. IFF can help nonprofits finance, plan, and build facilities that are critical to their mission and success. IFF serves nonprofits in Illinois and other Midwestern states, with a focus on those that serve low- and moderate-income communities and special needs populations. For more information, please visit the IFF [website](#).

## Appendix C: Technical Assistance Available to Non-Exempt Local Governments

Several organizations have resources to assist local governments interested in developing affordable housing programs, incentives and/or plans for their community.

**Chicago Metropolitan Agency for Planning (CMAP)** – CMAP is the federally mandated Metropolitan Planning Organization (MPO) for the Northeast Illinois region, including Cook, DuPage, Kane, Kendall, Lake, McHenry, and Will Counties. CMAP is charged with developing and implementing the region’s long-range, comprehensive plan. The current plan [ON TO 2050](#) emphasizes the importance of planning for a range of housing options in regionally and locally appropriate ways. To implement the plan, CMAP provides staff assistance to communities through the agency’s Local Technical Assistance program, which seeks project proposals from communities in the spring each year. CMAP is a previous partner organization for the Homes for a Changing Region initiative, more information on this initiative is included below. For more information on CMAP and its programming, visit the CMAP [website](#).

**Metropolitan Mayors Caucus (MMC)** – MMC provides a forum through which the chief elected officials of the region cooperatively develop consensus on common public policy issues and multi-jurisdictional challenges. With a foundation of collaboration and consensus-based decision-making, it serves several functions for its partner organizations and local governments. With its partners, MMC has developed a number of housing-related resources for its membership base including [Homes for a Changing Region](#). Funded by IHDA, the Homes initiative provides community-level affordable housing planning assistance throughout Northeast Illinois to create housing options to serve the needs of all income levels, especially low- to moderate-income households. For more information on MMC, please visit its [website](#).

**Metropolitan Planning Council (MPC)** – MPC is dedicated to shaping a more equitable, sustainable, and prosperous greater Chicago region. MPC serves communities and residents by developing, promoting, and implementing solutions for sound regional growth. Through research, advocacy, and demonstration projects, MPC is a partner to governments, businesses, and communities as each confronts the region’s pressing needs. MPC is a previous partner organization for the Homes for a Changing Region initiative. For more information, visit the MPC [website](#).

**IHDA’s Community Revitalization Technical Assistance Program** – IHDA is committed to expanding the capacity of underserved communities in Illinois to identify local housing needs and to empower those communities to take steps to meet their needs. To this aim, IHDA offers free planning services to communities and organizations statewide through its Community Revitalization (CR) Technical Assistance Program. Through this program, IHDA partners with residents, leaders, and organizations to undertake planning activities, develop strategies for future revitalization and investment, and produce official planning documentation for communities to utilize in their pursuit of future development. Because Community Revitalization strategies and activities are incentivized within IHDA’s Low-Income Housing Tax Credit (LIHTC) program; IHDA’s Community Revitalization staff are available to provide technical assistance to sponsors and communities seeking to submit their strategies as part of their LIHTC application.

For more information on IHDA’s CR Program, including how to begin a partnership with IHDA’s CR Team, please visit the IHDA [website](#).

**Impact for Equity** – Formerly known as Business and Professional People for the Public Interest (BPI), Impact for Equity is a public interest law and policy center that works throughout the Chicago region. The group’s housing program works to preserve and expand the supply of housing affordable to working

people, seniors, and young families, especially in areas of opportunity, and seeks to stabilize and strengthen neighborhoods that already have a large supply of affordable housing. Frequently working in collaboration with local governments and other local partners, Impact for Equity has helped local leaders to assess local housing needs and trends, conducted research on best practices from across the country, and helped to develop and improve local policies and programs. For example, they have assisted local governments in developing policies and programs that facilitate the creation of affordable housing, including incentives that allow developers to cover the cost of high-quality affordable housing at no cost to the local government. Impact for Equity has also worked with local governments to develop programs that preserve existing affordable units. For more information visit their [website](#).

#### [Appendix D: CDBG and HOME Program Administrators Directory](#)

Individual communities that do not receive direct allocations of Community Development Block Grants (CDBG) or HOME Investment Partnerships Program (HOME) funds from HUD may be in a county which does receive a direct allocation. Local funding administrators can partner with communities seeking resources for affordable housing initiatives or residential developments.

HUD maintains a listing of communities across the country which receive funding under its different initiatives, including CDBG and HOME. Local governments wishing to identify opportunities for funding and partnerships should review the HUD Awards and Allocations [website](#).

Additionally, for a statewide list of CDBG entitlement areas in Illinois, including access to contact information, use this [link](#).

## Appendix E: 310 ILCS 67 (AHPAA Statute as Amended)

Provided below is the text of the Affordable Housing Planning and Appeal Act (AHPAA) as amended. This language was sourced from the Illinois General Assembly Compiled Statutes [website](#).

### **(310 ILCS 67/) Affordable Housing Planning and Appeal Act.**

(310 ILCS 67/1)

Sec. 1. Short title. This Act may be cited as the Affordable Housing Planning and Appeal Act.  
(Source: P.A. 93-595, eff. 1-1-04.)

(310 ILCS 67/5)

Sec. 5. Findings. The legislature finds and declares that:

- (1) there exists a shortage of affordable, accessible, safe, and sanitary housing in the State;
- (2) it is imperative that action be taken to assure the availability of workforce and retirement housing;
- (3) local governments in the State that do not have sufficient affordable housing are encouraged to assist in providing affordable housing opportunities to assure the health, safety, and welfare of all citizens of the State;
- (4) increasing the inventory and affordability of housing choices for people earning between 80% and 140% of the area median income, termed the missing middle, also helps preserve affordable housing, prevents homelessness, and encourages investment in more inclusive, mixed-income communities throughout the State; and
- (5) studying the inventory and affordability gaps that affect the missing middle is also crucial to ensuring workforce and retirement housing in the State.

(Source: P.A. 104-319, eff. 1-1-26.)

(310 ILCS 67/10)

Sec. 10. Purpose. The purpose of this Act is to encourage counties and municipalities to incorporate affordable housing within their housing stocks sufficient to meet the needs of their county or community. Further, affordable housing developers who believe that they have been unfairly treated due to the fact that the development contains affordable housing may seek relief from local ordinances and regulations that may inhibit the construction of affordable housing needed to serve low-income and moderate-income households in this State.

(Source: P.A. 93-595, eff. 1-1-04.)

(310 ILCS 67/15)

Sec. 15. Definitions. As used in this Act:

"Affordable housing" means housing that has a value or cost or rental amount that is within the means of a household that may occupy moderate-income or low-income housing. In the case of owner-occupied dwelling units, housing that is affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit. In the case of dwelling units for rent, housing that is affordable means housing for which the rent and utilities constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit. In the case of dwelling units for rent, the costs of any required parking, maintenance, or landlord-imposed fees are to be included in the calculation of affordable housing if available from the U.S. Census Bureau.

"Affordable housing developer" means a nonprofit entity, limited equity cooperative or public agency, or private individual, firm, corporation, or other entity seeking to build an affordable housing development.

"Affordable housing development" means (i) any housing that is subsidized by the federal or State government or (ii) any housing in which at least 20% of the dwelling units are subject to covenants or restrictions that require that the dwelling units be sold or rented at prices that preserve them as affordable housing for a period of at least 15 years, in the case of owner-occupied housing, and at least 30 years, in the case of rental housing.

"Approving authority" means the governing body of the county or municipality.

"Area median household income" means the median household income adjusted for family size for applicable income limit areas as determined annually by the federal Department of Housing and Urban Development under Section 8 of the United States Housing Act of 1937.

"Community land trust" means a private, not-for-profit corporation organized exclusively for charitable, cultural, and other purposes and created to acquire and own land for the benefit of the local government, including the creation and preservation of affordable housing.

"Development" means any building, construction, renovation, or excavation or any material change in any structure or land, or change in the use of such structure or land, that results in a net increase in the number of dwelling units in a structure or on a parcel of land by more than one dwelling unit.

"Exempt local government" means any local government in which at least 10% of its total year-round housing units are affordable, as determined by the Illinois Housing Development Authority in accordance with Section 20, or any municipality with a population under 1,000.

"Household" means the person or persons occupying a dwelling unit.

"Housing organization" means a trade or industry group engaged in the construction or management of housing units, or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low or moderate-income households.

"Housing trust fund" means a separate fund, either within a local government or between local governments pursuant to intergovernmental agreement, established solely for the purposes authorized in subsection (d) of Section 25, including, without limitation, the holding and disbursing of financial resources to address the affordable housing needs of individuals or households that may occupy low-income or moderate-income housing.

"Local government" means a county or municipality.

"Low-income housing" means housing that is affordable, according to the federal Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that does not exceed 50% of the area median household income.

"Moderate-income housing" means housing that is affordable, according to the federal Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that is greater than 50% but does not exceed 80% of the area median household income.

"Non-appealable local government requirements" means 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.

(Source: P.A. 102-175, eff. 7-29-21; 103-487, eff. 1-1-24.)

(310 ILCS 67/20)

Sec. 20. Determination of exempt local governments.

(a) Beginning October 1, 2004, the Illinois Housing Development Authority shall determine which local governments are exempt and not exempt from the operation of this Act based on an identification of the total number of year-round housing units in the most recent data from the U.S. Census Bureau for each local government within the State and by an inventory of owner-occupied and rental affordable housing units, as defined in this Act, for each local government from the U.S. Census Bureau and other relevant sources.

(b) The Illinois Housing Development Authority shall make this determination by:

(i) totaling the number of owner-occupied housing units in each local government that are affordable to households with a gross household income that is less than 80% of the median household income within the county or primary metropolitan statistical area;

(ii) totaling the number of rental units in each local government that are affordable to households with a gross household income that is less than 60% of the median household income within the county or primary metropolitan statistical area;

(iii) adding the number of owner-occupied and rental units for each local government from items (i) and (ii); and

(iv) dividing the sum of (iii) above by the total number of year-round housing units in the local government as contained in the latest U.S. Census Bureau and multiplying the result by 100 to determine the percentage of affordable housing units within the jurisdiction of the local government.

(c) Beginning on the effective date of this amendatory Act of the 98th General Assembly, the Illinois Housing Development Authority shall publish a list of exempt and non-exempt local governments and the data that it used to calculate its determination at least once every 5 years. The data shall be shown for each local government in the State and for the State as a whole. Upon publishing a list of exempt and non-exempt local governments, the Illinois Housing Development Authority shall notify a local government that it is not exempt from the operation of this Act and provide to it the data used to calculate its determination.

(d) A local government or developer of affordable housing may appeal the determination of the Illinois Housing Development Authority as to whether the local government is exempt or non-exempt under this Act in connection with an appeal under Section 30 of this Act.

(e) Additionally, the Illinois Housing Development Authority shall make the following calculations:

(i) totaling the number of owner-occupied housing units in each local government that are affordable to households with a gross household income that is at or below 30% of the median household income within the county or primary metropolitan statistical area;

(ii) totaling the number of rental units in each local government that are affordable to households with a gross household income that is at or below 30% of the median household income within the county or primary metropolitan statistical area;

(iii) adding the number of owner-occupied and rental units for each local government from items (i) and (ii);

(iv) dividing the sum of (iii) above by the total number of year-round housing units in the local government as contained in the latest U.S. Census Bureau and multiplying the result by 100 to determine the percentage of extremely low-income affordable housing units within the jurisdiction of the local government;

(v) totaling the number of owner-occupied housing units in each local government that are affordable to households with a gross household income that is between 80% and 140% of the median household income within the county or primary metropolitan statistical area;

(vi) totaling the number of rental units in each local government that are affordable to households with a gross household income that is between 60% and 80% of the median household income within the county or primary metropolitan statistical area;

(vii) totaling the number of rental units in each local government that are affordable to households with a gross household income that is between 80% and 140% of the median household income within the county or primary metropolitan statistical area;

(viii) adding the number of owner-occupied and rental units for each local government from items (v), (vi), and (vii); and

(ix) dividing the sum of (viii) above by the total number of year-round housing units in the local government as contained in the latest U.S. Census Bureau and multiplying the result by 100 to determine the percentage of affordable middle housing units within the jurisdiction of the local government.

(f) Beginning on the effective date of this amendatory Act of the 104th General Assembly, the Illinois Housing Development Authority shall publish the data collected under paragraphs (i) through (ix) of subsection (e). The data shall be shown for each local government in the State and for the State as a whole and shall be published at least once every 5 years. The Illinois Housing Development Authority shall also compile the collected data into a report and submit the report to the General Assembly.

(g) The data collected under subsection (e) shall be for informational purposes only and shall not factor into the determination of exempt local governments.

(Source: P.A. 104-319, eff. 1-1-26.)

(310 ILCS 67/25)

Sec. 25. Affordable housing plan.

(a) Prior to April 1, 2005, all non-exempt local governments must approve an affordable housing plan. Any local government that is determined by the Illinois Housing Development Authority under Section 20 to be non-exempt for the first time based on the recalculation of U.S. Census Bureau data after 2010 shall have 18 months from the date of notification of its non-exempt status to approve an affordable housing plan under this Act. On and after the effective date of this amendatory Act of the 102nd General Assembly, an affordable housing plan, or any revision thereof, shall not be adopted by a non-exempt local government until notice and opportunity for public hearing have first been afforded.

(b) For the purposes of this Act, the affordable housing plan shall consist of at least the following:

(i) a statement of the total number of affordable housing units that are necessary to exempt the local government from the operation of this Act as defined in Section 15 and Section 20;

(ii) an identification of lands within the jurisdiction that are most appropriate for the construction of affordable housing and of existing structures most appropriate for conversion to, or rehabilitation for, affordable housing, including a consideration of affordable housing for both owner-occupied dwelling

units and dwelling units for rent, lands and structures of developers who have expressed a commitment to provide affordable housing, and lands and structures that are publicly or semi-publicly owned;

(iii) incentives that local governments may provide for the purpose of attracting affordable housing to their jurisdiction;

(iv) a description of any housing market conditions, infrastructure limitations, local government ordinances, including zoning and land use ordinances, local government policies or practices that do not affirmatively further fair housing as defined in the federal Fair Housing Act, and other factors that may constrain the local government's ability to create and preserve affordable housing;

(v) a plan or potential strategies to eliminate or mitigate these constraints identified in item (iv);

(vi) one or more of the following goals: a minimum of 15% of all new development or redevelopment within the local government that would be defined as affordable housing in this Act; a minimum of a 5 percentage point increase in the overall percentage of affordable housing within its jurisdiction, as described in subsection (b) of Section 20 of this Act; or a minimum of a total of 10% affordable housing within its jurisdiction as described in subsection (b) of Section 20 of this Act. These goals may be met, in whole or in part, through the creation of affordable housing units under intergovernmental agreements as described in subsection (e) of this Section; and

(vii) proposed timelines to commence, within the

first 24 months after the date upon which the affordable housing plan was adopted, for actions to implement the components of the affordable housing plan.

Local governments that have previously been determined as a non-exempt municipality and that have submitted an affordable housing plan shall also include a summary of actions taken to implement the previously submitted plan, as well as a summary of progress made toward achieving the goals of the plan.

To comply with the affordable housing plan requirements, no later than 4 years after adopting or updating an affordable housing plan the local government shall submit a report to the Illinois Housing Development Authority summarizing actions taken to implement the current plan.

(c) Within 60 days after the adoption of an affordable housing plan or revisions to its affordable housing plan, the local government must submit a copy of that plan to the Illinois Housing Development Authority.

(d) In order to promote the goals of this Act and to maximize the creation, establishment, or preservation of affordable housing throughout the State of Illinois, a local government, whether exempt or non-exempt under this Act, may adopt the following measures to address the need for affordable housing:

(1) Local governments may individually or jointly create or participate in a housing trust fund or otherwise provide funding or support for the purpose of supporting affordable housing, including, without limitation, to support the following affordable housing activities:

(A) Housing production, including, without limitation, new construction, rehabilitation, and adaptive re-use.

(B) Acquisition, including, without limitation, land, single-family homes, multi-unit buildings, and other existing structures that may be used in whole or in part for residential use.

(C) Rental payment assistance.

(D) Home-ownership purchase assistance.

(E) Preservation of existing affordable housing.

(F) Weatherization.

(G) Emergency repairs.

(H) Housing related support services, including homeownership education and financial counseling.

(1) Grants or loans to not-for-profit organizations engaged in addressing the affordable housing needs of low-income and moderate-income households.

Local governments may authorize housing trust funds to accept and utilize funds, property, and other resources from all proper and lawful public and private sources so long as those funds are used solely for addressing the affordable housing needs of individuals or households that may occupy low-income or moderate-income housing.

(2) A local government may create a community land trust, which may: acquire developed or undeveloped interests in real property and hold them for affordable housing purposes; convey such interests under long-term leases, including ground leases; convey such interests for affordable housing purposes; and retain an option to reacquire any such real property interests at a price determined by a formula ensuring that such interests may be utilized for affordable housing purposes.

(3) A local government may use its zoning powers to require the creation and preservation of affordable housing as authorized under Section 5-12001 of the Counties Code and Section 11-13-1 of the Illinois Municipal Code.

(4) A local government may accept donations of money or land for the purpose of addressing the affordable housing needs of individuals or households that may occupy low-income or moderate-income housing. These donations may include, without limitation, donations of money or land from persons, as long as the donations are demonstrably used to preserve, create, or subsidize low-income housing or moderate-income housing within the jurisdiction.

(e) In order to encourage regional cooperation and the maximum creation of affordable housing in areas lacking such housing in the State of Illinois, any non-exempt local government may enter into intergovernmental agreements under subsection (e) of Section 25 with local governments within 10 miles of its corporate boundaries in order to create affordable housing units to meet the goals of this Act. A non-exempt local government may not enter into an intergovernmental agreement, however, with any local government that contains more than 25% affordable housing as determined under Section 20 of this Act. All intergovernmental agreements entered into to create affordable housing units to meet the goals of this Act must also specify the basis for determining how many of the affordable housing units created will be credited to each local government participating in the agreement for purposes of complying with this Act. All intergovernmental agreements entered into to create affordable housing units to meet the goals of this Act must also specify the anticipated number of newly created affordable housing units that are to be credited to each local government participating in the agreement for purposes of complying with this Act. In specifying how many affordable housing units will be credited to each local government, the same affordable housing unit may not be counted by more than one local government.

(f) To enforce compliance with the provisions of this Section, and to encourage local governments to submit their affordable housing plans to the Illinois Housing Development Authority in a timely manner, the Illinois Housing Development Authority shall notify any local government and may notify the Office of the Attorney General that the local government is in violation of State law if the Illinois Housing Development Authority finds that the affordable housing plan submitted is not in substantial compliance with this Section or that the local government failed to submit an affordable housing plan. The Attorney General may enforce this provision of the Act by an action for mandamus or injunction or by means of other appropriate relief.

(g) The Illinois Housing Development Authority shall post each affordable housing plan submitted by a local government on the Illinois Housing Development Authority's website.

(Source: P.A. 102-175, eff. 7-29-21; 103-487, eff. 1-1-24.)

(310 ILCS 67/30)

Sec. 30. Appeal to State Housing Appeals Board.

(a) (Blank).

(b) (Blank).

(b-5) Beginning January 1, 2026, any of the following parties may file an appeal as an appellant to the State Housing Appeals Board against a non-exempt municipality if the proposed affordable housing development was denied by the municipality, or approved with conditions that in the appellant's judgment render the provision of affordable housing infeasible:

- (1) the affordable housing developer of the proposed affordable housing development;
- (2) a person who would be eligible to apply for residency in the proposed affordable housing development; or
- (3) 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.

Appeals must be filed within 45 days after the decision by the municipality. The appellant must submit information regarding why the appellant believes the affordable housing development was unfairly denied or unreasonable conditions were placed upon the tentative approval of the development. In the case of local governments that are determined by the Illinois Housing Development Authority under Section 20 to be non-exempt for the first time based on the recalculation of U.S. Census Bureau data after the effective date of this amendatory Act of the 103rd General Assembly, no appellant may appeal to the State Housing Appeals Board until 6 months after a local government has been notified of its non-exempt status.

(c) Beginning on the effective date of this amendatory Act of the 98th General Assembly, the Board shall, whenever possible, render a decision on the appeal within 120 days after the appeal is filed. The Board may extend the time by which it will render a decision where circumstances outside the Board's control make it infeasible for the Board to render a decision within 120 days. In any proceeding before the Board, the appellant bears the burden of demonstrating that the proposed affordable housing development (i) has been unfairly denied or (ii) has had unreasonable conditions placed upon it by the decision of the local government.

(d) The Board shall dismiss any appeal if:

(i) the local government has adopted an affordable housing plan as defined in Section 25 of this Act and submitted that plan to the Illinois Housing Development Authority within the time frame required by this Act; and

(ii) the local government has implemented its affordable housing plan and has met its goal as established in its affordable housing plan as defined in Section 25 of this Act.

(e) The Board shall dismiss any appeal if the reason for denying the application or placing conditions upon the approval is a non-appealable local government requirement under Section 15 of this Act.

(f) The Board may affirm, reverse, or modify the conditions of, or add conditions to, a decision made by the approving authority. The decision of the Board constitutes an order directed to the approving authority and is binding on the local government.

(g) The appellate court has the exclusive jurisdiction to review decisions of the Board. Any appeal to the Appellate Court of a final ruling by the State Housing Appeals Board may be heard only in the Appellate Court for the District in which the local government involved in the appeal is located. The appellate court shall apply the "clearly erroneous" standard when reviewing such appeals. An appeal of a final ruling of the Board shall be filed within 35 days after the Board's decision and in all respects shall be in accordance with Section 3-113 of the Code of Civil Procedure.

(Source: P.A. 103-487, eff. 1-1-24.)

(310 ILCS 67/40)

Sec. 40. Nonresidential development as part of an affordable housing development.

(a) An affordable housing developer who applies to develop property that contains nonresidential uses in a nonresidential zoning district must designate either at least 50% of the area or at least 50% of the

square footage of the development for residential use. Unless adjacent to a residential development, the nonresidential zoning district shall not include property zoned industrial. The applicant bears the burden of proof of demonstrating that the purposes of a nonresidential zoning district will not be impaired by the construction of housing in the zoning district and that the public health and safety of the residents of the affordable housing will not be adversely affected by nonresidential uses either in existence or permitted in that zoning district. The development should be completed simultaneously to the extent possible and shall be unified in design.

(b) For purposes of subsection (a), the square footage of the residential portion of the development shall be measured by the interior floor area of dwelling units, excluding that portion that is unheated. Square footage of the nonresidential portion shall be calculated according to the gross leasable area. (Source: P.A. 93-595, eff. 1-1-04.)

(310 ILCS 67/50)

Sec. 50. Housing Appeals Board.

(a) On and after the effective date of this amendatory Act of the 103rd General Assembly, the Housing Appeals Board consists of 7 members appointed by the Governor as follows:

(1) 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;

(2) 4 members selected from among the following categories:

(A) county or municipal zoning board of appeals members;

(B) county or municipal planning board members;

(C) a mayor or municipal council or board member;

(D) a county board member;

(3) an affordable housing developer; and

(4) an affordable housing advocate.

In addition, the Chairman of the Illinois Housing Development Authority, ex officio, shall serve as a non-voting member. At least 2 of the appointments under paragraph (2) shall be from a local government that is non-exempt under this Act.

(b) Initial terms of 4 members designated by the Governor under this amendatory Act of the 103rd General Assembly shall be for 2 years. Initial terms of 3 members designated by the Governor under this amendatory Act of the 103rd General Assembly shall be for one year. Thereafter, members shall be appointed for terms of 2 years. After a member's term expires, the member shall continue to serve until a successor is appointed. There shall be no limit to the number of terms an appointee may serve. A member shall receive no compensation for his or her services, but shall be reimbursed by the State for all reasonable expenses actually and necessarily incurred in the performance of his or her official duties. The Board shall hear all petitions for review filed under this Act and shall conduct all hearings in accordance with the rules and regulations established by the chairperson. The Illinois Housing Development Authority shall provide space and clerical and other assistance that the Board may require.

(c) (Blank).

(d) To the extent possible, any vacancies in the Housing Appeals Board shall be filled within 90 days of the vacancy.

(e) The terms of members serving before the effective date of this amendatory Act of the 103rd General Assembly expire on the effective date of this amendatory Act of the 103rd General Assembly.

(Source: P.A. 102-175, eff. 7-29-21; 103-487, eff. 1-1-24.)

(310 ILCS 67/51)

Sec. 51. Affordable housing for community college students. A non-exempt local government may develop affordable housing for community college students in coordination with a nonprofit affordable housing developer and the Housing Authority having jurisdiction of the area designated for the proposed affordable housing development.

(Source: P.A. 102-62, eff. 1-1-22.)

(310 ILCS 67/60)

Sec. 60. Rulemaking authority. The Illinois Housing Development Authority shall adopt other rules and regulations as needed to carry out the Board's responsibilities under this Act and to provide direction to local governments and affordable housing developers.

(Source: P.A. 94-303, eff. 7-21-05.)

(310 ILCS 67/70)

Sec. 70. Home rule application. Unless otherwise provided under this Act or otherwise in accordance with State law, a unit of local government, including a home rule unit, or any non-home rule county within the unincorporated territory of the county, may not regulate the activities described in this Act in a manner more restrictive than the regulation of those activities by the State under this Act. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

(Source: P.A. 102-175, eff. 7-29-21.)

## Appendix F: 47 Ill. Adm. Code 395 (SHAB Administrative Rules)

Provided below is the text of the administrative rules of the State Housing Appeals Board (SHAB), as amended at 50 Ill. Reg. 1085, effective January 8, 2026. This language was sourced from the Illinois General Assembly website.

### State Housing Appeals Board (47 Ill. Adm. Code 395)

#### SUBPART A: GENERAL RULES

##### Section 395.101 Authority

IHDA is designated as the agency responsible for adopting rules and regulations needed to carry out the Board's responsibilities under the Act. This Part is authorized by Section 60 of the Act and Section 7.19 of the IHDA Act.

##### Section 395.102 Purpose and Objectives

The purpose of the Act and this Part is to carry out the Board's responsibilities under the Act and to provide direction to Local Governments and Affordable Housing Developers.

##### Section 395.103 Definitions

The following terms used in this Part shall have the following definitions:

"Act": The Affordable Housing Planning and Appeal Act [310 ILCS 67].

*"Affordable housing": Housing that has a value or cost or rental amount that is within the means of a household that may occupy moderate-income housing or low-income housing.*

*In the case of owner-occupied dwelling units, affordable housing means housing in which mortgage, amortization, taxes, insurance and condominium or association fees, if any, constitute no more than 30% of the gross annual household income for a household of the size that may occupy the dwelling unit.*

*In the case of dwelling units for rent, affordable housing means housing for which the rent and utilities constitute no more than 30% of the gross annual household income for a household of the size that may occupy the dwelling unit. In the case of dwelling units for rent, the costs of any required parking, maintenance or landlord-imposed fees are to be included in the calculation of affordable housing if available from the U.S. Census Bureau.*

*"Affordable housing developer": A nonprofit entity, limited equity cooperative or public agency, or private individual, firm, corporation, or other entity seeking to build an Affordable housing development.*

*"Affordable housing development": Any housing that is subsidized by the federal or State government, or any housing in which at least 20% of the dwelling units are subject to covenants or restrictions that require the dwelling units to be sold or rented at prices that preserve them as affordable housing for a period of at least 15 years, in the case of owner-occupied housing, and at least 30 years, in the case of rental housing. [310 ILCS 67/15]*

"Affordable housing plan": A plan approved by a non-exempt local government as set forth in Section 25 of the Act and submitted to IHDA for review and subsequent approval.

"Appellant": Any of the following parties:

*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; or*

*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. [310 ILCS 67/30]*

"Approving authority": The governing body of the local government.

"Area median household income": *The median household income adjusted for family size for applicable income limit areas as determined annually by HUD under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437). [310 ILCS 67/15]*

"Board": The State Housing Appeals Board.

"Chairperson": The Chairperson of the Board.

"Contumacious Conduct": A willful disobedience of the Board's order.

"Days": Calendar days. Due dates under this Part falling on a Saturday, Sunday or a legal State or federal holiday shall be deemed to fall on the next calendar day that is not a Saturday, Sunday or a legal State or federal holiday.

"Development": *Any building, construction, renovation or excavation, or any material change in any structure or land, or change in the use of a structure or land, that results in a net increase in the number of dwelling units in a structure or on a parcel of land by more than one dwelling unit.*

"Dwelling unit": Real property located within the State upon which there is located a structure or structures that are a single family home, a condominium or a multi-unit residential structure that is the principal residence of the household that resides in the unit.

"Exempt local government": *Any local government in which at least 10% of its total year-round housing units are affordable housing, as determined by IHDA pursuant to Section 20 of the Act, or any municipality with a population under 1,000.*

"Household": *The person or persons occupying a Dwelling Unit.*

"Housing Organization": *A trade or industry group engaged in construction or management of housing units, or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low- and moderate-income households.*

"HUD": The United States Department of Housing and Urban Development.

"IHDA": The Illinois Housing Development Authority.

"IHDA Act": The Illinois Housing Development Act [20 ILCS 3805].

"IHDA Chairman": The chairman of IHDA.

*"Local Government": A county or a municipality, including home rule units and counties and municipalities other than home rule units, as described in Article VII of the Constitution of the State of Illinois.*

*"Low-Income Housing": Housing that is affordable, according to HUD, for either home ownership or rental and that is occupied, reserved or marketed for occupancy by Households with a gross household income that does not exceed 50% of the Area Median Household Income.*

"Member": A member of the State Housing Appeals Board.

*"Moderate-Income Housing": Housing that is affordable, according to HUD, for either home ownership or rental, and that is occupied, reserved or marketed for occupancy by Households with a gross household income that is greater than 50%, but does not exceed 80%, of the Area Median Household Income.*

*"Non-Appealable Local Government Requirements": 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. [310 ILCS 67/15] Zoning, density and bulk restrictions may count as Non-Appealable Local Government Requirements if the Board finds that they qualify under the Act's definition of Non-Appealable Local Government Requirements.*

"Non-Exempt Local Governments": All local governments that do not meet the definition of Exempt Local Governments.

"Offices of IHDA": 111 E. Wacker, Suite 1000, Chicago, Illinois 60601.

"Public Building": *Any building or portion thereof owned or leased by a Public Body. [5 ILCS 120/2.01]*

*"Public Body": All legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts, and all other municipal corporations, boards, bureaus, committees or commissions of the State, and any subsidiary bodies of any of the foregoing, including, but not limited to, committees and subcommittees supported in whole or in part by tax revenue, or that expend tax revenue, except the General Assembly and committees or commissions of the General Assembly. [5 ILCS 120/1.02]*

"State": The State of Illinois.

(Source: Amended at 50 Ill. Reg. 1085, effective January 8, 2026)

### **Section 395.104 Compliance with Federal and State Law**

Notwithstanding anything in this Part to the contrary, this Part shall be construed in conformity and compliance with applicable federal and State law.

### **Section 395.105 Forms and Procedures for the Program**

IHDA may prepare, use, supplement and amend forms, agreements and other documents and procedures as may be necessary to implement the duties of the Board, all as may be prescribed by IHDA.

### **Section 395.106 Fees and Charges**

The Authority shall not charge the Board any fees or other charges for services it provides to the Board. The Members shall be reimbursed by the State for all reasonable expenses actually and necessarily incurred in the performance of their official duties. In the making of reimbursements to the Members, the State may use funds from the Illinois Affordable Housing Trust Fund, pursuant to the Illinois Affordable Housing Act [310 ILCS 65], or such other funds as the State may determine.

(Source: Amended at 43 Ill. Reg. 11314, effective September 26, 2019)

#### **Section 395.107 Amendment**

This Part may be supplemented, amended or repealed by IHDA from time to time and in a manner consistent with the Illinois Administrative Procedure Act [5 ILCS 100], this Part, the Act and other applicable laws. This Part shall not constitute or create any contractual rights.

#### **Section 395.108 Severability**

If any clause, sentence, paragraph, subsection, Section, or Subpart of this Part is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair or invalidate the remainder of this Part, but shall be confined in its operation to the clause, sentence, paragraph, subsection, Section or Subpart to which the judgment is rendered.

#### **Section 395.109 Gender and Number**

All terms used in any one gender or number shall be construed to include any other gender or number as the context may require.

#### **Section 395.110 Titles and Captions**

Titles and captions of Subparts, Sections and subsections are used for convenience and reference and are not a part of the text.

### **SUBPART B: ORGANIZATION**

#### **Section 395.201 Jurisdiction**

The Board shall have jurisdiction to hear and render decisions regarding appeals filed by Affordable Housing Developers in connection with applications for Affordable Housing Developments when Approving Authorities have either denied the applications or approved the applications with conditions that, in the opinion of the Affordable Housing Developer, may render the Affordable Housing Developments infeasible. In connection with appeals filed by Affordable Housing Developers, the Board shall also have jurisdiction to hear and render decisions affecting the exempt or non-exempt status of Local Governments under the Act.

#### **Section 395.202 Organization of the Board**

The duties of the Board are governed by the Act and this Part. The Board shall consist of seven Members appointed by the Governor.

- a) Chairperson: *A retired Illinois circuit judge, retired Illinois 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 is a Member. [310 ILCS 67/50]
- b) Other Members: Other Members, who are appointed from time to time by the Governor, are as follows:

- 1) *Four Members selected from the following categories:*
    - A) *County or municipal zoning board of appeals members;*
    - B) *County or municipal planning board members;*
    - C) *A mayor or municipal council or board member; and*
    - D) *A county board member.*
  - 2) *An Affordable Housing Developer; and*
  - 3) *An affordable housing advocate.*
- c) *Ex Officio Member: The IHDA Chairman, ex officio, shall serve as a non-voting Member.*
- d) *At least 2 of the appointments under subsection (b) shall be from Non-Exempt Local Governments.*
- e) *Beginning January 1, 2024, initial terms of four Members designated by the Governor shall be for two years and initial terms of three Members designated by the Governor shall be for one year. Thereafter, Members shall be appointed for two years. After a Member's term expires, the Member shall continue to serve until a successor is appointed. There shall be no limit to the number of terms an appointee may serve. The terms of Members serving before January 1, 2024 expire on January 1, 2024.*
- f) *A Member shall receive no compensation for his or her services; however, Members shall be reimbursed by the State for all reasonable travel and administrative expenses actually and necessarily incurred in the performance of the Member's official duties.*
- g) *The Board shall hear all petitions for review filed under the Act and shall conduct hearings in accordance with this Part.*
- h) *The principal office of the Board shall be the Offices of IHDA with office hours that are coterminous with the office hours of IHDA. IHDA shall provide space, clerical assistance and other assistance that the Board may require. [310 ILCS 67/50]*
- (Source: Amended at 50 Ill. Reg. 1085, effective January 8, 2026)

### **Section 395.203 Meetings of the Members**

- a) *Compliance with Open Meetings Act: All meetings of the Board shall be in compliance with the Illinois Open Meetings Act [5 ILCS 120].*
- b) *Regular Meetings: The regular meetings of the Board shall be held at the Offices of IHDA when there are appeals, other applicable context, or other business to come before the Board, at least annually, with the specific date for the annual meeting to be set no later than January 1 of each calendar year. The Board may hold a regular meeting *simultaneously* at the Offices of IHDA *and one or more other locations in a Public Building through an interactive video conference if public notice and public access are provided for all meeting locations. Members physically present in those locations shall count towards determining a quorum.* [5 ILCS 20/2.01]*
- c) *Rescheduled Meetings: A regular meeting of the Board may be rescheduled as determined by the Chairperson, in which event notice of the rescheduled meeting shall be given in accordance with the Open Meetings Act.*

d) Special Meetings: Special meetings of the Board may be called at any time by the Chairperson or upon request of any two Members of the Board. *Public notice of the special meeting, except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting described in subsection (c), or of a reconvened meeting shall be given at least 48 hours before the meeting. Notice of the special meeting, and the agenda for the meeting, shall be posted at the Offices of IHDA and on IHDA's website.* [5 ILCS 120/2.02]

e) Emergency Meetings: Emergency meetings of the Board may be called at any time by the Chairperson or upon request of any two Members of the Board. *Public notice of the emergency meeting shall be given as soon as practicable, but in any event, prior to the holding of the meeting.*

f) Notice of Meetings: The Board, through IHDA, shall publish a schedule of its regular meetings by January 1 of each calendar year listing the dates, times and places of the meetings, if any. The schedule shall be posted at the Offices of IHDA and on IHDA's website. No notice of regular meetings, as provided for in subsection (b) need be given to any Member. Notice in writing of all special, emergency and rescheduled meetings shall be delivered personally or via electronic mail, or shall be mailed to each Member at the Member's business or home address. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope addressed to the Member, with postage prepaid. Any Member may waive notice of a special, emergency or rescheduled meeting and attendance at the meeting shall constitute a waiver of notice of the meeting except when a Member attends for the express purpose of objecting to the meeting because the meeting was not lawfully called or convened.

g) Quorum: A majority of the appointed Members of the Board shall constitute a quorum. A quorum must be physically present at any meeting of the Board. A Member attending a meeting via video conference as provided for in subsection (b) will be considered physically present for the purposes of determining a quorum and voting. The affirmative vote of a majority of the appointed Members shall be necessary for any action taken by or in the name of the Board at any meeting. If less than a quorum is present at a meeting, a majority of the Members present may adjourn the meeting from time to time. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all of the rights and perform all of the duties of the Board.

h) Attendance By Means Other Than Physical Presence:

1) If a quorum is physically present at a meeting of the Board, a Member may attend the meeting via audio or video conference only if the Member cannot attend because of:

- A) *personal illness or disability;*
- B) *employment purposes or other business of the Board;*
- C) *a family or other emergency; or*
- D) *unexpected childcare obligations.* (5 ILCS 120/7).

2) The Member must notify the Chairperson of the Member's intention to attend the meeting via audio or video conference at least 48 hours before the meeting unless impracticable. A Member cannot attend more than one regularly scheduled meeting of the Board for that calendar year via audio or video conference unless the Member

presents a document from the Member's physician attesting to the Member's inability to physically attend a meeting or meetings. If one or more Members attend via audio or video conference, the Board, through IHDA, shall issue a written notice at the meeting stating the names of the Members present by audio or video conference, the electronic means that the Members will use to attend the meeting, and the location of the speakerphone or monitor receiving and transmitting the communications from the Members present by audio or video conference. The Member must then identify himself or herself by name and be recognized by the Chairperson or other presiding officer before communicating. The minutes of the meeting shall reflect which Members were physically present and which Members were present via video or audio conference.

i) Records: A full and complete record shall be kept of all Board proceedings. IHDA shall be the official custodian of the records. Oral proceedings shall be recorded electronically, stenographically or by other means that will adequately ensure the preservation of the testimony or oral proceedings and shall be transcribed on the request of any party to a case. Transcription costs, if any, shall be borne by the party requesting the transcript. Other records shall consist of the following:

- 1) *all pleadings, including all notices and responses to those pleadings, and all motions and ruling;*
- 2) a transcript of the hearing, if any;
- 3) *all evidence received;*
- 4) *a statement of matters officially noticed;*
- 5) *any offers of proof, objections and rulings on that proof;*
- 6) *any proposed findings and exceptions;*
- 7) any decision, opinion or report of the Board;
- 8) *all staff memoranda or data submitted to the Board by IHDA in connection with the consideration of a case before the Board; and*
- 9) *Any prohibited ex parte communications. [5 ILCS 100/10-35(a)]*

(Source: Amended at 50 Ill. Reg. 1085, effective January 8, 2026)

#### **Section 395.204 Conduct of the Board**

a) Authority: The Board shall have all the powers necessary and appropriate to conduct a full, fair and impartial hearing, including, but not limited to, the following:

- 1) to administer oaths and affirmations;
- 2) to rule upon offers of proof and receive relevant evidence;
- 3) to issue subpoenas;
- 4) to provide for discovery and to determine its scope;

- 5) to regulate the course of the hearing and the conduct of the parties and their counsel;
- 6) to consider and rule upon procedural requests;
- 7) to require or hold conferences for the settlement or simplification of the issues;
- 8) to examine witnesses, direct witnesses to testify, limit the number of times a witness may testify, limit repetitive or cumulative testimony, and set reasonable limits on the amount of time a witness may testify;
- 9) to ensure that the hearing is conducted in a full, fair and impartial manner, that order is maintained, and that unnecessary delay is avoided in the disposition of the hearing;
- 10) to dismiss appeals in accordance with the Act; and
- 11) to affirm, reverse or modify the conditions of or add conditions to a decision of an Approving Authority.

b) **Disqualification of Members of the Board:** No person who is a Member of the Board shall engage in practice before the Board in any respect. No person who has been a Member of the Board shall, for one year after termination of membership on the Board, engage in practice before the Board in any respect. No person who has been a Member of the Board shall engage in any practice before the Board in connection with any case or proceeding that was pending during that person's membership with the Board. No Member of the Board shall participate in any hearing or other proceeding before the Board regarding an Affordable Housing Development in which that Member has a direct or indirect financial interest.

c) **Ex Parte Communications:**

- 1) Except in the disposition of matters that the Board is authorized to entertain or dispose of on an ex parte basis, the Board and IHDA staff shall not, with respect to any pending or contested appeal, communicate directly or indirectly in connection with any issue of fact before the Board, with any party or the representative of any party, except upon notice and an opportunity for all parties to participate.
- 2) An ex parte communication received by any member of the Board or any employee or member of IHDA pertaining to a pending appeal shall be made a part of the record of the pending appeal, including all written communications, all written responses to the communications, and a memorandum stating the substance of all oral communications and all responses made and the identity of each person from whom the ex parte communication was received.
- 3) Ex Parte communications prohibited by the Illinois Administrative Procedure Act [5 ILCS 100] shall not form the basis of any decision of the Board.
- 4) Communications regarding matters of practice and procedure, such as the status of appeals, filing requirements, form letters, scheduling of hearings, format of pleadings, number of copies required, manner of service, and the like are not considered ex parte communications under this Part.

d) Contumacious Conduct: Contumacious Conduct at any hearing before the Board shall be grounds for exclusion from the hearing. If a witness or a party fails to appear or refuses to answer a question after being directed to do so or refuses to obey an order to provide or permit discovery, the Board may issue orders with regard to the failure to appear or the refusal as are just and appropriate, including, but not limited to, excluding the testimony of witnesses, entering an order of default, entering an order that certain facts are deemed admitted for purposes of the proceeding, or entering an order denying the application or complaint of a party.

(Source: Amended at 43 Ill. Reg. 11314, effective September 26, 2019)

### **SUBPART C: APPEALS TO THE BOARD BY APPELLANTS**

#### **Section 395.301 Service of Documents**

All initial pleadings and all documents in connection with any hearing before the Board under this Subpart shall be served by the party filing the document on the Board, the Approving Authority, the appellant and all other parties to the proceedings. Service of any document upon any party may be made personally, by certified or registered mail with return receipt signed by the person or their registered agent, or by private delivery service. If service is made by United States mail, service shall be presumed complete 3 days after mailing, if proof of service shows the document was properly addressed. This presumption may be overcome by the addressee with evidence establishing that the document was not delivered or delivered at a later date. A party's failure to accept or claim a document served by mail shall not be grounds for overcoming the presumption. Proof of service shall be made by affidavit of the person making personal service that includes the name and address of the party served and the date and manner of service, or by a properly executed registered or certified mail receipt.

(Source: Amended at 50 Ill. Reg. 1085, effective January 8, 2026)

#### **Section 395.302 Computation of Time**

All petitions, evidence, motions and other written correspondence sent by United States mail to the Board shall be considered filed with the Board as of the postmark date in accordance with the Illinois Statute on Statutes [5 ILCS 70/1.25]. Petitions, evidence, motions and all other written correspondence sent to the Board by a delivery service other than the United States mail shall be considered as filed with the Board on the date sent as indicated on the tracking label.

#### **Section 395.303 Parties**

a) Substitution of the Parties: The Board may, on motion, at any time in the course of any proceeding, permit a substitution of parties as justice or convenience may require.

b) Intervention: The Board may allow any person or persons showing that they may be substantially and specifically affected by the proceedings to intervene as a party in the whole or in any portion of the proceedings. The Board may allow any other interested person to participate by presentation of argument orally or in writing or for any other limited purpose, as the Board may order. The Board shall not allow a person to intervene if his or her interests are substantially similar to those of any party and no showing is made that one or more of the parties will not diligently represent those interests. Being a resident, land owner or taxpayer of a Local Government, with no other showing of an issue that is not being adequately addressed by one of the parties, shall not be sufficient to sustain intervention.

#### **Section 395.304 Consolidation, Severance and Joinder**

Any person entitled to participate in proceedings subject to the Board's jurisdiction may appear as follows:

- a) A natural person may appear on his or her own behalf or by an attorney who is licensed and registered to practice in the State.
- b) A corporation may appear through any officer, employee or representative or by an attorney who is licensed and registered to practice in the State.
- c) Any other person, including Local Governments, Approving Authorities, the State and all of its political subdivisions, may appear through any officer, employee or representative, or by an attorney who is licensed and registered to practice in the State.
  - 1) Attorneys not licensed and registered to practice in the State may request to appear on a particular matter by filing a motion with the Board.
  - 2) An attorney appearing in a representative capacity shall file a separate written notice of appearance with the Board, together with proof of service and notice of filing on all parties.
  - 3) An attorney who has appeared in a representative capacity and who wishes to withdraw from that representation shall file a notice of withdrawal with the Board, together with proof of service and notice of filing on all parties.

#### **Section 395.305 Initial Pleadings by Appellants**

Appellants must submit written initial pleadings to the Board and must serve written initial pleadings on the Approving Authority and all other parties within 45 days after the decision of an Approving Authority to deny an application for an Affordable Housing Development. *In the case of Local Governments that are determined by IHDA under Section 20 of the Act to be a Non-Exempt Local Government for the first time based on the recalculation of the United States Census Bureau data after January 1, 2024, no Appellant shall appeal to the Board until 6 months after the Local Government has been notified of its non-exempt status.* [310 ILCS 67/30] An initial pleading may be submitted to the Board electronically by submitting an email to [legalnotices@ihda.org](mailto:legalnotices@ihda.org). An initial pleading shall contain the following:

- a) a clear and concise statement of the prior proceedings before all Approving Authorities, including the date of notice of the decision the appellant is appealing;
- b) a clear and concise statement of the appellant's objections to the Approving Authority's decision, indicating why the appellant believes the application to develop Affordable Housing was unfairly denied, which may include an appeal of IHDA's determination of the exempt status of the Local Government as set forth in Section 395.401, or what conditions, if any, were imposed that the appellant believes were unreasonable;
- c) a clear and concise statement setting forth the relief sought;
- d) the complete name and address of the appellant for the purpose of service of papers in connection with the appeal;
- e) the name and address of the attorney or attorneys representing the appellant, if any; and

f) a complete copy of the application for the Affordable Housing Development, as it was submitted to the Approving Authority, including sufficient information to determine whether the proposal that is the subject of the appeal is Affordable Housing.

(Source: Amended at 50 Ill. Reg. 1085, effective January 8, 2026)

### **Section 395.306 Notice of Appeal**

a) Within 5 days after the Board has received the initial pleading filed by the appellant, the Board shall send a notice of appeal and a courtesy copy of the initial pleading to the Approving Authority identified in the initial pleading.

b) Upon receipt, the Approving Authority shall post the notice of appeal in the Approving Authority's office and on the Approving Authority's website. The Approving Authority shall continue to post the notice of appeal for a period of not less than 10 days. If the Approving Authority fails or neglects to post the notice of appeal in the Approving Authority's office or on the Approving Authority's website, the appeal shall proceed and shall not be impaired.

c) A notice of appeal shall include the following:

- 1) the time, place and nature of the appeal;
- 2) the legal authority and jurisdiction under which the hearing is to be held;
- 3) a reference to the particular Section of the Act involved;
- 4) the consequences of a failure to respond and the official file or other reference number; and
- 5) the name and mailing address of the Board and all parties.

(Source: Amended at 50 Ill. Reg. 1085, effective January 8, 2026)

### **Section 395.307 Dismissal before Hearing**

a) Within 10 days after receipt of the notice of appeal from the Board, the Approving Authority may file a motion to dismiss the appeal under the following circumstances:

- 1) pursuant to Section 20(c) of the Act, the Local Government was determined to be exempt pursuant to Section 20 of the Act in the year in which the appeal was filed. If applicable, the Local Government shall address any allegations by the appellant, pursuant to Section 395.401, that the determination the Local Government is exempt from the Act is incorrect; or
- 2) pursuant to Section 30(d) of the Act, the Local Government adopted an Affordable Housing Plan, submitted that plan to IHDA within the required time frame, and submitted documentation to IHDA that evidences the Local Government met its goal pursuant to Section 25(b)(vi) of the Act; or
- 3) pursuant to Section 30(e) of the Act, the denial is based upon non-appealable local government requirements.

b) A motion to dismiss before a hearing shall include the following:

- 1) a statement explaining why the appeal should be dismissed; and

- 2) if appropriate, any documents or material supporting the claim.
- c) On the same day that the Approving Authority files a motion to dismiss with the Board, the Approving Authority shall serve a complete copy of the motion to dismiss on the Affordable Housing Developer and any other parties at the address or addresses specified in the initial pleading.
- d) If the Approving Authority files a motion to dismiss prior to the hearing, the Affordable Housing Developer may file a rebuttal within 10 days after the filing of the motion to dismiss, rebutting any of the claims made in the Approving Authority's motion to dismiss.
- e) The Board shall decide the appellant's rebuttal on the merits. If the Board determines that the appellant has successfully rebutted the claims made in the Approving Authority's motion to dismiss, the Board shall deny the motion to dismiss and the issues raised in the motion to dismiss a the response shall be questions of fact to be resolved as part of the appeals process; otherwise, the Board may dismiss the appeal and, if dismissed, the Approving Authority shall not be required to file a reply.

(Source: Amended at 50 Ill. Reg. 1085, effective January 8, 2026)

#### **Section 395.308 Reply to the Initial Pleading by Approving Authority**

- a) If an appeal is not dismissed before the hearing pursuant to Section 395.307, within 15 days after the Board's decision to deny the motion to dismiss, the Approving Authority shall file a reply to the initial pleading with the Board and shall provide a copy of the reply to the initial pleading to the appellant and all other parties. If no motion to dismiss is filed, the Approving Authority shall file a reply to the initial pleading with the Board and shall provide a copy of the reply to the initial pleading to the appellant and all other parties within 15 days after the notice of appeal.
- b) The reply to the initial pleading shall include the following:
  - 1) a statement explaining why the application that is the subject of the appeal was denied or conditions were applied, which may include an appeal of IHDA's determination of the non-exempt status of the Local Government under the Act as set forth in Section 395.401. If the Approving Authority denied an application or imposed conditions because it concluded that the Affordable Housing Developer did not comply with all Non-Appealable Local Government Requirements, the reply to the initial pleading must specify the requirements that justify the denial or the imposition of changes;
  - 2) a record of the vote on the Affordable Housing Developer's application that is the subject of the appeal; and
  - 3) any findings of fact related to the application; and
  - 4) a statement clarifying which local, State, or federal law, if any, the Local Government relied upon as a basis for denying, or applying conditions to the application that is the subject of the appeal.
- c) The failure to file a reply to the initial pleading shall be deemed a general denial of matters asserted in the initial pleading and a waiver of all affirmative defenses.

d) A party may participate in the hearing without forfeiting any jurisdictional objection, if the objection is made within 15 days after receipt of the notice of appeal. Any party may file a response to the objection within 15 days after service.

(Source: Amended at 50 Ill. Reg. 1085, effective January 8, 2026)

### **Section 395.309 Prehearing Conferences, Settlement Conferences, Subpoenas and Depositions**

a) Pre-hearing Conferences: The Board may, on its own motion or on motion of any other party to the appeal, set a pre-hearing conference. The Board's decision whether to conduct a pre-hearing conference will be based on the complexity of the appeal, the issues in controversy and the potential for settlement. The Board shall issue a pre-hearing conference order setting forth the matters agreed to and rulings as to disputed matters. The order shall be served concurrently upon all parties and the Board shall control the subsequent course of the proceedings. The purpose of the pre-hearing conference shall be to:

- 1) ascertain the positions of the parties;
- 2) promote the narrowing of witnesses;
- 3) allow for the admissions of fact and stipulation of evidence;
- 4) exchange witness lists;
- 5) aid in the simplification of the evidence and disposition of the proceedings; or
- 6) reach a compromise settlement agreeable to the parties.

b) Settlement Conferences: At any stage of the appeal and at its direction, the Board may order a settlement conference and require the participation of the parties. Within 15 Days after the beginning of a settlement conference, the parties shall inform the Board in writing whether a settlement was reached. Settlement conferences need not be recorded.

c) Subpoenas: At any stage of the appeal and at its direction, the Board may issue subpoenas requiring the attendance and the giving of testimony by witnesses, or the production of books, papers, records, accounts, memoranda or other materials relevant to the appeal. Subpoenas may be issued either upon the Board's own motion or upon the written request of any party with a showing of the relevancy of the request to the issues in the hearing. In cases in which the Board receives a request for a subpoena, the Board shall grant or deny the request, either in writing or on the record. If any party fails or neglects to appear or testify or produce books, papers and records pursuant to the issuance of a subpoena by the Board, the Board may request the assistance of the Attorney General to invoke the aid of the circuit court within the jurisdiction in which the hearing is being held to request that the party be ordered to appear before the Board to testify or produce the requested evidence.

- 1) Service: The movant shall serve the subpoena on the other party or witness if the movant's request for a subpoena is granted. Service of a subpoena must be completed 10 Days before the date of the required appearance or production. The movant shall be responsible for payment of the witness fees for attendance, subsistence and mileage at the time the subpoena is served. Witnesses appearing at a hearing pursuant to subpoena are entitled to the same fees and mileage as are allowed witnesses in civil cases in the courts of the State, pursuant to Section 4.3 of the Circuit Court Act [705 ILCS 35/4.3]. The movant must tender all fees with the subpoena. A witness appearing at

the request of the Board shall submit the subpoena with a voucher when claiming reimbursement.

2) Modification: The Board, upon motion made before the time initially specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable, oppressive or irrelevant. The Board shall rule upon motions to quash or modify material requested in the subpoena, or denying, limiting or conditioning the production of information when necessary to prevent undue delay, undue expense, harassment or oppression, or to protect materials from disclosure. If the request for a subpoena is denied or modified, the Board shall proceed to conduct the hearing and the reasons for denying or modifying the request shall be made part of the record.

d) Depositions: Discovery depositions and evidence depositions may be taken of a witness or a party only upon order of the Board, either at its own initiative or upon motion of a party. The Board shall rule on such motions at its discretion. In taking such a deposition, the procedures in Illinois Supreme Court Rules (S.Ct. Rules 201 through 230) shall be followed, except as modified by order of the Board. Discovery depositions shall not be allowed into evidence in any matter before the Board.

e) Stipulations: At the discretion of the Board, the parties may, by stipulation in writing filed with the Board at any stage of the proceeding, or orally made at the hearing, agree upon any pertinent facts in the proceeding. In making its findings, the Board need not be bound to any such stipulation.

#### **Section 395.310 Conduct of Hearings**

a) Hearings may begin within 45 days after the initial pleading is filed, unless the Board determines that a settlement conference is underway and is likely to resolve the matters in dispute to the satisfaction of both parties.

b) The appellant shall present its case first, followed by questions from the Board.

c) The Approving Authority shall present its case second, followed by questions from the Board.

d) In the event that a Local Government's exempt or non-exempt status under the Act is appealed and the issue has not been disposed of by motion of either of the parties, then, pursuant to Section 395.401, IHDA shall produce all written guidance and any other relevant materials regarding the Local Government's exempt or non-exempt status for the Board's review.

e) With respect to Non-Appealable Local Government Requirements, if there is disagreement between the Approving Authority and the appellant as to whether a particular requirement is a Non-Appealable Local Government Requirement, the Board may make that determination based on whether the specific requirement in question meets the statutory definition of Non-Appealable Local Government Requirements.

f) Both parties shall be permitted to cross-examine witnesses; however, the scope of any such cross-examination shall be limited to the scope of the direct examination.

g) Both parties shall be permitted to make closing statements; closing statements shall not include facts not previously introduced.

h) The Board, upon motion of any Member or on the motion of a party, may amend a complaint to conform to the evidence presented in the hearing or to include uncharged allegations supported by the evidence at any time prior to the issuance of the Board's decision and order.

(Source: Amended at 50 Ill. Reg. 1085, effective January 8, 2026)

### **Section 395.311 Motions**

a) Motions shall be made in writing, unless made during the hearing, at which time the motions may be made orally, on the record. All motions shall set forth the relief or order sought and the legal authority for the action requested. If made in writing, at least 2 copies of all motions shall be filed with the Board, and at least one copy shall be served on each additional party to the hearing.

b) Within 10 Days, or other period as the Board may require, after service of a written motion or other document, a party may file a response to the motion. The response may include affidavits or other evidence.

c) A written brief may be filed with a motion or a response to a motion, stating the arguments and authorities relied upon. The brief shall be no longer than 15 pages in length unless, prior to the filing date, leave is granted by the Board to file a brief greater than 15 pages in length.

d) The Board may allow oral arguments to be heard on a motion.

e) The Board shall rule upon all motions, except that it shall have no authority to dismiss or decide an appeal on the merits without granting all parties to the proceeding a right to be heard and to establish a record.

f) The Board will dispose of motions by written order and on notice to all parties.

g) Unless otherwise ordered, the filing of an answer or motion shall not stay the proceeding or extend the time for the performance of any act.

h) A party has a right to file an emergency motion setting forth why an emergency exists and the Board may deny the emergency motion solely on the basis that the motion did not demonstrate that an emergency exists or the Board may grant or deny the motion on other grounds.

### **Section 395.312 Postponement or Continuance of Hearing**

Postponement or continuances of hearings shall be granted by order of the Board for good cause shown in writing. Good cause shall be the inability to attend the hearing at the date and time set by the Board for a cause beyond the control of the party, such as the unavoidable absence of a party, his or her attorney or material witness, or the serious illness or death of a witness or party. The Board shall re-set the hearing for a continued case unless the parties request that the Board decide the appeal based on the evidence in the record without a formal hearing. Notwithstanding any continuance, the Board shall issue, whenever possible, a final decision within 120 days after the Initial Pleading is filed. The Board may extend the time by which it will render a decision when circumstances outside the Board's control make it infeasible for the Board to render a decision within 120 days.

(Source: Amended at 38 Ill. Reg. 3596, effective January 21, 2014)

### Section 395.313 Evidence

- a) A party shall be entitled to present its case by testimonial or documentary evidence, to submit rebuttal evidence, *and to conduct cross-examination as may be required for a full and fair disclosure of facts.* [5 ILCS 100/10-40(b)] Testimonial evidence shall be taken only on oath or affirmation. Any cross-examination shall be limited to the scope of the direct examination.
- b) *The rules of evidence and privilege that apply in civil cases in Illinois circuit courts shall be followed. However, evidence not admissible under those rules may be admitted (unless precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.* [5 ILCS 100/10-40(a)]
- c) The Chairperson shall have the discretion to determine whether evidence being offered is reliable and whether the evidence should be admitted. The Chairperson may exclude evidence that is irrelevant, immaterial or unduly repetitious. (See 5 ILCS 100/10-40(a).)
- d) Subject to the requirements of this Subpart, *when a hearing will be expedited and the interest of the parties will not be prejudiced,* the Chairperson may allow *evidence to be received in written form.* [5 ILCS 100/10-40(a)]
- e) If a party objects to the admission or rejection of any evidence or to the limitation to the scope of any examination or cross-examination, or to the failure to limit that scope, that party shall state briefly the grounds for the objection. Rulings on all objections shall appear in the record.
- f) Official Notice: *Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of the fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Board's specialized knowledge. Parties shall be notified either before or during the hearing of the material noticed, including any memoranda or data prepared by IHDA staff, and the parties shall be afforded an opportunity to contest the facts noticed. The experience, technical competence and specialized knowledge of the Board and IHDA may be utilized in the evaluation of the evidence.* [5 ILCS 100/10-40(c)]
- g) Types of Evidence: The Board shall hear evidence only as to matters actually in dispute. Factual areas in which evidence may be heard if it is relevant to issues in dispute include, but are not limited to, the following:
- 1) Health, safety and the environment;
    - A) structural soundness of the proposed buildings;
    - B) adequacy of sewage arrangements;
    - C) adequacy of water drainage arrangements;
    - D) adequacy of fire protection;
    - E) adequacy of the Affordable Housing Developer's proposed arrangements for dealing with traffic circulation within the site, and feasibility of arrangements that could be made by the Local Government for dealing with traffic generated by the proposed housing on adjacent streets;

- F) proximity of the proposed site to airports, industrial activities or other activities that may affect the health and safety of the occupants of the proposed housing;
- 2) Site and building design;
- A) height, bulk and placement of the proposed housing;
  - B) physical characteristics of the proposed housing;
  - C) height, bulk and placement of surrounding structures and improvements;
  - D) physical characteristics of the surrounding land;
  - E) adequacy of parking arrangements;
  - F) adequacy of open areas, including outdoor recreational areas, proposed within the building site;
- 3) Open space;
- A) availability of existing open spaces in the Local Government;
  - B) current and projected utilization of existing open spaces and consequent need, if any, for additional open spaces, by the Local Government's population, including occupants of the proposed housing;
  - C) relationship of the proposed site to any Local Government open space or outdoor recreation plan officially adopted by the applicable corporate authorities of the Local Government, and to any official actions to preserve open spaces taken with respect to the proposed site by the Local Government prior to the date of the Affordable Housing Developer's initial submission; the inclusion of the proposed site in the open space or outdoor recreation plan shall create a presumption that the site is needed to preserve open spaces unless the appellant produces evidence to the contrary;
  - D) relationship of the proposed site to any regional open space plan prepared by the applicable regional planning agency;
  - E) current use of the proposed site and of land adjacent to the proposed site;
  - F) inventory of site suitable for use as open spaces, and available for acquisition or other legal restriction as open spaces, in the Local Government, provided that the Board shall admit no evidence of any open space plan adopted only by the local conservation commission or other local body but not officially adopted by the planning board/commission;
- 4) Municipal planning;
- A) a Local Government's master plan, comprehensive plan or community development plan; and
  - B) the results of the Local Government's efforts to implement those plans;

- 5) The uniform application, or lack thereof, of any impact fees, building permit fees and any other local fees.

(Source: Amended at 50 Ill. Reg. 1085, effective January 8, 2026)

### **Section 395.314 Appellant's Burden of Proof**

a) Denial: Pursuant to Section 30(c) of the Act, in the case of a denial of an Affordable Housing Developer's application, the appellant bears the burden of demonstrating that the Approving Authority unfairly denied approval of the Affordable Housing Development. To meet this burden, the appellant must prove that it is an Affordable Housing Developer and has proposed an Affordable Housing Development, or is a person who would be eligible to apply for residency in the proposed Affordable Housing Development, or is a housing organization whose geographic focus area includes the municipality, or county if in an unincorporated area, where the proposed Affordable Development is located. In addition, the appellant shall demonstrate that:

- 1) the proposed Affordable Housing Development complies with all Non-Appealable Local Government Requirements and all relevant federal and State statutes and regulations. The appellant must prove these elements with respect to only those aspects of the project that are in dispute; or
- 2) Non-Appealable Local Government Requirements or federal or State statutes or regulations have been applied differently to proposals that do not include Affordable Housing; or
- 3) the Approving Authority has a pattern of denying applications to develop Affordable Housing; or
- 4) the Approving Authority changed the zoning of an area regarding a specific Affordable Housing Development that, but for the change in zoning, is otherwise able to proceed, or has a pattern of changing zoning of an area in regards to Affordable Housing Developments that, but for the change in zoning, are otherwise able to proceed; or
- 5) the Approving Authority unreasonably or intentionally delayed its decision regarding a specific Affordable Housing Development that, but for the lack of timely decision by the Approving Authority, is otherwise able to proceed, or has a pattern of unreasonably or intentionally delaying its decisions on applications for Affordable Housing Developments that, but for the lack of timely decisions of the Approving Authority, are otherwise able to proceed; or
- 6) IHDA's determination that the Local Government is exempt from the Act is incorrect based on the counting protocols set forth in Section 20 of the Act; or
- 7) the denial of the application for the Affordable Housing Development was unfair because it otherwise inhibits the construction of Affordable Housing.

b) Approval with Conditions: Pursuant to Section 30(c) of the Act, in the case of an approval with conditions, the appellant bears the burden of demonstrating that the Approving Authority imposed unreasonable conditions on the proposed Affordable Housing Development. To meet this burden, the Affordable Housing Developer must prove the developer is an Affordable

Housing Developer that has proposed an Affordable Housing Development. The appellant shall also demonstrate:

- 1) the Approving Authority has generally not imposed unreasonable conditions on similar developments; or
  - 2) the conditions are not necessary to further the asserted Approving Authority interest; or
  - 3) less costly conditions can be imposed on the proposed Affordable Housing Development that sufficiently address the asserted Approving Authority's interest.
- c) The failure of a Local Government to submit an Affordable Housing Plan as set forth in Section 25 of the Act shall not prevent an appellant from filing an appeal with the Board. The Board may take into consideration the failure to submit an Affordable Housing Plan in connection with any appeal before the Board.

(Source: Amended at 50 Ill. Reg. 1085, effective January 8, 2026)

### **Section 395.315 Standard of Proof**

The standard of proof for any hearing conducted under this Part shall be the preponderance of the evidence.

### **Section 395.316 Decision**

- a) The Board shall render a written decision within 120 Days after the Initial Pleading is filed. Notwithstanding the foregoing, the Board may extend the time by which it will render a decision when circumstances outside the Board's control make it infeasible for the Board to render a decision within 120 Days. The written decision shall state the Board's findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.
- b) The Board shall dismiss the appeal during or after the hearing if, based on all relevant evidence presented, it concludes that:
  - 1) the Local Government was an Exempt Local Government in the year in which the appeal was filed;
  - 2) the Local Government has adopted an Affordable Housing Plan, has submitted that plan to IHDA within the required time-frame under the Act, and has submitted documentation to IHDA that evidences the Local Government has met its goal to provide Affordable Housing as required by the Act; or
  - 3) the Approving Authority denied the Affordable Housing based upon Non-Applicable Local Government Requirements.
- c) In the case of a denial, if the Board finds that the Affordable Housing Developer has met its burden of proof pursuant to Section 395.314(a), the Board shall vacate the decision of the Approving Authority and shall direct the Approving Authority to issue the appropriate permits to the Affordable Housing Developer.
- d) In the case of conditions imposed by the Approving Authority, if the Board finds that the Affordable Housing Developer has met its burden of proof pursuant to Section 395.314(b):

- 1) the Board shall direct the Approving Authority to remove any such condition; or
- 2) if the Board finds that the conditions are unreasonable but can be modified to reasonably protect the health, safety, environmental design, open space, and other local concerns, the Board shall direct the Approving Authority to so modify the conditions.

(Source: Amended at 43 Ill. Reg. 11314, effective September 26, 2019)

### **Section 395.317 Enforcement**

- a) The Board shall immediately notify the parties of its decision by delivering the decision at the hearing, or by certified or registered mail with return receipt signed by the person or the person's registered agent, or by private delivery service.
- b) In cases in which the appellant has met its burden of proof as set forth in Section 395.314, the Approving Authority shall carry out the decision and order of the Board within 30 days after the Board's decision. However, if the Approving Authority can demonstrate that a longer time period is necessary, the Board shall consider a longer time period to carry out the decision of the Board so long as the Approving Authority began to carry out the Board's decision within the initial 30 day period.
- c) The decision and order of the Board are binding on all parties. The Board can interpret or clarify its decision or order for the purposes of resolving any procedural ambiguities or disputes that may arise.
- d) If the Approving Authority does not carry out the decision and order of the Board within the time limits prescribed in Section 395.317(b), the Board may seek representation by the Attorney General's office, pursuant to the Attorney General Act [15 ILCS 205], and may file a complaint in the circuit court for the district in which the Approving Authority subject to the appeal is located.
- e) If the Approving Authority does not carry out the decision and order of the Board within the time limits prescribed in Section 395.317(b), the appellant may seek legal representation and file a complaint in the circuit court for the district in which the Approving Authority subject to the appeal is located.

(Source: Amended at 50 Ill. Reg. 1085, effective January 8, 2026)

### **Section 395.318 Motions to Reconsider the Board's Decision**

The affected party may file a motion to reconsider with the Board within 14 Days after the Board's decision. The Board shall issue its final decision within 14 Days after the receipt of the motion to reconsider.

### **Section 395.319 Appeals of the Board's Decision**

The final decision and order of the Board, after all motions to reconsider have been exhausted, may be appealed by the party affected by the decision by bringing an action for review in the appellate court for the district in which the Local Government subject to the appeal is located. The appellate court shall apply the "clearly erroneous" standard when reviewing these appeals. An appeal of a final ruling of the Board shall be filed within 35 days after the Board's decision and in all respects shall be in accordance with Section 3-113 of the Administrative Review Law [735 ILCS 5/3-113].

(Source: Amended at 43 Ill. Reg. 11314, effective September 26, 2019)

**SUBPART D: APPEALS OF LOCAL GOVERNMENT EXEMPT STATUS**

**Section 395.401 Exempt Status**

- a) Appeals of IHDA's determination of a local government's exempt status. In connection with an appeal under Subpart C, a Local Government or an appellant may appeal IHDA's determination of the Local Government's exempt or non-exempt status under the Act to the extent that the appealing party can demonstrate that IHDA's determination was not made in accordance with the counting protocols set forth in Section 20 of the Act. The parties shall introduce evidence to support their positions consistent with the requirements of Subpart C. IHDA shall produce and any other relevant materials regarding the Local Government's exempt or non-exempt status for the Board's review. The Board shall review the evidence provided by the parties and by IHDA and shall issue its decision on the matter in connection with the appeal filed under Subpart C. The Board may decide the matter during motion practice before the Board or during the hearing.
- b) Notice to the Attorney General. By January 31 of the third year of the current affordable housing plan cycle, IHDA shall notify the Attorney General of all non-compliant local governments each year of that cycle.

(Source: Amended at 50 Ill. Reg. 1085, effective January 8, 2026)

## Appendix G: 2023 Listing of AHPAA Non-Exempt Local Governments

Provided below is a listing of the NELGs as determined under the 2023 Local Government Exemption Determination Process. This information is the same as is included in the “2023 Report on Non-Exempt Local Governments”.

The listing has been presented in two formats, ordinal and nominally. In either format, the same roster of communities is included. For information on Exempt Local Governments, please see the “2023 Statewide Report on Local Government Affordability”.

### **2023 Report of Non-Exempt Local Governments (Ordinal) Determination based on 2016 American Community Survey 5-year Estimates.**

#	Place	County	Population	Total Year-Round Units	Total Affordable Units	Affordable Housing Share
1	Kildeer	Lake	4,093	1,317	5	0.4%
2	Timberlane	Boone	1,323	385	5	1.3%
3	Inverness	Cook	7,684	2,768	40	1.4%
4	Riverwoods	Lake	3,742	1,298	20	1.5%
5	Kenilworth	Cook	2,423	755	12	1.6%
6	Tower Lakes	Lake	1,340	457	8	1.8%
7	Deer Park	Lake	3,638	1,269	24	1.9%
8	Western Springs	Cook	13,550	4,510	95	2.1%
9	South Barrington	Cook	5,012	1,661	35	2.1%
10	Lincolnshire	Lake	7,905	3,249	72	2.2%
11	Campton Hills	Kane	10,468	3,498	83	2.4%
12	Lily Lake	Kane	1,278	406	10	2.5%
13	North Barrington	Lake	2,814	992	26	2.6%
14	Bull Valley	McHenry	1,250	476	13	2.7%
15	Glencoe	Cook	8,824	3,195	87	2.7%
16	Hawthorn Woods	Lake	8,959	2,867	81	2.8%
17	Lake Bluff	Lake	5,878	2,150	63	2.9%
18	Barrington Hills	Cook	4,236	1,425	49	3.4%
19	Winnetka	Cook	12,658	4,353	159	3.6%
20	Hinsdale	DuPage	17,148	5,700	208	3.7%
21	Lakewood	McHenry	4,489	1,486	64	4.3%
22	Long Grove	Lake	8,258	2,449	106	4.3%
23	Burr Ridge	DuPage	11,167	4,506	201	4.5%
24	Deerfield	Lake	19,228	7,475	358	4.8%
25	Wilmette	Cook	27,895	10,331	501	4.8%
26	Northbrook	Cook	35,108	13,395	674	5.0%
27	Wayne	DuPage	2,548	924	50	5.4%

#	Place	County	Population	Total Year-Round Units	Total Affordable Units	Affordable Housing Share
28	Lake Forest	Lake	19,450	7,014	407	5.8%
29	Third Lake	Lake	1,137	428	26	6.2%
30	Northfield	Cook	5,853	2,383	150	6.3%
31	Spring Grove	McHenry	5,713	1,772	112	6.3%
32	Highland Park	Lake	30,245	12,079	766	6.3%
33	Frankfort	Will	20,040	6,405	406	6.3%
34	Oak Brook	DuPage	8,178	3,071	202	6.6%
35	Lincolnwood	Cook	13,358	4,766	318	6.7%
36	Geneva	Kane	21,472	7,964	584	7.3%
37	Homer Glen	Will	24,664	8,054	595	7.4%
38	Prairie Grove	McHenry	1,928	696	57	8.1%
39	Park Ridge	Cook	39,562	15,199	1,237	8.1%
40	Port Barrington	Lake	1,686	572	47	8.3%
41	Glenview	Cook	48,150	18,406	1,625	8.8%
42	Libertyville	Lake	20,616	7,458	691	9.3%
43	Elmhurst	DuPage	45,661	16,476	1,550	9.4%
44	River Forest	Cook	11,742	4,428	430	9.7%

*See Nominal Listing on the next page.*

**2023 Report of Non-Exempt Local Governments (Nominal)**

Determination based on 2016 American Community Survey 5-year Estimates.

#	Place	County	Population	Total Year-Round Units	Total Affordable Units	Affordable Housing Share
1	Barrington Hills	Cook	4,236	1,425	49	3.4%
2	Bull Valley	McHenry	1,250	476	13	2.7%
3	Burr Ridge	DuPage	11,167	4,506	201	4.5%
4	Campton Hills	Kane	10,468	3,498	83	2.4%
5	Deer Park	Lake	3,638	1,269	24	1.9%
6	Deerfield	Lake	19,228	7,475	358	4.8%
7	Elmhurst	DuPage	45,661	16,476	1,550	9.4%
8	Frankfort	Will	20,040	6,405	406	6.3%
9	Geneva	Kane	21,472	7,964	584	7.3%
10	Glencoe	Cook	8,824	3,195	87	2.7%
11	Glenview	Cook	48,150	18,406	1,625	8.8%
12	Hawthorn Woods	Lake	8,959	2,867	81	2.8%
13	Highland Park	Lake	30,245	12,079	766	6.3%
14	Hinsdale	DuPage	17,148	5,700	208	3.7%
15	Homer Glen	Will	24,664	8,054	595	7.4%
16	Inverness	Cook	7,684	2,768	40	1.4%
17	Kenilworth	Cook	2,423	755	12	1.6%
18	Kildeer	Lake	4,093	1,317	5	0.4%
19	Lake Bluff	Lake	5,878	2,150	63	2.9%
20	Lake Forest	Lake	19,450	7,014	407	5.8%
21	Lakewood	McHenry	4,489	1,486	64	4.3%
22	Libertyville	Lake	20,616	7,458	691	9.3%
23	Lily Lake	Kane	1,278	406	10	2.5%
24	Lincolnshire	Lake	7,905	3,249	72	2.2%
25	Lincolnwood	Cook	13,358	4,766	318	6.7%
26	Long Grove	Lake	8,258	2,449	106	4.3%
27	North Barrington	Lake	2,814	992	26	2.6%
28	Northbrook	Cook	35,108	13,395	674	5.0%
29	Northfield	Cook	5,853	2,383	150	6.3%
30	Oak Brook	DuPage	8,178	3,071	202	6.6%
31	Park Ridge	Cook	39,562	15,199	1,237	8.1%
32	Port Barrington	Lake	1,686	572	47	8.3%
33	Prairie Grove	McHenry	1,928	696	57	8.1%
34	River Forest	Cook	11,742	4,428	430	9.7%

#	Place	County	Population	Total Year-Round Units	Total Affordable Units	Affordable Housing Share
35	Riverwoods	Lake	3,742	1,298	20	1.5%
36	South Barrington	Cook	5,012	1,661	35	2.1%
37	Spring Grove	McHenry	5,713	1,772	112	6.3%
38	Third Lake	Lake	1,137	428	26	6.2%
39	Timberlane	Boone	1,323	385	5	1.3%
40	Tower Lakes	Lake	1,340	457	8	1.8%
41	Wayne	DuPage	2,548	924	50	5.4%
42	Western Springs	Cook	13,550	4,510	95	2.1%
43	Wilmette	Cook	27,895	10,331	501	4.8%
44	Winnetka	Cook	12,658	4,353	159	3.6%