

**Chapter 5: HOUSING OPPORTUNITY PROGRAM: MUNICIPAL LAND USE AND ZONING ORDINANCE RULE**

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**Summary:** This chapter sets forth the provisions which require municipalities to create or amend local ordinances to allow for (1) additional density for affordable housing developments in certain areas; (2) multiple dwelling units on lots designated for housing; and (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit in any area where housing is permitted.

**Note:** This chapter incorporates by reference certain material. The Appendix lists the material that is incorporated by reference, the date for each reference, and the organization where copies of the material are available.

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**SECTION 1. PURPOSE AND DEFINITIONS****A. PURPOSE**

1. This chapter sets forth the provisions which require municipalities to create or amend local ordinances to allow for (1) additional density for affordable housing developments in certain areas; (2) multiple dwelling units on lots designated for housing; and (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit in any area where housing is permitted.
2. Municipalities need not adopt this rule language or the statutory language in P.L. 2021 Ch. 672 word for word. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community and the minimum requirements of this legislation. Municipalities may wish to adopt ordinances that are more permissive, provided that such ordinances are equally or more effective in achieving the goal of increasing housing opportunities. If a municipality does not adopt ordinances to comply with P.L. 2021 Ch. 672, this legislation will preempt municipal home rule authority.
3. These rules do not:
  - a) Abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this rule, as long as the agreement does not abrogate rights pursuant to the United States Constitution or the Constitution of Maine;
  - b) Exempt a subdivider from the requirements in Title 30-A Chapter 187 subchapter 4;

- c) Exempt an affordable housing development, a dwelling unit, or accessory dwelling unit from the shoreland zoning requirements established by the Department of Environmental Protection pursuant to Title 38 Chapter 3 and municipal shoreland zoning ordinances; or
- d) Abrogate or annul minimum lot size requirements under Title 12 Chapter 423-A.

## B. DEFINITIONS

All terms used but not defined in this chapter shall have the meanings ascribed to those terms in Chapter 187 of Title 30-A of the *Maine Revised Statutes*, as amended. Municipalities need not adopt the terms and definitions outlined below word for word. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community. Municipalities may wish to adopt terms and definitions that are more permissive, provided that such terms and definitions are equally or more effective in achieving the goal of increasing housing opportunities.

**Accessory dwelling unit.** "Accessory dwelling unit" means a self-contained dwelling unit located within, attached to or detached from a single-family dwelling unit located on the same parcel of land. An accessory dwelling unit must be a minimum of 190 square feet and municipalities may impose a maximum size.

**Affordable housing development.** "Affordable housing development" means

1. For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs; and
2. For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the *United States Housing Act of 1937*, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs.
3. For purposes of this definition, "majority" means more than half of proposed and existing units on the same lot.
4. For purposes of this definition, "housing costs" include, but are not limited to:
  - a) For a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, and/or trash) that the household pays separately from the rent; and

- b) For an ownership unit, the cost of mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner's insurance, condominium fees, and homeowners' association fees.

**Area median income.** "Area median income" means the midpoint of a region's income distribution calculated on an annual basis by the U.S. Department of Housing & Urban Development.

**Attached.** "Attached" means connected by a shared wall to the principal structure or having physically connected finished spaces.

**Base density.** "Base density" means the maximum number of units allowed on a lot not used for affordable housing based on dimensional requirements in a local land use or zoning ordinance. This does not include local density bonuses, transferable development rights, or other similar means that could increase the density of lots not used for affordable housing.

**Centrally managed water system.** "Centrally managed water system" means a water system that provides water for human consumption through pipes or other constructed conveyances to at least 15 service connections or serves an average of at least 25 people for at least 60 days a year as regulated by 10-144 C.M.R. Ch. 231, *Rules Relating to Drinking Water*. This water system may be privately owned.

**Certificate of occupancy.** "Certificate of occupancy" means the municipal approval for occupancy granted pursuant to 25 M.R.S. §2357-A or the *Maine Uniform Building and Energy Code* adopted pursuant to Title 10 Chapter 1103. Certificate of occupancy may also be referred to as issuance of certificate of occupancy or other terms with a similar intent.

**Comparable sewer system.** "Comparable sewer system" means any subsurface wastewater disposal system that discharges over 2,000 gallons of wastewater per day as regulated by 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.

**Comprehensive plan.** "Comprehensive plan" means a document or interrelated documents consistent with 30-A M.R.S. §4326(1)-(4), including the strategies for an implementation program which are consistent with the goals and guidelines established pursuant to Title 30-A Chapter 187 Subchapter II.

**Density requirements.** "Density requirements" mean the maximum number of dwelling units allowed on a lot, subject to dimensional requirements.

**Designated growth area.** "Designated growth area" means an area that is designated in a municipality's or multi-municipal region's comprehensive plan as suitable for orderly residential, commercial, or industrial development, or any combination of those types of development, and into which most development projected over ten (10) years is directed. Designated growth areas may also be referred to as priority development zones or other terms with a similar intent. If a municipality does not have a comprehensive plan, "designated growth area" means an area served by a public sewer system that has the capacity for the growth-related project, an area identified in the latest Federal Decennial

Census as a census-designated place or a compact area of an urban compact municipality as defined by 23 M.R.S. §754.

**Dimensional requirements.** “Dimensional requirements” mean requirements which govern the size and placement of structures including, but limited not to, the following requirements: building height, lot area, minimum frontage and lot depth.

**Dwelling unit.** “Dwelling unit” means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments.

**Existing dwelling unit.** “Existing dwelling unit” means a residential unit in existence on a lot at the time of submission of a permit application to build additional units on that lot. If a municipality does not have a permitting process, the dwelling unit on a lot must be in existence at the time construction begins for additional units on a lot.

**Housing.** “Housing” means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments. For purposes of this rule, this does not include dormitories, boarding houses or other similar types of housing units. This also does not include transient housing or short-term rentals, unless these uses are otherwise allowed in local ordinance.

**Land use ordinance.** "Land use ordinance" means an ordinance or regulation of general application adopted by the municipal legislative body which controls, directs, or delineates allowable uses of land and the standards for those uses.

**Lot.** “Lot” means a single parcel of developed or undeveloped land.

**Multifamily dwelling.** “Multifamily dwelling” means a structure containing three (3) or more dwelling units.

**Potable.** “Potable” means safe for drinking as defined by the U.S. Environmental Protection Agency’s (EPA) Drinking Water Standards and Health Advisories Table and Maine’s interim drinking water standards for six different perfluoroalkyl and polyfluoroalkyl substances (PFAS), Resolve 2021 Chapter 82, *Resolve, To Protect Consumers of Public Drinking Water by Establishing Maximum Contaminant Level for Certain Substances and Contaminants*.

**Principal structure.** "Principal structure" means a structure in which the main or primary use of the structure is conducted. For purposes of this rule, principal structure does not include commercial buildings.

**Restrictive covenant.** “Restrictive covenant” means a provision in a deed, or other covenant conveying real property, restricting the use of the land.

**Setback requirements.** “Setback requirements” mean the minimum horizontal distance from a lot line, shoreline, or road to the nearest part of a structure, or other regulated object or area as defined in local ordinance.

**Single-family dwelling unit.** “Single-family dwelling unit” means a structure containing one (1) dwelling unit.

**Structure.** “Structure” means anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons as defined in 38 M.R.S. §436-A(12).

**Zoning ordinance.** "Zoning ordinance" means a type of land use ordinance that divides a municipality into districts and that prescribes and reasonably applies different regulations in each district.

## SECTION 2. AFFORDABLE HOUSING DENSITY

### A. GENERAL

This Section requires municipalities to allow an automatic density bonus for certain affordable housing developments approved on or after July 1, 2023, as outlined below. This section only applies to lots in zoning districts that have adopted density requirements.

### B. ELIGIBILITY FOR DENSITY BONUS

1. For purposes of this section, a municipality shall verify that the development:
  - a) Is an affordable housing development as defined in this chapter, which includes the requirement that a majority of the total units on the lot are affordable;
  - b) Is in a designated growth area pursuant to 30-A M.R.S. §4349-A(1)(A) or (B) or served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system;
  - c) Is located in an area in which multifamily dwellings are allowed per municipal ordinance;
  - d) Complies with minimum lot size requirements in accordance with Title 12 Chapter 423-A; and
  - e) Owner provides written verification that each unit of the housing development is proposed to be connected to adequate water and wastewater services prior to certification of the development for occupancy or similar type of approval process. Written verification must include the following:
    - i. If a housing unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;

- ii. If a housing unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.
- iii. If a housing unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and
- iv. If a housing unit is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

## 2. Long-Term Affordability

Prior to granting a certificate of occupancy or other final approval of an affordable housing development, a municipality must require that the owner of the affordable housing development (1) execute a restrictive covenant that is enforceable by a party acceptable to the municipality; and (2) record the restrictive covenant in the appropriate registry of deeds to ensure that for at least thirty (30) years after completion of construction:

- a) For rental housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and
- b) For owned housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

## C. DENSITY BONUS

If the requirements in Section 2(B)(1) and (2) are met, a municipality must:

- 1. Allow an affordable housing development to have a dwelling unit density of at least 2.5 times the base density that is otherwise allowed in that location; and
- 2. Require no more than two (2) off-street parking motor vehicle spaces for every three (3) dwelling units of an affordable housing development.

If fractional results occur when calculating the density bonus in this subsection, the number of units is rounded down to the nearest whole number. Local regulation that chooses to round up shall be considered consistent with and not more restrictive than this

law. The number of motor vehicle parking spaces may be rounded up or down to the nearest whole number.

### **SECTION 3. DWELLING UNIT ALLOWANCE**

#### **A. GENERAL**

This section requires municipalities to allow multiple dwelling units on lots where housing is allowed beginning on July 1, 2023, subject to the requirements below. The requirements listed in Section 3 apply to municipalities with and without zoning. Private, state or local standards such as homeowners' association regulation, deed restrictions, lot size, set back, density, septic requirements, minimum lot size, additional parking requirements, growth ordinance permits, shoreland zoning and subdivision law, may also apply to lots.

#### **B. REQUIREMENTS**

##### **1. Dwelling Unit Allowance**

- a) If a lot does not contain an existing dwelling unit, municipalities must allow up to four (4) dwelling units per lot if the lot is located in an area in which housing is allowed, meets the requirements in 12 M.R.S. Ch. 423-A, and is:
  - i. Located within a designated growth area consistent with 30-A M.R.S. §4349 A(1)(A)-(B); or
  - ii. Served by both a public, special district or other centrally managed water system and a public, special district or other comparable sewer system in a municipality without a comprehensive plan.
- b) If a lot does not contain an existing dwelling unit and does not meet i. or ii. above, a municipality must allow up to two (2) dwelling units per lot located in an area in which housing is allowed, provided that the requirements in 12 M.R.S. Ch. 423-A are met. The two (2) dwelling units may be (1) within one structure; or (2) separate structures.
- c) If a lot contains one existing dwelling unit, a municipality must allow the addition of up to two (2) additional dwelling units:
  - i. One within the existing structure or attached to the existing structure;
  - ii. One detached from the existing structure; or
  - iii. One of each.
- d) If a lot contains two existing dwelling units, no additional dwelling units may be built on the lot unless allowed under local municipal ordinance.

- e) A municipality may allow more units than the minimum number of units required to be allowed on all lots that allow housing.

## 2. Zoning

With respect to dwelling units allowed under this Section, municipalities with and without zoning ordinances must comply with the following:

- a) If more than one dwelling unit has been constructed on a lot as a result of the allowance pursuant to this Section, the lot is not eligible for any additional units or increases in density except as allowed by the municipality. Municipalities have the discretion to determine if a dwelling unit or accessory dwelling unit has been constructed on a lot for purposes of this provision.
- b) Municipalities may establish a prohibition or an allowance for lots where a dwelling unit in existence after July 1, 2023, is torn down and an empty lot results.

## 3. Dimensional and Setback Requirements

- a) A municipal ordinance may not establish dimensional requirements or setback requirements for dwelling units allowed pursuant to this Section that are more restrictive than the dimensional requirements or setback requirements for single-family housing units.

- 4. A municipality may establish requirements for a lot area per dwelling unit as long as the additional dwelling units required for each additional dwelling unit is proportional to the lot area per dwelling unit of the first unit.

## Water and Wastewater

- a) The municipality must require an owner of a proposed housing structure to provide written verification that each proposed structure is to be connected to adequate water and wastewater services prior to certification of the development for occupancy or similar type of approval process. Written verification must include the following:
  - i. If a housing structure is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;
  - ii. If a housing structure is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.



- iii. If a housing structure is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and
- iv. If a housing structure is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

### **C. MUNICIPAL IMPLEMENTATION**

In adopting an ordinance, a municipality may:

- 1. Establish an application and permitting process for dwelling units;
- 2. Impose fines for violations of building, site plan, zoning, and utility requirements for dwelling units; and
- 3. Establish alternative criteria that are less restrictive than the requirements of Section 3(B)(4) for the approval of a dwelling units only in circumstances in which the municipality would be able to provide a variance pursuant to 30-A M.R.S. §4353(4)(A), (B), or (C).

## **SECTION 4. ACCESSORY DWELLING UNITS**

### **A. GENERAL**

- 1. A municipality must allow, effective July 1, 2023, one accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which housing is allowed, subject to the requirements outlined below. The requirements listed in Section 4 apply to municipalities with and without zoning. Private, state or local standards such as homeowners' association regulation, deed restrictions, set back, density, septic requirements, shoreland zoning and subdivision law may also apply to lots.
- 2. A municipal ordinance that allows more than one accessory dwelling unit or that allows accessory dwelling units to be established in relation to duplex, triplex and other multi-unit buildings shall be considered consistent with the goals of P.L. 2021 Ch. 672.

### **B. REQUIREMENTS**

- 1. Accessory Dwelling Unit Allowance

An accessory dwelling unit may be constructed only:

- a) Within an existing dwelling unit on the lot;

- b) Attached to a single-family dwelling unit; or
- c) As a new structure on the lot for the primary purpose of creating an accessory dwelling unit.

A municipality may allow an accessory dwelling unit to be constructed or established within an existing accessory structure, except the setback requirements of Section 4(B)(3)(b)(i) shall apply.

## 2. Zoning

With respect to accessory dwelling units, municipalities with zoning ordinances and municipalities without zoning must comply with the following conditions:

- (a) At least one accessory dwelling unit must be allowed on any lot where a single-family dwelling unit is the principal structure; and
- (b) If more than one accessory dwelling unit has been constructed on a lot as a result of the allowance pursuant to this Section, the lot is not eligible for any additional units or increases in density, except as allowed by the municipality. Municipalities have the discretion to determine if a dwelling unit or accessory dwelling unit has been constructed on a lot for purposes of this provision.

## 3. Other

With respect to accessory dwelling units, municipalities must comply with the following conditions:

- a) A municipality must exempt an accessory dwelling unit from any density requirements or lot area requirements related to the area in which the accessory dwelling unit is constructed;
- b) For an accessory dwelling unit located within the same structure as a single-family dwelling unit or attached to a single-family dwelling unit, the dimensional requirements and setback requirements must be the same as the dimensional requirements and setback requirements of the single-family dwelling unit;
  - i. For an accessory dwelling unit permitted in an existing accessory building or secondary building or garage as of July 1, 2023, the required setback requirements in local ordinance of the existing accessory or secondary building apply.
- c) A municipality may establish more permissive dimensional requirements and setback requirements for an accessory dwelling unit.
- d) An accessory dwelling unit may not be subject to any additional motor vehicle parking requirements beyond the parking requirements of the

single-family dwelling unit on the lot where the accessory dwelling unit is located.

4. Size

- a) An accessory dwelling unit must be at least 190 square feet in size, unless the Technical Building Code and Standards Board, pursuant to 10 M.R.S. §9722, adopts a different minimum standard; if so, that standard applies.
- b) Municipalities may set a maximum size for accessory dwelling units in local ordinances, as long as accessory dwelling units are not less than 190 square feet.

5. Water and Wastewater

A municipality must require an owner of an accessory dwelling unit to provide written verification that the proposed accessory dwelling unit is to be connected to adequate water and wastewater services prior to certification of the accessory dwelling unit for occupancy or similar type of approval process. Written verification must include the following:

- a) If an accessory dwelling unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;
- b) If an accessory dwelling unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*;
- c) If an accessory dwelling unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and
- d) If an accessory dwelling unit is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

**C. MUNICIPAL IMPLEMENTATION**

In adopting an ordinance under this Section, a municipality may:

- 1. Establish an application and permitting process for accessory dwelling units;

2. Impose fines for violations of building, zoning and utility requirements for accessory dwelling units; and
3. Establish alternative criteria that are less restrictive than the above criteria in Section 4 for the approval of an accessory dwelling unit only in circumstances in which the municipality would be able to provide a variance pursuant to 30-A M.R.S. §4353(4)(A), (B), or (C).

**D. RATE OF GROWTH ORDINANCE**

A permit issued by a municipality for an accessory dwelling unit does not count as a permit issued toward a municipality's rate of growth ordinance pursuant to 30-A M.R.S. §4360.

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**STATUTORY AUTHORITY:**

PL 2021 Ch. 672 codified at 30-A M.R.S. §§ 4364, 4364-A, 4364-B.

**EFFECTIVE DATE:**

April 18, 2023 – filing 2023-056

## APPENDIX

### List of Reference Material

Reference Material	Location to Obtain Document
U.S. Environmental Protection Agency's (EPA) Drinking Water Standards and Health Advisories Table, March 2018.	U.S. Environmental Protection Agency Office of Water Drinking Water Hotline 1-800-426-4791
10-144 C.M.R. Ch. 231, Rules Relating to Drinking Water, May 9, 2016	Maine Department of Health & Human Services Maine Center for Disease Control & Prevention 11 State House Station Augusta, Maine 04333 207-287-8016
Resolve 2021, Ch. 82, Resolve, To Protect Consumers of Public Drinking Water by Establishing Maximum Contaminant Levels for Certain Substances and Contaminants	Maine State Legislature Legislative Information Office- Document Room 100 State House Station Augusta, ME 04333 207-287-1408 <a href="mailto:webmaster_house@legislature.maine.gov">webmaster_house@legislature.maine.gov</a>
01-672 C.M.R. Ch. 10, Land Use Districts and Standards, December 30, 2022	Maine Department of Agriculture, Conservation & Forestry Bureau of Resource Information and Land Use Planning Land Use Planning Commission 22 State House Station Augusta, Maine 04333 207-287-2631
10-144 C.M.R. Ch. 241, Subsurface Wastewater Disposal Rules, August 3, 2015	Maine Department of Health & Human Services Maine Center for Disease Control & Prevention 11 State House Station Augusta, Maine 04333 207-287-8016