

**TO: Old Orchard Beach Town Council
Diana Asanza, Town Manager
Tim Fleury, Executive Assistant**
FROM: Planning Department
SUBJECT: Housing Opportunity Program Ordinance Amendments Workshop
DATE: 28 November 2023

I. The law and why we need to amend our ordinances:

What does the state law say?

- The law sets forth the provisions that require municipalities to create or amend local ordinances to allow for the following:
 - (1) Additional units on lots zoned for single-family homes.
 - (2) At least one accessory dwelling unit on lots with existing single-family homes; and
 - (3) Allow 2 1/2 times the currently allowed housing units, for developments where most of the units meet standard affordability definitions.
- The goal of the law is to alleviate housing affordability issues in Maine by increasing housing opportunities.
- If a municipality does not adopt ordinances to comply with the law, this legislation will preempt municipal home rule authority.

Why is this before us? What is the Town required to do?

- Since this is signed into state law we need to amend our ordinances to meet the requirements of the law.
- The implementation date is January 1, 2024 for municipalities that enact ordinances without approval of voters of the municipality.

II. History summary:

- State
 - LD 2003 was passed by the State Legislature and signed by the Governor in April 2022, and went into effect July 27, 2022. The original required implementation date was July 1, 2023
- Amendments/law changes
 - LD 1706, An Act to Clarify Statewide Laws Regarding Affordable Housing and Accessory Dwelling Units, became effective on June 16, 2023.
 - This legislation amended LD 2003 by extending the implementation date of July 1, 2023, to January 1, 2024, for municipalities that enact ordinances by municipal officer without further action, and July 1, 2024, for all other municipalities.
- PB process
 - This was first introduced to the PB at the May 11, 2023 meeting.
 - The PB had two workshops in June 2023.
 - The PB held two public hearings on July 13, 2023 and October 12, 2023
 - The PB made a recommendation at their November 9, 2023 meeting that the Town Council adopt the ordinances.
- Council
 - The first draft ordinance was introduced to council at the June 6, 2023 meeting.

III. Summary of ordinance amendments:

Affordable Housing Density Bonus

- Density: 2.5 x what is allowed in the base district
- Setbacks: Same as underlying districts
- Parking: Minimum 2 spaces for every 3 dwelling units
- Key Points:
 1. Must meet affordable housing definition
 2. In designated growth area or served by public water and public sewer
 3. Must be in district that allows multifamily
 - Districts that allow multifamily are R2, R3, R4, DD1, DD2, GB1, GB2, NC1, NC2, NC3, ID, BRD, RBD, PMUD, and HO
 4. Complies with state minimum lot size requirements (lots served by septic system only, minimum lot size is 20,000 sq ft)
 5. Provide documentation unit(s) are connected to adequate water and wastewater systems

Dwelling Unit Increase Allowance (Non-Affordable Housing, market-rate)

- Density: Same as underlying district
- Increase allowance:
 1. If lot has no existing dwelling units:
 - 4 units max in growth areas (growth areas include all regular zoning districts except RD)
 - no more than one single-family structure allowed. The structure arrangement can include duplexes, a triplex, or a quadplex.
 - 2 units max in non-growth areas
 2. Lot with 1 unit existing: 2 units max
 3. Lot with 2 units existing: 0 units
- Setbacks: Same as underlying districts
- Parking: Same as underlying districts
- Key Points:
 1. Dwelling units created under this section cannot be used for short term rentals.
 2. More than 1 unit constructed on lot using the Dwelling Unit Increase Allowance, the lot is no longer eligible for additional units or increases in density.
 3. Dwelling removed and results in vacant lot after date of ordinance adoption, lot shall be treated as if the dwelling still exists for the purposes of the Dwelling Unit Increase Allowance under this ordinance, unless prior authorization for the demolition and dwelling unit increase is given by the PB.
 - Provide documentation unit(s) are connected to adequate water and wastewater systems

Accessory Dwelling Unit (ADU)

- Density: ADUs outside of a shoreland zone are not considered to be a second dwelling unit for determining the required minimum lot area, or net residential density.
- An ADU can be located on the same lot where a single-family dwelling unit is the principal structure and only existing dwelling unit in any area in which housing is allowed
- Setbacks:
 1. If separate, stand-alone structure must meet accessory structure setbacks in underlying district
 2. If within or attached to existing structure must meet the principal structure setbacks for the underlying district
- Parking: Exempt from parking requirements
- Key Points:
 1. Does not allow an ADU to be permitted or licensed for short-term rentals
 2. ADU's can be within or attached to existing single family. Also, ADU's can be in a detached structure

3. Floor Area: Minimum 190 sq. ft., Maximum 1,000 sq. ft. or 50% of floor area of the existing single family
4. Height: Cannot exceed maximum principal building height of underlying district, and if detached, cannot exceed the maximum height allowed for an accessory structure.
5. If there is more than one dwelling unit on a lot, an ADU is not permitted
6. ADU cannot contain more than two bedrooms
7. Cannot be separately owned; single family and ADU must be in common ownership
8. Owner must reside (seasonal allowed) in ADU or single family
9. Built so design and orientation is compatible with neighborhood
10. Provide documentation unit(s) are connected to adequate water and wastewater systems
11. Does not require Planning Board review

IV. QA:

- **What happens if we don't comply?**
 - *This legislation will preempt municipal home rule authority, which means that any ordinance or regulation that is not consistent with the law may be challenged as invalid.*
- **Examples of how this works in districts w/ smaller lots (R2, Ocean Park, Homewood Park)**
 - **R2 District (Union Ave, Washington Ave areas)**
 - *Single-family and two-family are currently permitted in this district.*
 - *Multifamily is currently a conditional use so it is considered allowed.*
 - *Accessory Dwelling Units are not currently allowed.*
 - *Minimum lot size is 20,000 sq. ft. Minimum net lot area per family unit is 10,000 sq. ft.*
 - *Under the affordable housing density bonus a 20,000 sq. ft. lot could have 5 units*
 - *The dwelling unit increase allowance references underlying district density so units created under this allowance couldn't exceed what is currently allowed.*
 - *A lot with only a single-family dwelling could potentially add an ADU.*
 - **R3 District (Ocean Park area)**
 - *Single-family and two-family are currently permitted in this district.*
 - *Multifamily is currently a conditional use so it is considered allowed.*
 - *Accessory Dwelling Units are currently allowed as a conditional use.*
 - *Minimum lot size is 9,000 sq. ft., and minimum net lot area per family unit requirement is 5,000 sq. ft.*
 - *Under the affordable housing density bonus a 10,000 sq. ft. lot could have 5 units*
 - *The dwelling unit increase allowance references underlying district density so units created under this allowance couldn't exceed what is currently allowed.*
 - *A lot with only a single-family dwelling could potentially add an ADU.*
 - **R5 District (Homewood Park)**
 - *R5 District is currently considered a single-family private dwelling district.*
 - *Multifamily is not currently allowed in R5 so the affordable housing bonus density couldn't be used in this district.*
 - *Accessory Dwelling Units are currently allowed as a conditional use.*
 - *Minimum lot size is 20,000 sq. ft., and minimum net lot area per family unit requirement is 20,000 sq. ft.*

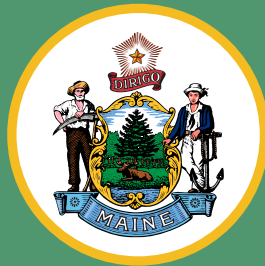
- *Many lots are 20,000 sq. ft. and couldn't use the dwelling unit increase allowance to add additional dwellings because the underlying district density still needs to be met.*
 - *A 40,000 sq. ft. lot with a single-family dwelling could add a second dwelling unit under this new ordinance, provided other requirements are met. Our current ordinance wouldn't allow a second dwelling unit in this district.*
 - *A lot with only a single-family dwelling could potentially add an ADU.*
- **How does proposed ADU differ from what exists?**
 - *Our current ordinance doesn't allow for the single-family dwelling or accessory dwelling unit to be rented.*
 - *This draft ADU ordinance prohibits the single-family dwelling or accessory dwelling unit from being used as a short-term rental.*
 - *There is still an owner occupancy requirement to occupy either the single-family dwelling or accessory dwelling unit.*
 - *The draft ordinance eliminates the family relation restriction for the ADU.*
 - *It also eliminates the requirement for a primary entrance via primary structure.*
 - *The minimal square footage requirement was reduced down to 190 square feet from the 500 square feet, to match the law (unless the Technical Building Code and Standards Board adopts a different minimum standard).*
 - *The requirement for additional parking is eliminated because the state law doesn't allow us to require additional parking for an ADU.*
- **Has this been reviewed by Town Attorney?**
 - *This has not been reviewed by the Town Attorney. During the drafting of the ordinance I did use the State guidance document, and reviewed legal presentations on the law.*
- **PB comments/concerns**
 - *There was some confusion early on over the dwelling unit increase allowance and how it worked in regards to density since it doesn't allow a greater density than the underlying district.*
 - *This was clarified by explaining that the law is essentially eliminating single family only zoning.*
 - *There was some discussion on short term rentals (STRs).*
 - *One concern with STRs was with the affordable housing density bonus and rental of those units' short term.*
 - *A restrictive covenant needs to be filed with the registry of deeds with specific affordability requirements, and restrictions on STRs could be included in the covenant if needed.*
 - *Another concern was maintaining the affordability, and the restrictive covenant is required to ensure that for at least 30 years after completion of construction the affordability guidelines are met.*
 - *The PB had some concerns on the 2.5 times density bonus for affordable housing, but most of the concern had to do with the parking reduction from the current standards.*
- **Which districts will allow Affordable Housing Density Bonus, Dwelling Unit Increase Allowance, and ADUs?**
 - Affordable Housing Density Bonus:
 - *Allowed in all districts where multifamily is allowed, that are either in a growth area, or area served by public water and sewer.*

- *Districts that allow multifamily are R2, R3, R4, DD1, DD2, GB1, GB2, NC1, NC2, NC3, ID, BRD, RBD, PMUD, and HO*
 - *Dwelling Unit Increase Allowance:*
 - *There are only four districts that currently restrict residential to single family only that would now need allow more than a single family.*
 - *R1, R5, NC4, and RD*
 - *R1, R5, and NC4 are growth areas.*
 - *RD is not a growth area.*
 - *ADUs*
 - *ADUs would be allowed on a lot containing one single family dwelling unit in any area residential uses are permitted. This essentially includes all zoning districts.*
- **Difference between requirements for affordable versus market rate?**
 - *A 3.7-acre lot in GB1 / R4 with a 5,000 sq. ft. per unit density requirement would allow the following:*
 - *Current density: 32 units and require 64 parking spaces.*
 - *Density under the affordable housing density bonus: 80 units and require 54 parking spaces.*
- **How do these changes handle parking?**
 - *Affordable Housing Density Bonus: requires two off-street parking spaces for every three dwelling units.*
 - *Dwelling Unit Increase Allowance: No changes; requires minimum number of off-street parking spaces as currently required by Ch. 78 (for residential in most cases it is two spaces per dwelling.*
 - *ADU: No additional parking can be required.*
- **Can approved subdivisions put in more units?**
 - *It depends if there are covenants, deed restrictions, or other agreements which would limit use of the lot to single family residential.*

V. Deadline / Next steps

- *Schedule a public hearing*
- *Adopt draft ordinances by January 1, 2024*

PL 2021, Ch. 672 (LD 2003) Guidance



MAINE DEPARTMENT OF
ECONOMIC AND COMMUNITY
DEVELOPMENT

PL 2021, Ch. 672 Guidance

PL 2021, Ch. 672, “An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions,” generally referred to by its legislative tracking name of LD 2003, was signed into law by Governor Mills on April 27, 2022. This law is designed to remove unnecessary regulatory barriers to housing

production in Maine, while preserving local ability to create land use plans and protect sensitive environmental resources. LD 2003 is based on the recommendations of the legislative commission named in the title, though not all those recommendations are included in the enacted legislation.

In June 2023, Governor Mills signed into law, LD 1706, An Act to Clarify Statewide Laws Regarding Affordable Housing and Accessory Dwelling Units. This legislation amended LD 2003 by extending the compliance date for municipalities, as well as making minor changes for clarity.

This guidance is the result of a collaborative effort by the Department of Economic and Community Development, the Governor’s Office of Policy Innovation and the Future, the Department of Agriculture, Conservation and Forestry; legislative staff, and several municipal lawyers and community planners. It is intended to provide information for local authorities to use in determining how LD 2003 affects their local zoning and land use codes, as well as what steps they can take if they wish to tailor their ordinances to avoid conflicts with state laws. This guidance is not legally binding or intended to serve as a substitute for the statutory language or the rule, 19-100 CMR Ch. 5, Housing Opportunity Program: Municipal Land Use and Zoning Ordinance Rule. It represents the interpretation of LD 2003 and LD 1706 and the rule, as well as its requirements by the state agencies that are responsible for its implementation.





PL 2021, ch. 672 has the following sections that are relevant to municipal government. The amended sections of state law are shown in the chart below. Among other things:

1. Section 4 allows for additional density for “affordable housing developments” in certain areas.
2. Section 5 generally requires that municipalities allow between two and four housing units per lot where residential uses are permitted.
3. Section 6 requires that municipalities allow accessory dwelling units to be located on the same lot as a single-family home, under certain conditions.
4. Sections 3 and 7 require that the state establish statewide and regional housing production goals and set forth ways in which local governments can coordinate with that goal.

WHILE PL 2021, CH. 672 WENT INTO EFFECT ON AUGUST 8, 2022, SOME ELEMENTS OF THE LAW ARE NOT REQUIRED TO BE APPLIED UNTIL JANUARY 1, 2024 OR JULY 1, 2024

<p>Effective Aug. 8, 2022</p> <p>Statewide Housing Production Goals</p> <p>(5 M RSA §13056, sub-§9)</p>	<p>Effective Aug. 8, 2022</p> <p>Municipal Role in Fair Housing/ Short Term Rentals</p> <p>(30-A M RSA §4364-C)</p>	<p>Effective Jan. 1, 2024 or July 1, 2024</p> <p>Accessory Dwelling Units</p> <p>(30 A M RSA §4364-B)</p>
<p>Effective January 1, 2024 or July 1, 2024</p> <p>Affordable Housing Density in Growth Areas Bonus</p> <p>(4 30-A M RSA §4364)</p>	<p>Effective January 1, 2024 or July 1, 2024</p> <p>Two to Four Units</p> <p>(30-A M RSA §4364-A)</p>	
<p>January 1, 2024: Compliance date for municipalities for which ordinances may be enacted by the municipal officers without further action or approval by the voters of the municipality.</p> <p>July 1, 2024: Compliance date for all other municipalities.</p>		

IN GENERAL, AS LONG AS THESE ACTIONS ARE CONSISTENT WITH PL 2021, CH. 672, MUNICIPALITIES MAY:

CONTINUE to develop Growth Management programs, including comprehensive plans and zoning consistent with those plans

ENFORCE local shoreland zoning ordinances consistent with state shoreland zoning law

REGULATE how many square feet of land are needed for each dwelling unit (other than accessory dwelling units)

CONDUCT site plan review, if authorized by local ordinances, of any residential development

REGULATE the maximum size of accessory dwelling units

REGULATE short-term rentals in their community

CREATE rate of growth ordinances so long as they do not limit the number of accessory dwelling units outlined in Section 6

CREATE local ordinances that are more permissive for residential housing development than the requirements of LD 2003

REGULATE housing development based on documented water and wastewater capacity constraints

IN GENERAL, UNDER THIS LAW, LOCAL GOVERNMENTS MAY NOT:

ENACT local ordinances that allow housing but limit it to one unit per lot

PROHIBIT one accessory dwelling unit per lot or count those units towards a rate of growth ordinance

LIMIT the affordable housing density bonuses allowed in LD 2003 in growth areas as defined in state law

Affordable Housing Density Bonus

30-A MRS § 4364

This section requires municipalities to allow an automatic density bonus for certain affordable housing developments. This section only applies to lots in zoning districts that have adopted density requirements. To qualify for this bonus, the development must:

1. Be approved after a municipality's implementation date
2. Include a certain number of rent or sales price restricted affordable housing units
3. Be in a growth area under section 4349-A, subsection 1, paragraph A or B, or served by water and sewer
4. Be in an area in which multifamily dwellings are allowed
5. Meet shoreland zoning requirements, meet minimum lot sizes if using subsurface waste disposal, and verify that water and sewer capacity is adequate for the development

BONUSES FOR AN AFFORDABLE HOUSING DEVELOPMENT

To take advantage of this density bonus, a development must qualify as "affordable" (as defined below). If eligible, the affordable housing development qualifies for the following exceptions to the zoning requirements in the community:

1. The number of units allowed will be 2.5 times the number allowed for a development not designated affordable
2. The off-street parking requirements may not exceed two spaces for every three units

So, for example, if a developer can build up to six units on a site under local rules, and designates the development as affordable, the developer would be eligible to build 15 units (6×2.5). The local off-street parking requirement for this development could not exceed ten spaces ($15 \times \frac{2}{3}$). In cases of fractional results, the number of units would generally be rounded down, but the municipality has discretion to round the number of parking spaces either up or down to the nearest whole number.



WHAT REQUIREMENTS DO AFFORDABLE HOUSING DEVELOPMENTS HAVE TO MEET TO RECEIVE THE DENSITY BONUS?

For rentals, a household with an income at no more than 80% of the area median income for the community, as defined by the U.S. Department of Housing & Urban Development, must be able to afford 51% or more of the units in the development. That means that rent and certain other housing expenses will not require more than 30% of the household's income.

For homeownership projects, a household with an income at no more than 120% of the area median income for the community, as defined by the U.S. Department of Housing & Urban Development, must be able to afford 51% or more of the units in the development. That means that mortgage payments (including mortgage insurance) and certain other housing expenses will not require more than 30% of the household's income.

The units that will be affordable at these levels must be restricted through a restrictive covenant that is enforceable by a party acceptable to the municipality (which could be the municipality) for at least 30 years, and that states that the units must be restricted in rent or sales prices accordingly. Often these developments will be getting funding through MaineHousing, which typically requires a comparable covenant.

Information on Area Median Incomes is updated annually by the U.S. Department of Housing & Urban Development. For reference, MaineHousing maintains updated 80% of area median income and 120% of area median income data on their website.

[View AMI data on MaineHousing.org](https://www.mainehousing.org)

QUESTIONS AND ANSWERS ON AFFORDABLE HOUSING DENSITY BONUS

What is meant by “multifamily dwellings?”

“Multifamily dwellings” is defined in rule.

What is a “base density that is otherwise allowed?”

Under a local zoning code, the “base density that is otherwise allowed” is the maximum number of units allowed based on dimensional requirements, such as lot area per dwelling unit. This is defined in rule.

If lot area per dwelling unit can be used as a measure of number of units permitted, do the limits on lot area per dwelling unit requirements in Section 5 apply?

No, Section 5’s provision about “lot area per dwelling unit,” 30-A M.R.S. § 4364-A(3), does not apply to Section 4. Therefore, municipalities have the discretion to designate lot area per dwelling unit when approving “affordable housing developments.” Municipalities, however, must comply with the minimum lot size requirements stated in Title 12, chapter 423- A, as applicable.

Does LD 2003 apply to municipalities that do not use the term “designated growth area,” but instead use a different term for growth districts in comprehensive plans.

Yes. LD 2003 applies to a municipality that has adopted a different term to mean a “designated growth area” in its comprehensive plan.

What if a household exceeds the maximum income after living in the unit?

LD 2003 specifies that the income eligibility is based on household income “at the time of initial occupancy,” meaning that a household could be allowed to remain in an “affordable” unit if their income goes up after they occupy the unit. MaineHousing has experience with this issue, as do communities that manage their own affordable housing programs, so there may be best practices that can be adopted locally. The restrictive covenants should outline how this would work.

What happens when a restricted affordable home ownership unit is sold?

The restrictive covenants should outline how this would work. MaineHousing has experience with this issue, as do communities that manage their own affordable housing programs, so there may be best practices that can be adopted locally.

How does this density bonus interact with any local density bonus that might exist?

A municipality may apply its local density bonus to “affordable housing developments” instead of the density bonus stated in 30-A M.R.S § 4364, as long as the municipality’s local density bonus is equally or more permissive. More permissive, for purposes of this comparison, means that a local density bonus must be more generous and permissive in regard to each of the requirements described in the LD 2003 density bonus.



Residential Areas, Generally; Up to 4 Dwelling Units

30-A MRS § 4364-A

This section requires municipalities to allow multiple dwelling units on parcels where residential uses are allowed, including conditional uses, provided evidence of sufficient water and wastewater capacity exists, beginning on the municipality's implementation date. Municipalities may not apply different dimensional requirements, including but not limited to setback requirements, to lots with more than one dwelling unit on them than they would to a lot with one dwelling unit, with the exception that they may require a minimum lot area per dwelling unit. However, if the municipality chooses to require a minimum lot area per dwelling unit, the lot area required may not be less for the first unit than for subsequent units.

The number of units allowed under this section depends on a few factors:

- A lot without a dwelling unit already on it can have two units if it is not within a designated growth area under section 4349-A, subsection 1, paragraph A or B, served by water system and sewer in a municipality without a comprehensive plan.
- A lot with an existing dwelling unit may have up to two additional dwelling units, either one additional attached dwelling unit, one additional

detached dwelling unit, or one of each.

- A lot without a dwelling unit already on it can have four units if it is either:
 - Within a designated growth area under section 4349-A, subsection 1, paragraph A or B, or
 - Served by water system and sewer in a municipality without a comprehensive plan.

Municipalities may allow more than the minimum number required to be allowed on all lots that allow residential uses, if they wish. In addition, private parties are permitted to restrict the number of housing units on a lot in a private easement, covenant, deed restriction or other agreement provided the agreement does not violate State or Federal rights such as equal protection.

Finally, a municipality may determine in local ordinance that if a property owner tears down an existing dwelling unit, the lot may be treated under this section as if the dwelling unit were still in existence.



Lot Area per Dwelling Unit

Additional units may not require more land area per unit than the first unit

NOT PERMITTED



One Unit Requires
10,000 sq ft



Two Units Require
30,000 sq ft



Three Units Require
50,000 sq ft

PERMITTED



One Unit
Requires
10,000 sq ft



Two Units
May Require Up
To 20,000 sq ft



Three Units
May Require Up
To 30,000 sq ft

QUESTIONS AND ANSWERS ON RESIDENTIAL AREAS, GENERALLY UP TO 4 DWELLING UNITS

Subsection 2 (“Zoning Requirements”) says that municipal zoning ordinances “must” comply with certain conditions, but subsection B. says that they “may” regulate how this section applies to a lot where a dwelling unit is torn down. Is this a “must” or a “may”?

Municipalities have the option of taking the actions in subsection B but do not have to do so, in which case a lot where a dwelling unit was torn down would be viewed as a vacant lot.

Subsection 4 says that verification must be provided to “the municipality” of water and wastewater services. Who should that verification be provided to?

These capacity issues should be reviewed by the municipal staff or board that would normally review these issues as part of any housing development.

Does LD 2003 establish minimum dimensional requirements for dwelling units under this section?

Yes, a municipality cannot establish dimensional requirements for additional dwelling units on a lot that are more restrictive than dimensional requirements for a single-family unit, except that a municipal ordinance may establish requirements for a lot area per dwelling unit as long as the required lot area for subsequent units on a lot is not greater than the required lot area for the first unit.

Section 5 requires a municipality to allow up to two dwelling units per lot if that lot contains an “existing dwelling unit.” What does “existing dwelling unit” mean?

“Existing dwelling unit” means a dwelling 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.

What is meant by “potable” water?

This is addressed in rule.

What if residential uses are allowed in an area but only as a conditional use?

LD 1706 amended LD 2003 to clarify that dwelling units are allowed in any area in which residential uses are allowed, including as a conditional use.

What does “attached to an existing structure” mean?

The rule defines the word “attached.” Municipalities are not required to adopt this definition in local ordinance, but must adopt a definition that is consistent with, and no more restrictive, than the definition in rule.

Does the language in subsection 1 mean that if a lot is served by water and sewer in a municipality without a comprehensive plan that it does not need to be vacant to allow up to 4 units?

No, that language still requires the lot not “contain an existing dwelling unit.”

Does LD 2003 apply to municipalities with comprehensive plans that have expired findings?

Yes. An expired finding does not invalidate a locally adopted comprehensive plan or invalidate ordinances, but it could provide an opening for a party to challenge the ordinance in court. Consultation with legal counsel is recommended.

Do the provisions of LD 2003 that mention “designated growth areas” apply to a municipality that does not use the term “designated growth area,” but instead uses a related term for growth districts in its comprehensive plan?

Yes. LD 2003’s provisions apply to a municipality that does not use the term “designated growth area” but instead uses a related term to mean growth districts in its comprehensive plan.

Residential Areas

Empty Lot Where Housing Is Already Allowed

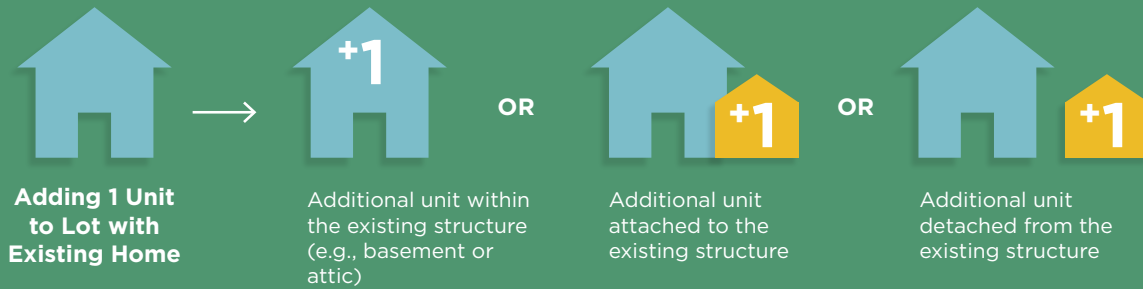


NOTE: The three and four units can be within one structure or multiple structures.

THREE AND FOUR UNITS ALLOWED IF:

- Located in "growth area" consistent with section 4349-A, subsection 1, paragraph A or B.
- Located in area with existing water/sewer capabilities in towns without comprehensive plans.

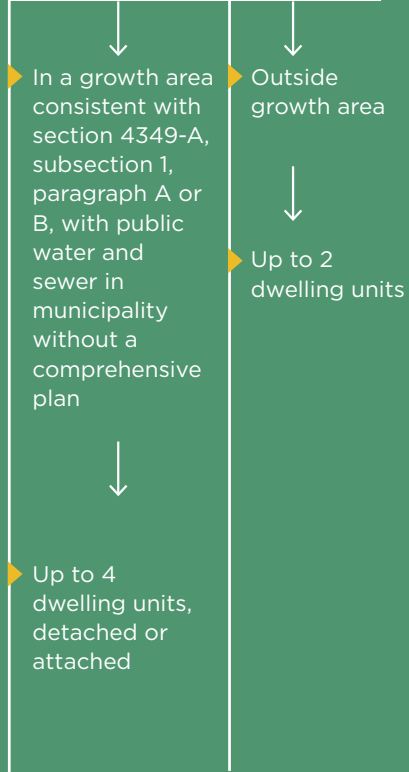
Existing Home



The additional units depicted in orange in this diagram are dwelling units, not accessory dwelling units.

What Can Be Built On This Lot?

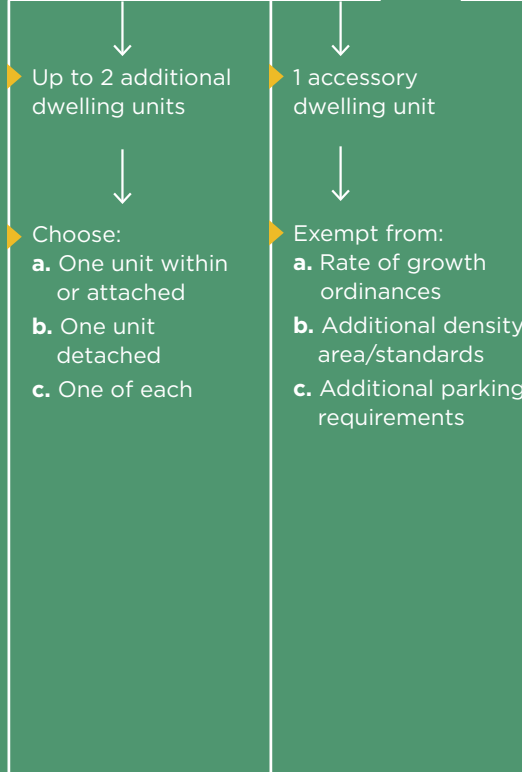
ON LAND WITH **ZERO** EXISTING UNITS



PRIVATE, STATE OR LOCAL STANDARDS SUCH AS THESE MAY APPLY:

- Home Owners Association regulations
- Deed restrictions
- Lot size, set back, density (not greater than single family)
- Septic requirements
- Minimum Lot Size
- Additional Parking requirement
- Growth ordinance permits
- Shoreland Zoning
- Subdivision Law

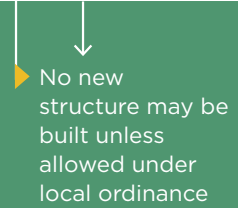
ON LAND WITH **ONE** EXISTING UNIT



PRIVATE, STATE OR LOCAL STANDARDS SUCH AS THESE MAY APPLY:

- Home Owners Association regulations
- Deed restrictions
- Lot size or set back requirements (not greater than single family/existing accessory structure)
- Septic requirements
- Shoreland Zoning
- Other locally determined ADU standards (e.g. maximum size, rules regarding short term rental, etc.)

ON LAND WITH **TWO** EXISTING UNITS



Accessory Dwelling Units

30-A MRSA §4364-B

This section allows any lot with a single-family dwelling in an area where residential uses are permitted, including as a conditional use, to have one accessory dwelling unit (ADU) as well, effective on a municipality's implementation date. That ADU can be within the existing home, attached to it, or in a new structure. Municipalities may also allow existing accessory structures to be converted into an ADU.

An ADU allowed under this law is exempt from zoning density requirements. In reviewing an ADU, the dimensional requirements, excluding lot area, for a single-family home continue to apply unless the municipality makes them more permissive for an ADU. For ADUs in an accessory structure, the dimensional requirements including setback requirements for such a structure apply.

ACCESSORY DWELLING UNIT PARKING

Additional parking requirements for the ADU beyond those required for the single-family dwelling are not permitted.

ACCESSORY DWELLING UNIT SIZE

ADUs must be at least 190 square feet in size. Municipalities may set a maximum size for ADUs in local ordinance.

SHORELAND ZONING

An ADU must comply with state and municipal shoreland zoning requirements, except that a municipality may not categorically prohibit ADUs in the shoreland zone that would otherwise meet state and municipal shoreland zoning requirements.

OTHER MUNICIPAL POWERS

Municipalities may establish an application and permitting process for ADUs that does not require planning board approval, provided it is consistent with in this section. Municipalities may also define ADUs, as long as the definition is consistent with state law in Title 30-A, §4301. 1-C. In addition, municipalities may establish requirements for ADUs that are less restrictive than those in this section, such as allowing more than one ADU on a lot or allowing an ADU for two-family or multifamily dwellings.

SIMILARITIES AND DIFFERENCES FROM OTHER SECTIONS

LIKE SECTIONS 4 AND 5, municipal requirements to verify adequate water and wastewater capacity still apply.

LIKE SECTION 5, private parties are permitted to restrict the number of housing units on a lot, including ADUs, in a private easement, covenant, deed restriction or other agreement provided the agreement does not violate State or Federal rights such as equal protection.

UNLIKE SECTION 5, one ADU for each single-family dwelling does not count towards any rate of growth ordinance as described in §4360.

UNLIKE SECTIONS 4 & 5, additional parking cannot be required for an ADU.

UNLIKE SECTION 5, a municipality may not establish requirements for minimum lot area for the addition of an ADU on a lot with an existing single-family home.

QUESTIONS AND ANSWERS ON ACCESSORY DWELLING UNITS

How is an ADU defined?

LD 2003 does not define ADUs. There is a definition in 30-A MRSA §4301 and many communities define them in local ordinances. This is addressed in rule.

Can an ADU be larger than a primary structure?

Yes, unless the municipality limits the maximum size of an ADU.

Can a previously illegal ADU be legalized under this section?

LD 1706 amended LD 2003 to clarify that an illegal accessory dwelling unit must be allowed by the municipality if the accessory dwelling unit otherwise meets the requirements for accessory dwelling units in municipal ordinance and state law.

If a pre-existing single-family dwelling is on a non-conforming lot (with respect to size, frontage, or similar characteristics) can an ADU be built on that lot?

LD 1706 amended LD 2003 to clarify that an accessory dwelling unit is allowed on a lot that does not conform to the municipal zoning ordinance if the accessory dwelling unit does not further increase the nonconformity, meaning the accessory dwelling unit does not further cause deviation from the dimensional standard(s) creating the nonconformity, excluding lot area.

Subsection 7 says that verification must be provided to “the municipality” of water and wastewater services. Who should that verification be provided to?

These capacity issues should be reviewed by the municipal staff or board that would normally review these issues as part of any housing development.

What is meant by “potable” water?

This is addressed in rule.

What if housing is allowed in an area but only as a conditional use?

LD 1706 amended LD 2003 to clarify that dwelling units are allowed in any area in which residential uses are allowed, including as a conditional use.

What does “attached to an existing structure” mean?

The rule defines the word “attached.” Municipalities are not required to adopt this definition in local ordinance, but must adopt a definition that is consistent with, and no more restrictive, than the definition in rule.

If a parcel has an existing two-unit structure, does subsection 1 allow an ADU to be built?

No, though a municipality would have the ability to allow that.

LD 2003 allows an ADU to be built that is “a new structure on the lot for the primary purpose of creating an accessory dwelling unit.” What does this mean?

This provision allows a new structure to be built on a lot with an existing single-family dwelling unit, as long as the main reason for building the structure is to support human habitation. Local ordinance can define primary purpose further.

Can a municipality require lot area requirements for the addition of an ADU on a lot with an existing single-family home?

No. A municipality must exempt an ADU from density and lot area requirements. The setback and other dimensional requirements, however, continue to apply unless the municipality makes this more permissive for an ADU.

Section 6 allows for the construction of an ADU within an “existing dwelling unit.” What does “existing dwelling unit” mean?

“Existing dwelling unit” means a dwelling unit in existence on a lot at the time of submission of a permit application to build an additional unit 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 an additional unit on a lot.

Parking for ADUs

Example Parking Requirement

NOT PERMITTED



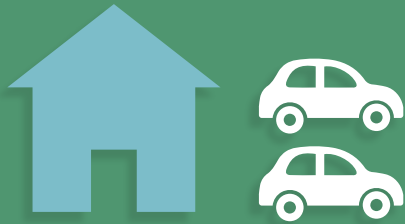
Single Family Home
2 spaces minimum



Single Family Home + ADU
3 spaces minimum



PERMITTED



Single Family Home
2 spaces minimum



Single Family Home + ADU
2 spaces minimum



This example applies to towns with minimum parking requirements.
For towns without parking restrictions, no additional restrictions would be imposed.

Housing Goals & Fair Housing

5 MRS §13056, sub-§9 AND 30-A MRS §4364-C

Section 3 directs the Department of Economic & Community Development, in coordination with Maine-Housing, to develop a statewide housing production goal and regional production goals based on that statewide goal. In doing so, the section instructs the Department to set benchmarks for meeting those goals, as well as to consider information provided by municipalities on current and potential housing development and permits.

Section 7 outlines ways municipalities can play a role in achieving those state and regional goals. It states that municipalities must ensure that local ordinances and regulations are designed to affirmatively further the purposes of the Federal Fair Housing Act, as well as the Maine Human Rights Act, as part of meeting the housing goals. It also explicitly authorizes municipalities to establish and enforce regulations related to short-term rentals to help meet those goals.

For more information on the statewide housing goals, please contact housing.decd@maine.gov

QUESTIONS AND ANSWERS ON SECTIONS 3 & 7

What obligations do the affirmatively furthering fair housing provisions put on municipalities that didn't already exist before LD 2003 passed?

Until recently, the link between land use regulation and fair housing was often not recognized. Section 7 clarifies that municipalities must ensure that zoning and land use ordinances and regulations are designed to affirmatively further the purposes of these state and federal laws.

What happens if local, regional or statewide housing goals are not met?

These sections do not set forth any specific penalties for not meeting these goals.

How does this relate to local Growth Management programs and comprehensive plans?

Local comprehensive plans, while not regulatory documents, should not conflict with these sections. The regulations for comprehensive plans under Chapter 208 state that communities should “[s]eek to achieve a level of at least 10% of new residential development built or placed during the next decade be affordable.”

Do municipalities have to regulate short term rentals?

No.



GENERAL QUESTIONS

What happens if a municipality does not act to update local ordinances, or tries to act and the updates are not approved by the local legislative body?

LD 2003 is an express preemption on municipal home rule authority. Therefore, any ordinance or regulation that is not consistent with the law may be challenged as invalid. Municipalities are encouraged to contact legal counsel to discuss how the law will affect the enforcement of existing ordinances and regulations.

If a town does not have growth areas as defined by section 4349-A, subsection 1, paragraph A or B, and does not have any areas served by water or sewer, does it need to comply with LD 2003?

These communities would not be subject to the affordable housing density provisions in Section 4, and would not have areas that are required to allow up to four units on a residential lot as per Section 5. Other provisions of LD 2003 would apply.

How do LD 2003's requirements relate to municipal comprehensive plans?

Comprehensive plans seeking a finding of consistency under the regulations in Chapter 208 should meet those requirements. Since a comprehensive plan is not a regulatory document, LD 2003 would not create any additional requirements. However, zoning ordinances adopted in a municipality would have to be consistent with both a local comprehensive plan and LD 2003.

Is LD 2003 a model ordinance for use in local zoning?

LD 2003 is not a model ordinance. Communities will be able to seek funding from the Housing Opportunity Program to develop new ordinances.

Can developers “double count” bonuses from various sections?

This issue is outlined in §4364-A Section 2.A. and §4364-B Section 3.B. Developers may only “double count” bonuses from various sections on a lot if this is permitted by the municipality in which the lot is located.

Sections 4, 5, and 6 require written verification of “adequate water and wastewater services.” What about a municipal concern that while a specific housing development may not immediately threaten water quality, the cumulative impact of new development may do so in a way that it did not prior to LD 2003?

As was true prior to the passage of LD 2003, communities are free to take regulatory actions as appropriate for protection of natural resources or existing water systems. These can include changes to zoning districts to limit where housing is permitted; changes to lot size requirements; or the creation of an impact fee system consistent with state law to fund environmental or water quality protection.

What does section 4349-A, subsection 1, paragraph A or B say?

It directs the State to make growth-related capital investments only in:

A. A locally designated growth area, as identified in a comprehensive plan adopted pursuant to and consistent with the procedures, goals and guidelines of this subchapter or as identified in a growth management program certified under section 4347A;

or

B. In the absence of a consistent comprehensive plan, 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 Title 23, section 754; or [PL 1999, c. 776, §10 (NEW).]

Growth areas are defined in section 4301, subsection 6-C as:

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 combinations of those types of development, and into which most development projected over 10 years is directed.



RULEMAKING PROCESSES

Sections 4, 5 and 6 authorize rulemaking to be led by the Department of Economic & Community Development, in consultation with the Department of Agriculture, Conservation & Forestry. These rules are considered “routine technical” – meaning they “establish standards of practice or procedure for the conduct of business with or before an agency” and can be approved administratively. The Department’s adopted rule, 19-100 CMR Chapter 5, can be found on the Department’s website.

FUNDING FOR TECHNICAL ASSISTANCE

While not part of LD 2003, the supplemental budget for Fiscal Years 2022 and 2023 included Section U-1. 5 MRS §13056-J, providing funding for a new “Housing Opportunity Program.” That program will “encourage and support the development of additional housing units in Maine, including housing units that are affordable for low and moderate income people and housing units targeted to community workforce housing needs” by supporting “regional approaches, municipal model ordinance development, and ... policy that supports increased housing density where feasible to protect working and natural lands.”

The Housing Opportunity Program has a variety of funding opportunities for municipalities and service providers to encourage and support the development of additional housing units in Maine.

1. **Service Provider Grants:** These grants will provide eligible service providers with funding to support municipalities with technical assistance, ordinance development, and community housing planning services
2. **Municipal Payments:** The Department has funding for municipalities for the costs associated with complying with PL 2021, ch. 672
3. **Municipal Grants:** These grants will provide municipalities with funding to support ordinance development and community housing planning services.

For more information about these funding opportunities, please contact housing.decd@maine.gov.

ADDITIONAL FREQUENTLY ASKED QUESTIONS

GENERAL

My town uses “net lot area” in its zoning ordinances to determine lot size. Can my municipality continue to do that under PL 2012, ch. 672?

A municipality may continue to define lot size in terms of “net lot area.”

My town has an out-of-date comprehensive plan that does not accurately reflect designated growth areas. If this is the case, does PL 2021, ch. 672 still apply to my municipality? Also, what if my town’s comprehensive plan does not align with PL 2021, ch. 672?

PL 2021, ch. 672 still applies to municipalities with outdated comprehensive plans. The Department encourages municipalities to use their best judgment when determining where growth areas are. The Department also encourages municipalities to update comprehensive plans to better reflect housing goals for the future.

Can a municipality adopt definitions that are different from the definitions adopted in the Department’s rule?

The Department recognizes that municipalities have their own adopted definitions for common land use planning terms. To comply with P.L. 2021, ch. 672 municipalities need not adopt the rule language or the statutory language verbatim. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the need of a particular community. Municipalities may wish to adopt definitions that are more permissive, provided that such ordinances are equally or more effective in achieving the goal of increasing housing opportunities.

Is a municipality required to allow development on nonconforming lots or nonconforming uses?

LD 1706 amended 30-A M.R.S. § 4364-B to clarify that a municipality must allow an accessory dwelling unit on a lot that does not conform to the municipal zoning ordinance only if the accessory dwelling unit does not further increase the nonconformity, meaning the accessory dwelling unit does not cause further deviation from the dimensional standard(s) creating the nonconformity, excluding lot area.

For 30-A MRS §§ 4364 and 4364-A, a municipality may allow development: on nonconforming lots; within nonconforming structures; or on lots/structures with nonconforming uses.

What happens if a municipality is unable to pass ordinances to comply with PL 2021, ch. 672 or does not have ordinances?

If a municipality is unable to pass ordinances to comply, the legislation preempts municipal home rule authority. The Department encourages that municipalities instead work to create ordinances that meet their own needs. Municipalities may be more permissive with ordinance language, as long as those ordinances meet the goals of P.L. 2021, ch. 672. Furthermore, the Department strongly encourages municipalities to speak with legal counsel with concerns about compliance to avoid potential litigation.

My municipality is concerned about the impact of increased development on local water supplies. Does PL 2021, ch. 672 allow municipalities to restrict development based on this concern?

PL 2021, ch. 672 requires that the owner of a housing structure or development provide written verification to the municipality that each unit or structure is connected to “adequate water and wastewater services” prior to certifying for occupancy (or equivalent

procedure). 30-A M.R.S. §§ 4364(5), 4364-A(4), 4364-B(7). Shoreland zoning, subsurface wastewater disposal rules, and state plumbing codes all still apply to developments. The Department encourages a municipality to work with their Code Enforcement Officer, if applicable, to determine that water and wastewater services meet all applicable state and local regulations for the proposed housing unit(s).

AFFORDABLE HOUSING DEVELOPMENT (30-A M.R.S. § 4364)

How does a municipality ensure long-term affordability of an affordable housing development?

PL 2021, ch. 672 states that “[b]efore granting final approval of an affordable housing development, including but not limited to issuing an occupancy permit, a municipality shall require that the owner of the affordable housing development have executed a restrictive covenant, recorded in the appropriate registry of deeds, for the benefit of and enforceable by a party acceptable to the municipality . . .” 30-A M.R.S. § 4364(3). A municipality may enforce the restrictive covenant to ensure long-term affordability, but it is not a requirement for a municipality to do so. The Department encourages municipalities to reach out to legal counsel or MaineHousing with questions about maintaining long-term affordability and restrictive covenants.

What if a municipality does not issue certificates of occupancy?

LD 1706 amended LD 2003 to clarify that certificates of occupancy are one way to approve an affordable housing development. However, a municipality does not have to issue certificates of occupancy to comply with 30-A MRS § 4364. Municipalities have discretion to determine how best to grant final approval for an affordable housing development.

Does the Affordable Housing Density section (30-A M.R.S. § 4364), apply only to municipalities that have adopted density requirements? What about municipalities that have adopted form-based codes?

The density bonus in 30-A M.R.S. §4364(2) only applies to lots in zoning districts that have density requirements. Lots in zoning districts that do not have density requirements, including lots in zoning districts that utilize a form-based code, are not subject to 30-A M.R.S. § 4364(2).

Does a municipality have to comply with parking requirements for an affordable housing development?

If a municipality is subject to the requirements listed in 30-A M.R.S. § 4364, it must comply with the parking requirements for an affordable housing development.

“UP TO 4 DWELLING UNITS” (30-A M.R.S. § 4364-A)

Does 30-A M.R.S. § 4364-A apply to small lots?

The applicability of this section is dependent upon a variety of factors. A municipality generally must allow between 2-4 units on a lot where housing is permitted. However, 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 apply resulting in a municipality prohibiting the addition of units on a lot. The Department recommends lot owners speak with their municipal code enforcement officer or municipal planner with specific questions about their lot.



30-A M.R.S. § 4364-A(2) allows the addition of “up to 4 dwelling units per lot if that lot does not contain an existing dwelling unit.” Does this mean that the lot must be vacant or can a commercial unit exist on the lot?

A lot does not have to be vacant for 30-A M.R.S. § 4364-A(2) to apply. A lot could contain a commercial unit or another type of structure and be eligible for additional units subject to the requirements of 30-A M.R.S. § 4364-A(2).

What is the difference between an ADU and dwelling unit? How can a municipality differentiate between constructing one ADU on a lot versus allowing an individual to build multiple dwelling units on a lot?

PL 2021, ch. 672 allows municipalities the discretion to determine the difference between an ADU and a dwelling unit, for the purposes of determining which statutory provisions of PL 2021, ch. 672 apply to a particular lot. Municipalities have the discretion to determine whether a proposed housing structure is an ADU or a dwelling unit.

Can a municipality allow a lot owner to take advantage of both the ADU section and the “Up to 4 Dwelling Unit” section on one lot?

A municipality may allow a lot owner to “double-dip” and build both an ADU and additional dwelling units on a lot. However, this is not a requirement.



ACCESSORY DWELLING UNIT (30-A M.R.S. § 4364-B)

Some towns have “Accessory Apartments” or other terminology similar to “Accessory Dwelling Unit”. Is this difference in terminology acceptable?

Municipalities need not adopt the definition of “Accessory Dwelling Unit” in rule verbatim. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the need of a particular community and the minimum requirements of the statutes. Municipalities may wish to adopt definitions and terms that are more permissive, provided that such ordinance and definitions are equally or more effective in achieving the goals of this legislation of increasing housing opportunities. If a municipality does not adopt terms and definitions to comply with P.L. 2021, ch. 672, this legislation and rule will preempt municipal home rule authority.

How does recent “tiny home” legislation, LD 1530 (30-A M.R.S. § 4363), relate to PL 2021, ch. 672?

Municipalities can regulate tiny homes when creating or updating ordinances to comply with PL 2021, ch. 672. The Department encourages municipalities interested in regulating “tiny homes”, to create a separate provision for the regulation of “tiny homes” to differentiate “accessory dwelling unit” from “tiny homes” as defined in LD 1530. The Department encourages municipalities to reach out to legal counsel to better understand the state law requirements for tiny homes.

Can my municipality impose owner-occupancy requirements for ADUs?

PL 2021, ch. 672 does not establish an owner-occupancy requirement for accessory dwelling units but municipalities have discretion to establish owner-occupancy requirements. The Department encourages municipalities to think about regulating short-term rentals in a separate ordinance, however, to avoid restricting the development of accessory dwelling units on permitted lots.

Does a municipality have to comply with the parking requirements for the addition of an ADU?

30-A M.R.S. § 4364-B prohibits a municipality from establishing additional parking requirements for an ADU beyond the parking requirements of the single-family dwelling unit on the lot where the accessory dwelling unit is located. A municipality cannot require additional parking requirements for the addition of an ADU. If a municipality has a current ADU ordinance in place that has parking requirements, those parking requirements must be updated.

Does the ADU allowance only apply to a lot that already contains a single-family dwelling or can a town permit ADUs on vacant lots, lots with commercial structures or lots with multi-family units?

At a minimum, Section 4364-B requires municipalities to allow one ADU on the same lot as a single-family dwelling unit. Municipalities, however, can be more permissive by allowing, for example, multiple ADUs on one lot, an ADU on a lot with an existing multifamily structure, or an ADU on a lot with an existing duplex.

What is the difference between an ADU and dwelling unit? How can a municipality differentiate between constructing one ADU on a lot versus allowing an individual to build multiple dwelling units on a lot?

PL 2021, ch. 672 allows municipalities the discretion to determine the difference between an ADU and a dwelling unit, for the purposes of determining which statutory provisions apply to a particular lot. Municipalities have the discretion to determine whether a proposed housing structure is an ADU or a dwelling unit.

Can a municipality allow a lot owner to take advantage of or “double dip” on the ADU section and the “Up to 4 Dwelling Unit” section on one lot?

A municipality may allow a lot owner to “double-dip” and take advantage of both the ADU section and dwelling unit section. This is not a requirement.

Does a municipality have to allow all three placements of ADUs (within, attached to, or a new structure) to be built in its ADU ordinance per the language in 30-A M.R.S. 4364-B(2)?

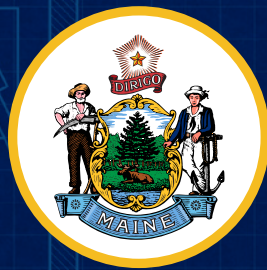
A municipality must allow an ADU to be built on a lot with an existing single-family unit. A municipality must allow a developer/homeowner the following three options for placement of this ADU regardless of density requirements: (1) within an existing structure; (2) attached or sharing a wall with an existing structure; or (3) as a new structure on a lot. A municipality, may, but is not required to, allow an accessory structure (such as a garage, shed, or barn) to be remodeled to include an ADU.



**Still have questions?
Need more information?**



VISIT: [MAINE.GOV/DECD/HOUSINGOPPORTUNITYPROGRAM](https://www.maine.gov/decd/housingopportunityprogram)



**MAINE DEPARTMENT OF
ECONOMIC AND COMMUNITY
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