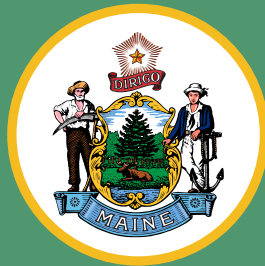


LD 2003 Guidance



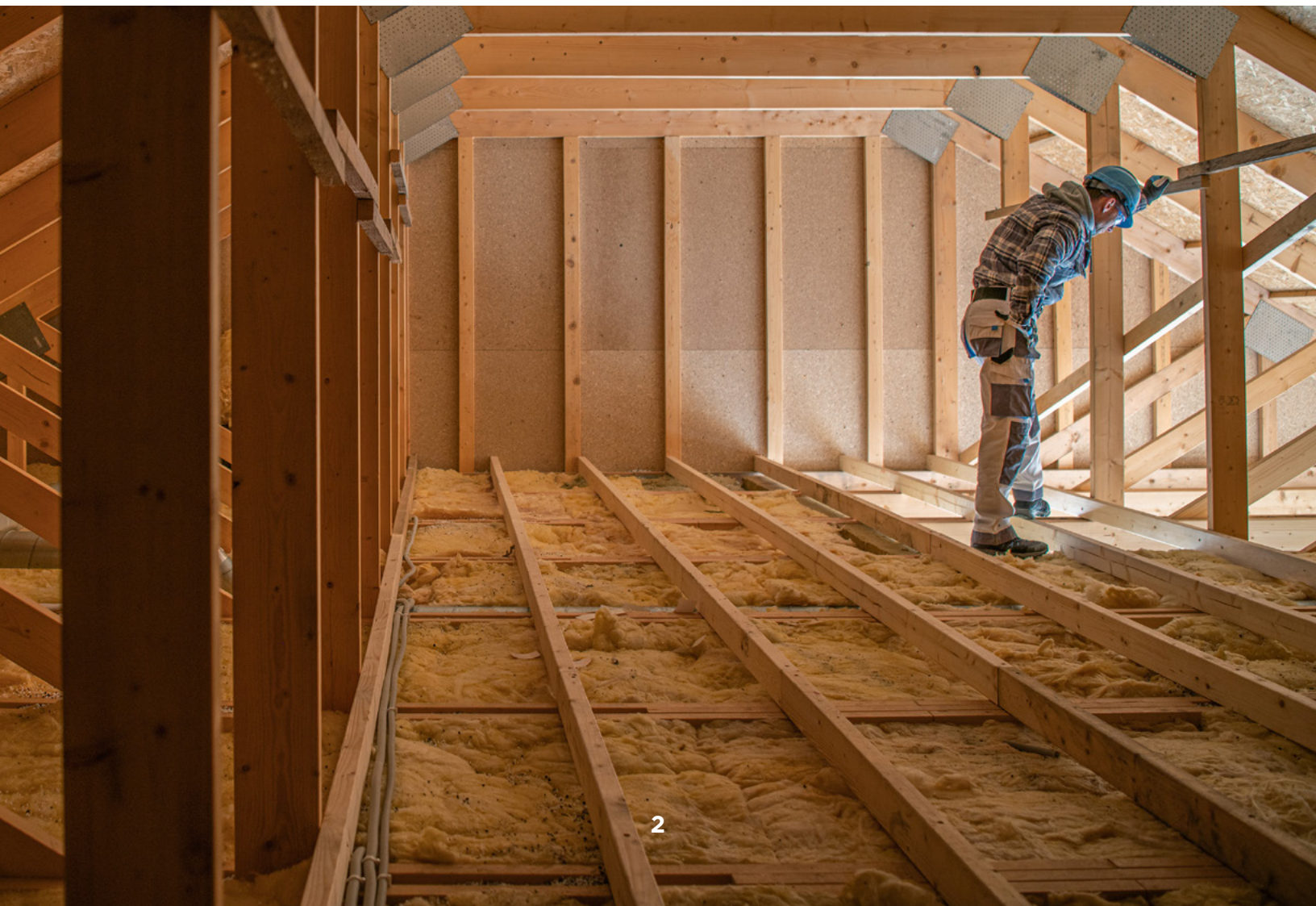
MAINE DEPARTMENT OF
ECONOMIC AND COMMUNITY
DEVELOPMENT

LD 2003 Guidance

“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.

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. While it is not legally binding or intended to serve as a substitute for the language of LD 2003 or the rules that will be adopted under the law, this guidance represents the interpretation of LD 2003 and its requirements by the state agencies that are responsible for its implementation.





LD 2003 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 housing is 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 LD 2003 WENT INTO EFFECT ON AUGUST 8, 2022, SOME ELEMENTS OF THE LAW ARE NOT REQUIRED TO BE APPLIED UNTIL JULY 1, 2023

LD 2003 in Brief			
<p>Effective Aug. 8, 2022</p> <p>Statewide Housing Production Goals</p> <p>(5 MRSA §13056, sub-§9)</p>	<p>Effective Aug. 8, 2022</p> <p>Municipal Role in Fair Housing/ Short Term Rentals</p> <p>(7 30-A MRSA §4364-C)</p>	<p>Effective July 1, 2023</p> <p>Accessory Dwelling Units</p> <p>(6 30 A MRSA §4364-B)</p>	
	<p>Effective July 1, 2023</p> <p>Affordable Housing Density in Growth Areas Bonus</p> <p>(4 30-A MRSA §4364)</p>	<p>Effective July 1, 2023</p> <p>Two to Four Units</p> <p>(5 30-A MRSA §4364-A)</p>	

IN GENERAL, AS LONG AS THESE ACTIONS ARE CONSISTENT WITH LD 2003, 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 MRSA §4364

This section creates an automatic density bonus for certain affordable housing developments. To qualify for this bonus, the development must:

1. Be approved after June 30, 2023
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 number of spaces would generally be rounded up.



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 more than half 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 more than half 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](#)

QUESTIONS AND ANSWERS ON AFFORDABLE HOUSING DENSITY BONUS

What is meant by “multifamily dwellings?”

“Multifamily dwellings” will be defined in rulemaking, but in planning practice generally applies to three units or more.

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

Under a local zoning code, the “base density that is otherwise allowed” is the number of dwelling units that might be allowed in a list of uses, and/or the maximum number of units allowed based on dimensional requirements, such as lot area per dwelling unit.

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?

This will be addressed in rulemaking.

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

This will be addressed in rulemaking.

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.



Residential Areas, Generally; Up to 4 Dwelling Units

30-A MRSA §4364-A

This section requires municipalities to allow multiple dwelling units on parcels where housing is allowed, provided evidence of sufficient water and wastewater capacity exists, beginning on July 1, 2023. Municipalities may not apply different dimensional requirements to lots with more than one housing unit on them than they would to a lot with one housing 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.

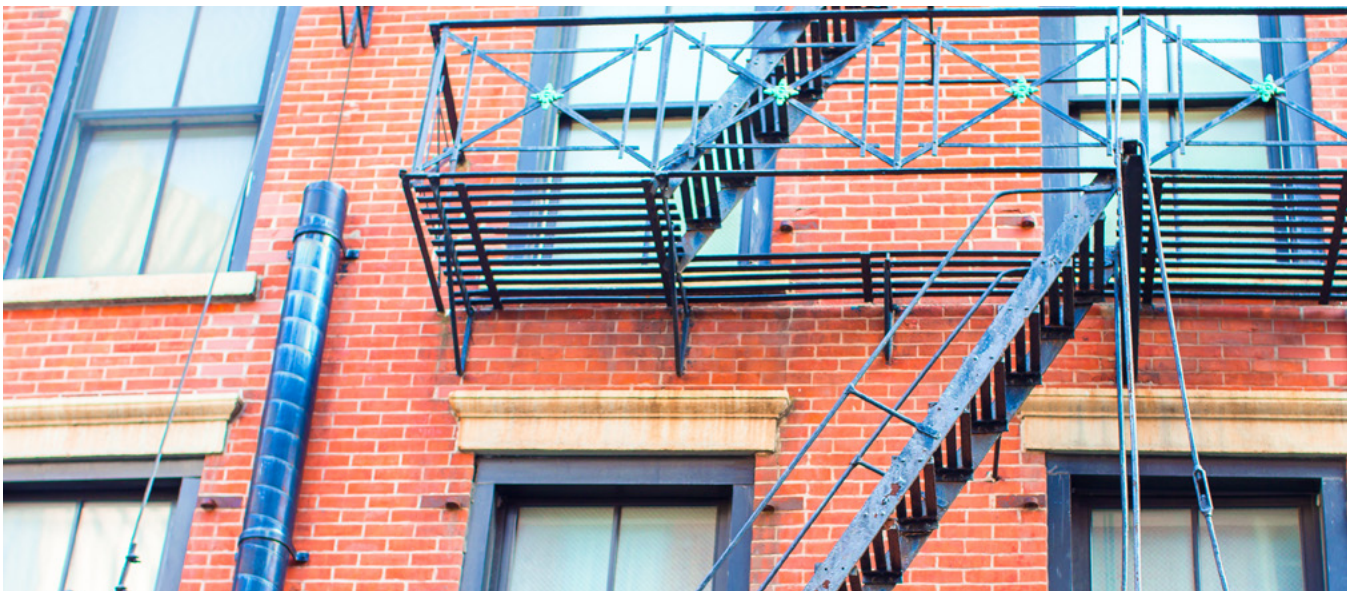
The number of units allowed under this section depends on a few factors:

- 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 housing, 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.

What if a municipality does not use Certificates of Occupancy?

Subsection 4 says that the municipality will “certify [a] structure for occupancy.” This requirement should be met for new housing developments under this section the same way they would be for any other housing.

What is meant by “potable” water?

This will be addressed in rulemaking.

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

Housing would be considered allowed in that area for the purposes of subsection 1. This will be further addressed in rulemaking.

What does “attached to an existing structure” mean?

Local ordinance can define “attached” but it would generally mean having physically connected finished spaces, not just connected via a common porch, breezeway or foundation.

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.”



Residential Areas

Empty Lot Where Housing Is Already Allowed

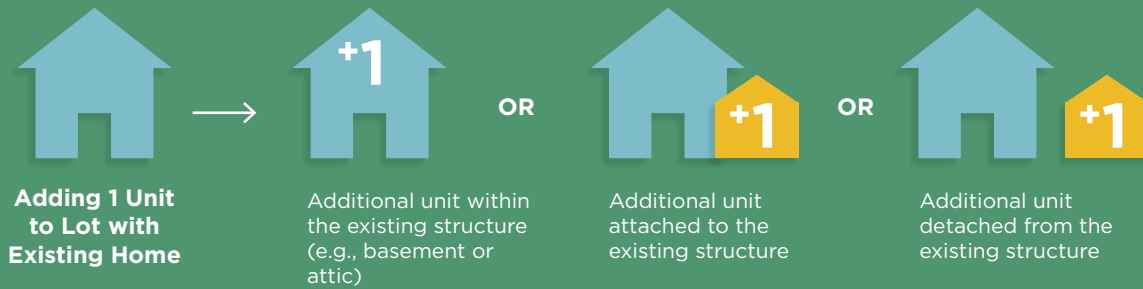


NOTE: The three and four units can be within one structure or multiple structures.

THREE AND FOUR UNITS ALLOWED IF:

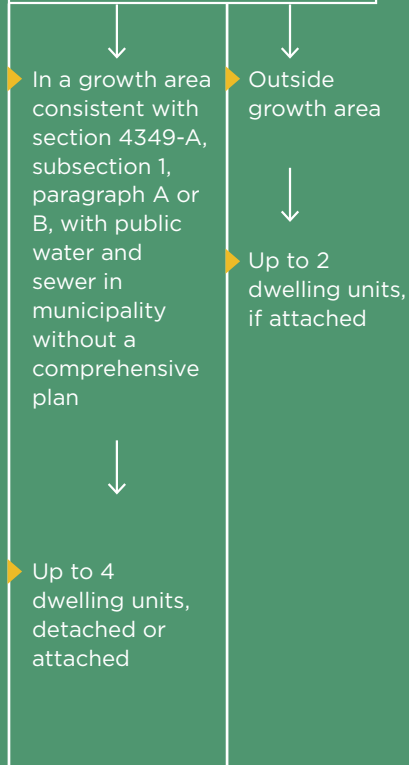
- Located in "growth area" consistent with section 4349-A, subsection 1, paragraph A or B.
- Located in area with existing water/sewer capabilities in towns without comprehensive plans.

Existing Home



What Can Be Built On This Lot?

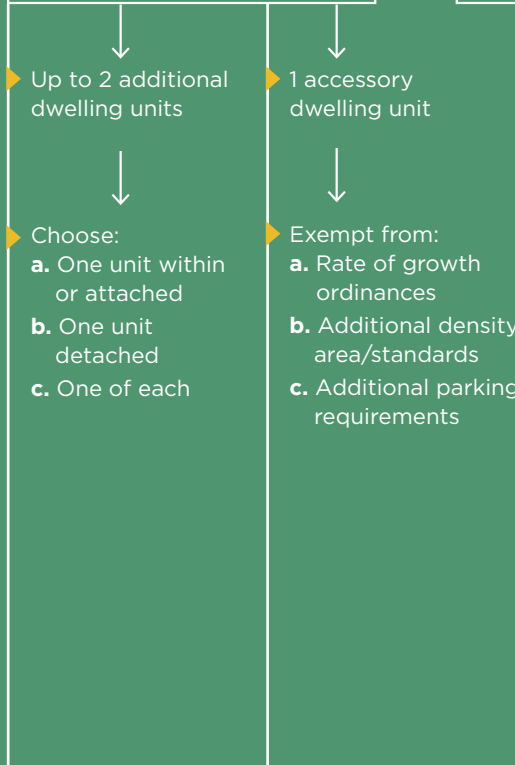
ON LAND WITH ZERO EXISTING UNITS



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 essentially allows any lot with a single-family dwelling in an area where housing is permitted to have one accessory dwelling unit (ADU) as well, effective July 1, 2023. 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 setback and dimensional requirements 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 setback and dimensional 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.

OTHER MUNICIPAL POWERS

Municipalities may establish an application and permitting process for ADUs 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, shoreland zoning still applies, as do requirements to verify adequate water and wastewater capacity.

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.

QUESTIONS AND ANSWERS ON ACCESSORY DWELLING UNITS

How is an ADU defined?

The law does not define ADUs. There is a definition in 30-A MRSA §4301 and many communities define them in local ordinances. Rulemaking will clarify which definition to use.

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?

This will be addressed in rulemaking.

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?

This will be addressed in rulemaking.

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 if a community does not use Certificates of Occupancy?

Subsection 4 says that the municipality will “certify [a] structure for occupancy.” This requirement should be met for new housing developments under this section the same way they would be for any other housing, whether through a formal Certificate of Occupancy or otherwise.

What is meant by “potable” water?

This will be addressed in rulemaking.

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

Housing would be considered allowed in that area for the purposes of subsection 1. This will be further addressed in rulemaking.

What does “attached to an existing structure” mean?

Local ordinance can define “attached” but it would generally mean having physically connected finished spaces, not just connected via a common porch, breezeway or foundation.

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.



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

MRSA §13056, sub-§9 AND 30-A MRSA §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.

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 sections of LD 2003 would apply.

How will LD 2003's requirements be related 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. In addition, the Department of Economic & Community Development will be hiring staff to provide technical assistance to communities.

Can developers “double count” bonuses from various sections?

This issue is outlined in §4364-A Section 2.A. and §4364-B Section 3.B. It will be further addressed for applicability to §4364 in rulemaking.

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 “technical” – meaning they “establish standards of practice or procedure for the conduct of business with or before an agency” and can be approved administratively. Rulemaking is expected to begin in the fall of 2022.

FUNDING FOR TECHNICAL ASSISTANCE

While not part of LD 2003, the supplemental budget for Fiscal Years 2022 and 2023 included Section U-1. 5 MRSA §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 will consist of three general areas. “Service Provider grants” will be awarded to experienced service providers to support municipal ordinance development, technical assistance, and public process and community engagement support, and may encourage regional coordination. Community Housing Incentive Program grants will be funded to municipalities directly in two categories:

- Community housing planning grants to be awarded through a competitive process to municipalities to support the creation of housing development plans, and ordinance and policy amendments to support those plans. The grants will be awarded for a period of up to three years, with progress reports each year.
- Community housing implementation grants to be awarded through a competitive process to support the implementation of community housing priorities.

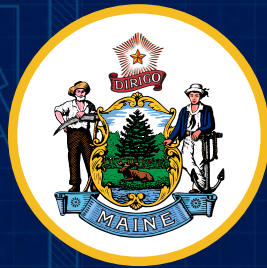
Finally, the Department of Economic and Community Development will be adding staff to provide direct technical assistance to communities.

The Housing Opportunity Program is currently undergoing internal development and is expected to be launched in the coming months.

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



VISIT: [MAINE.GOV/DECD/HOUSING-LEGISLATION](https://www.maine.gov/decd/housing-legislation)



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