

Notice of Agency Rulemaking Proposal

AGENCY: 19-100 Department of Economic and Community Development

CHAPTER NUMBER AND TITLE: Chapter 5, Housing Opportunity Program: Municipal Land Use and Zoning Ordinance Rule

TYPE OF RULE (*check one*): Routine Technical Major Substantive

PROPOSED RULE NUMBER:

BRIEF SUMMARY:

This new proposed rule sets forth provisions which require municipalities to create or amend local ordinances in accordance with P.L. 2021, ch. 672. P.L. 2021, ch. 672 requires 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. P.L. 2021 also directs the Department to adopt rules to administer certain sections of the law.

Date, time and location of PUBLIC HEARING (*if any*): Wednesday, March 1, 2023, at 1pm. This public hearing will be held by Zoom. To register and receive the Zoom link, please use this link: https://mainestate.zoom.us/meeting/register/tZEgf-2srjMqEtCNTOPsCq4_Buoc7dRGTvVK

COMMENT DEADLINE: Monday, March 13, 2023, 5pm

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, email*):

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CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): NA

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): This rule requires municipalities to update land use and zoning ordinances in accordance with P.L. 2021, ch. 672. The Department was allocated funding to award grants to service providers for municipal ordinance development to comply with P.L. 2021, ch. 672.

STATUTORY AUTHORITY FOR THIS RULE: P.L. 2021, ch. 672 codified at 30-A M.R.S. §§ 4364, 4364-A, 4364-B

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*):

AGENCY WEBSITE: www.maine.gov/decd.

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: denise.garland@maine.gov

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

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.

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. Municipalities must adopt ordinances that are consistent with and no more restrictive than the requirements of P.L. 2021, ch. 672, codified at 30-A M.R.S. §§ 4364, 4364-A, 4364-B, and this Chapter.
2. 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 must adopt definitions that are consistent with and no more restrictive, than the definitions outlined below. The following terms shall have the definitions hereinafter set forth:

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.
4. For purposes of this definition, "housing costs" means:
 - 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.

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.

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.

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 multimunicipal 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.

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.

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 described in a deed or other legal instrument.

Multifamily dwelling. "Multifamily dwelling" means a building 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.

Principal structure. "Principal structure" means a building or structure in which the main or primary use of the structure is conducted.

Restrictive covenant. "Restrictive covenant" means a provision in a deed 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.

Single-family dwelling unit. "Single-family dwelling unit" means a building 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. If a municipality has not adopted density requirements, this section applies only if the development meets the requirements listed in Section 2(B)(1)(a)-(e).

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 units 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 as of July 1, 2023;
 - 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 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. 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.

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 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. 4230-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. The additional dwelling unit(s) may be:
 - i. Within the existing structure or attached to the existing structure;
 - ii. 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, municipal 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 or Section 4, the lot is not eligible for any additional increases in density requirements except as allowed by the municipality.
- 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.

- b) A municipality may establish requirements for a lot area per dwelling unit as long as the additional dwelling units do not require more land area per unit than the first unit.

4. Water and Wastewater

- a) The municipality must require an owner of a housing structure to provide written verification that each structure is 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

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.

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

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 or Section 3, the lot is not eligible for any additional increases in density, except as allowed by the municipality.

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 or sharing a wall with 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 apply.
- c) A municipality may establish more permissive dimensional requirements for an accessory dwelling unit.
- d) An accessory dwelling unit must be allowed on a lot regardless of whether the lot conforms to existing dimensional requirements of the municipality. Any new structure constructed on the lot to be an accessory dwelling unit must meet the existing dimensional requirements as required by the municipality for an accessory structure.
- e) 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 each unit of the accessory dwelling unit is 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.

STATUTORY AUTHORITY: P.L. 2021, ch. 672 codified at 30-A M.R.S. §§ 4364, 4364-A, 4364-B.

EFFECTIVE DATE:

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
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