

**Chapter 1: HOUSING OPPORTUNITY PROGRAM: MUNICIPAL LAND USE AND ZONING ORDINANCE RULE**

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**Summary:** This chapter sets forth the provisions which require municipalities to create or amend local ordinances to allow for (1) additional density for affordable housing developments in certain areas; (2) multiple dwelling units on lots designated for housing residential uses; ~~and~~ (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit or multi-unit residential structure in any area where housing is residential uses are permitted; (4) residential uses in commercial zones; and (5) one off-street motor vehicle parking space per dwelling unit for a residential development in designated growth areas.

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

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

1. This chapter sets forth the provisions which require municipalities to create or amend local ordinances to allow for (1) additional density for affordable housing developments in certain areas; (2) multiple dwelling units on lots designated for housing residential uses; and (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit or multi-unit residential structure in any area where housing is permitted, residential uses are permitted; (4) residential uses in commercial zones; and (5) one off-street motor vehicle parking space per dwelling unit for a residential development in designated growth areas.
2. Municipalities need not adopt this rule language or the statutory language in 30-A M.R.S. §§ 4364, 4364-A, to 4364-B, and 4364-D word for word. The Department Office encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community and the minimum requirements of ~~this~~ legislation. Municipalities may wish to adopt ordinances that are more permissive, provided that such ordinances are equally or more effective in achieving the goal of increasing housing opportunities. If a municipality does not adopt ordinances to comply with 30-A M.R.S. §§ 4364, 4364-A, to 4364-B, and 4364-D, this legislation will preempt municipal home rule authority.
3. These rules do not:
  - a) Abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this rule, as long as the agreement does not abrogate

rights pursuant to the United States Constitution or the Constitution of Maine;

- b) Exempt a subdivider from the requirements in Title 30-A Chapter 187 subchapter 4;
- c) Exempt an affordable housing development, a dwelling unit, a mixed-use development, or an 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;
- d) Abrogate or annul minimum lot size requirements under Title 12 Chapter 423-A; or
- e) Apply to a lot or portion of a lot that is within the watershed of a water source located in Lewiston or Auburn and that is used to provide drinking water by a water utility that has received a waiver from filtration pursuant to 40 C.F.R. §§ 141.70 to 141.76, as determined by the Maine Department of Health and Human Services.

## B. DEFINITIONS

All terms used but not defined in this chapter shall have the meanings ascribed to those terms in Chapter 187 of Title 30-A of the *Maine Revised Statutes*, as amended.

Municipalities need not adopt the terms and definitions outlined below word for word. The Department Office encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community. Municipalities may wish to adopt terms and definitions that are more permissive, provided that such terms and definitions are equally or more effective in achieving the goal of increasing housing opportunities.

**Accessory dwelling unit.** "Accessory dwelling unit" means a self-contained dwelling unit located within, attached to or detached from a single-family dwelling unit or multi-unit residential structure 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 51% or more of the units in the development 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 51% or more of the units in the development without spending more than 30% of the household's monthly income on housing costs.

3. For purposes of this definition, “housing costs” include, but are not limited to:
  - a) For a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, and/or trash) that the household pays separately from the rent; and
  - b) For an ownership unit, the cost of mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner’s insurance, condominium fees, and homeowners’ association fees.

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

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

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

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

**Commercial use.** “Commercial use” means the use of lands, buildings or structures the intent or result of which is the production of income from the buying or selling of goods or services. Commercial use does not include a home-based business, the rental of a single dwelling unit on a single lot or incidental sales of goods or services as may be allowed by permit or standard. For purposes of this rule, this definition does not include areas zoned exclusively for industrial uses.

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

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

**Conditional use.** “Conditional use” means a use permitted on a lot in a zoning district by a municipal legislative body, subject to certain conditions not generally applicable to other lots located in that zoning district.

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

**Designated growth area.** “Designated growth area” means an area that is designated in a municipality's or multi-municipal region's comprehensive plan as suitable for orderly residential, commercial, or industrial development, or any combination of those types of development, and into which most development projected over ten (10) years is directed. ~~Designated growth areas may also be referred to as priority development zones or other terms with a similar intent. If a municipality does not have a comprehensive plan, “designated growth area” means an area served by a public sewer system that has the capacity for the growth related project, an area identified in the latest Federal Decennial Census as a census designated place or a compact area of an urban compact municipality as defined by 23 M.R.S. § 754.~~

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

**Duplex.** “Duplex” means a structure containing two (2) dwelling units.

**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. a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.~~

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

**Implementation date.** “Implementation date” means:

- ~~1. January 1, 2024, for municipalities for which ordinances may be enacted by the municipal officers without further action or approval by the voters of the municipality; and~~
- ~~2. July 1, 2024, for all other municipalities.~~
- ~~3. For purposes of this definition, “further action or approval by the voters of the municipality” means municipalities that have a town meeting form of government.~~

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

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

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

**Municipality.** "Municipality" means a city or a town, excluding all unorganized and deorganized townships, plantations, and towns that have delegated administration of land use controls to the Maine Land Use Planning Commission pursuant to 12 M.R.S. § 682(1).

**Municipal fire official.** "Municipal fire official" means a municipal fire chief as described in 30-A M.R.S. § 3153.

**Parking agreement.** "Parking agreement" means a legally binding agreement between a property developer and the owner of an off-site parking facility to provide required parking spaces within 0.25 miles of a residential development site.

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

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

**Quadplex.** "Quadplex" means a structure containing 4 (four) dwelling units.

**Residential use.** "Residential use" means a use permitted in an area by a municipal legislative body to be used for human habitation. Residential uses may include single-family, duplex, triplex, quadplex, and other multifamily housing; condominiums; time-share units; and apartments. For purposes of this rule, the following uses are not included under this definition, unless otherwise allowed in local ordinance: (1) Dormitories; (2) Congregate living facilities; (3) Campgrounds, campsites, hotels, motels, beds and breakfasts, or other types of lodging accommodations; and (4) Transient housing or short-term rentals.

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

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

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

**Story.** “Story” means the portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. A story is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

**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).

**Triplex.** “Triplex” means a structure containing three (3) dwelling units.

**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

1. This Section requires municipalities to allow an automatic density bonus for certain affordable housing developments. ~~approved on or after the implementation date, as outlined below.~~ This section only applies to lots in zoning districts that have adopted density requirements.
2. Municipalities must comply with the requirements of this Section by July 1, 2026, for municipalities for which ordinances may be enacted by the municipal officers without further action or approval by the voters of the municipality and July 1, 2027, for all other municipalities. Further action or approval by the voters of the municipality means municipalities that have a town meeting form of government.

### 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 51% or more a majority of the total units on the lot are affordable;
  - b) Is in a designated growth area ~~pursuant to 30-A M.R.S. §4349-A(1)(A) as identified in a municipality’s comprehensive plan or (B)~~ or served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system;
  - c) Is located in an area in which multifamily dwellings are allowed per municipal ordinance;

- d) Complies with minimum lot size requirements in accordance with Title 12 Chapter 423-A; and
- e) Owner provides written verification that each unit of the housing development is proposed to be connected to adequate water and wastewater services prior to certification of the development for occupancy or similar type of approval process. ~~Written must include the following:~~
  - i. If a housing unit is connected to a public, special district or other comparable sewer system, written verification includes 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, written verification includes 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. If the local plumbing inspector determines that a septic system is adequate, a municipality may not require additional review or documentation related to the adequacy of wastewater disposal prior to certifying for occupancy or similar type of approval process. 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, written verification includes 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.;
  - iv. If a housing unit is connected to a well, written verification includes 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 final approval of an affordable housing development, including but not limited to issuing an occupancy permit, 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.~~ Allow an affordable housing development to exceed any municipal height restrictions by one story or 14 feet, subject to building permit review and consultation with a municipal fire official or designee regarding the ability to serve with a fire apparatus; and
- ~~3.~~ Require no more than two (2) off-street parking motor vehicle spaces for every three (3) dwelling units of an affordable housing development.

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

## SECTION 3. DWELLING UNIT ALLOWANCE

### A. GENERAL

- 1. This ~~S~~section requires municipalities to allow multiple dwelling units on lots where residential uses are allowed, including as a conditional use, ~~beginning on the implementation date~~, subject to the requirements below. The requirements listed in Section 3 apply to municipalities with and without zoning. Private, state or local standards such as homeowners' association regulations, deed restrictions, ~~lot size~~, set back requirements, density, septic requirements, ~~minimum lot size~~, additional parking requirements, rate of growth ordinances ~~permits permitted by 30-A M.R.S. § 4360~~, shoreland zoning and subdivision law, may also apply to lots.
- ~~2.~~ Municipalities must comply with the requirements of this Section by July 1, 2026, for municipalities for which ordinances may be enacted by the municipal officers without further action or approval by the voters of the municipality and July 1, 2027, for all other municipalities. Further action or approval by the voters of the municipality means municipalities that have a town meeting form of government.

### B. REQUIREMENTS

1. Dwelling Unit Allowance Use Allowed. A municipality must allow, at a minimum, the following, subject to the requirements of this Section and Section 4:
  - a) A total of three (3) dwelling units, attached or detached, on lots where residential uses are permitted, including as a conditional use;
  - b) A total of four (4) dwelling units, attached or detached, if a lot is located in a designated growth area or served by both public, special district, or other centrally managed water system and a public, special district or other comparable sewer system; and
  - c) One of the units described in Section 3(B)(1)(a) and (b) to be an accessory dwelling unit (if applicable).
2. If applicable, the municipality must apply these requirements to a mixed-use development, subject to the requirements listed in Section 6.
3. A municipality may allow more dwelling units or accessory dwelling units than the minimum number of units required.

~~1. If a lot does not contain an existing dwelling unit, municipalities must allow up to four (4) dwelling units per lot if the lot is located in an area in which housing is allowed, meets the requirements in 12 M.R.S. Ch. 423-A, and is:~~

- ~~i. Located within a designated growth area consistent with 30-A M.R.S. §4349 A(1)(A)-(B); or~~
  - ~~ii. Served by both a public, special district or other centrally managed water system and a public, special district or other comparable sewer system in a municipality without a comprehensive plan.~~
- ~~2. If a lot does not contain an existing dwelling unit and does not meet i. or ii. above, a municipality must allow up to two (2) dwelling units per lot located in an area in which housing is allowed, provided that the requirements in 12 M.R.S. Ch. 423-A are met. The two (2) dwelling units may be (1) within one structure; or (2) separate structures.~~

~~If a lot contains one existing dwelling unit, a municipality must allow the addition of up to two (2) additional dwelling units:~~

- ~~i. One within the existing structure or attached to the existing structure;~~
- ~~ii. One detached from the existing structure; or~~
- ~~iii. One of each.~~

~~If a lot contains two existing dwelling units, no additional dwelling units may be built on the lot unless allowed under local municipal ordinance.~~

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

#### 4. Zoning Lot Size and Density Allowances for Residential Lots

- a) If a lot is located in a designated growth area and is served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system:
  - i. A municipality's minimum lot size for that zone or area may not exceed 5,000 square feet.
  - ii. A municipal ordinance shall not require more than 1,250 square feet of lot area per dwelling unit for the first four (4) units.
  - iii. If a municipality chooses to allow more than four (4) units on a lot as described in Section 3(B)(1)(b), a municipality must establish a lot area per dwelling unit requirement of 5,000 square feet of lot area or less for any additional units beyond the first four (4) units.
- b) If a lot is located outside of a designated growth area and is served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system:
  - i. A municipality's minimum lot size in that zone or area may not exceed 5,000 square feet.
  - ii. A municipality's density requirement for that zone or area may not exceed 5,000 square feet of lot area for the first two (2) dwelling units contained within a single structure. Accessory dwelling units are exempt from this density requirement.
  - iii. If the lot meets the minimum lot and density requirements described above, a municipality must allow, at a minimum, four (4) units on the lot as described in Section 3(B)(1)(b).
- c) If a lot is located in a designated growth area without a public, special district or other comparable sewer system, a municipality's minimum lot size requirement may not exceed 20,000 square feet for a single-family dwelling unit as required by Title 12 Chapter 423-A and the density requirements may not be more restrictive than those required by Title 12 Chapter 423-A. A municipality must allow at least four (4) units on a lot, as described in Section 3(B)(1)(b), if the requirements in Title 12 Chapter 423-A are met.
- d) If a lot is located outside a designated growth area and is not served by a public, special district or other comparable sewer system, a municipality's minimum lot size requirement and density requirements for that area or zone must comply with the requirements in Title 12 Chapter 423-A. A municipality may establish minimum lot size and density requirements for

these zones or areas that are more restrictive than the requirements in Title 12 Chapter 423-A. A municipality must allow at least three (3) units, as described in Section 3(B)(1)(a), if the requirements in Title 12 Chapter 423-A are met or exceeded.

- e) If four (4) or fewer dwelling units have been constructed on a lot as a result of the allowances in Section 3 or Section 4, the lot is not eligible for any additional increases in density, unless a municipality is more permissive in local ordinance.

**NOTE:** Below are examples of how the lot size and density requirements in Section 3(B)(4) could apply to a lot.

- A lot owner with a 10,000 square foot lot in a designated growth area with public water and public sewer may construct the following unit types: a quadplex; a triplex; a triplex and an accessory dwelling unit; a duplex, a duplex and an accessory dwelling unit; a single-family dwelling unit; or a single-family dwelling unit and an accessory dwelling unit. A fifth unit may be built if the municipality where the lot is located permits more than four units on a single lot. Private, state or local standards such as homeowners' association regulations, deed restrictions, setback requirements, shoreland zoning and subdivision law, may also apply to this lot.
- A lot owner with a 2,500 square foot lot in a designated growth area with public water and public sewer may not construct any type of dwelling unit, unless the municipality where the lot is located establishes a minimum lot size of less than 5,000 square feet.
- A lot owner with a 5,000 square foot lot with public water and public sewer (but outside a designated growth area) may construct the following unit types: a duplex; a duplex and an accessory dwelling unit; a single-family dwelling unit; or a single-family dwelling unit and an accessory dwelling unit. Private, state or local standards such as homeowners' association regulations, deed restrictions, setback requirements, additional parking requirements, rate of growth ordinances permitted by 30-A M.R.S. § 4360, shoreland zoning and subdivision law, may also apply to this lot.
- A lot owner with a 10,000 square foot lot with public water and public sewer (but outside a designated growth area) may construct the following unit types: a triplex; a triplex and an accessory dwelling unit; a duplex; a duplex and an accessory dwelling unit; a single-family dwelling unit; or a single-family dwelling unit and an accessory dwelling unit. Private, state or local standards such as homeowners' association regulations, deed restrictions, setback requirements, additional parking requirements, rate of growth ordinances permitted by 30-A M.R.S. § 4360, shoreland zoning and subdivision law, may also apply to the lot.

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

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

### 3.5. Dimensional ~~and Setback~~ Requirements

~~A municipal ordinance may not establish dimensional requirements for multiple residential units on a lot that are greater than those required for single-family dwelling units. A municipal ordinance may not establish dimensional requirements, including but not limited to setback requirements, for dwelling units allowed pursuant to this Section that are more restrictive than the dimensional requirements, including but not limited to setback requirements, for single-family housing units.~~

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

~~**NOTE:** For example, if a municipality requires 50 feet of road frontage for the construction of a single-family dwelling unit on a lot, a municipality may not require an additional 50 feet (100 feet in total) of road frontage for the construction of two residential units, attached or detached.~~

### 4.6. Water and Wastewater

- a) The municipality must require an owner of a proposed housing structure to provide written verification that each proposed structure is to be connected to adequate water and wastewater services prior to certification of the development for occupancy or similar type of approval process. ~~Written verification must include the following:~~
  - i. If a housing structure is connected to a public, special district or other comparable sewer system, written verification includes 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, written verification includes 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. If the local plumbing inspector determines that a septic

system is adequate, a municipality may not require additional review or documentation related to the adequacy of wastewater disposal prior to certifying for occupancy or similar type of approval process. 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, written verification includes 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, written verification includes 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. A municipality may not require planning board approval for four (4) or fewer residential dwelling units within a single structure. A municipality must apply the same review process for a single-family dwelling unit to a duplex, a triplex, a quadplex, or an accessory dwelling unit. Planning board approval does not mean code enforcement officer review, site plan review, or other municipal staff review. Establish an application and permitting process for dwelling units;
- 2. Impose fines for violations of building, site plan, zoning, and utility requirements for dwelling units. ~~;~~ ~~and~~
- 3. Establish alternative criteria that are less restrictive than the requirements of Section 3(B)(4) for the approval of a dwelling units only in circumstances in which the municipality would be able to provide a variance pursuant to 30-A M.R.S. §4353(4)(A), (B), or (C). ~~;~~

## SECTION 4. ACCESSORY DWELLING UNITS

### A. GENERAL

- 1. A municipality must allow; ~~effective on the implementation date, at least one (1)~~ accessory dwelling unit to be located on the same lot as a single-family dwelling unit or multi-unit residential structure in any area in which residential uses are permitted, including as a conditional use, subject to the requirements outlined below. The requirements listed in Section 4 apply to municipalities with and without zoning. Private, state or local standards such as homeowners' association

regulations, deed restrictions, set-back requirements, density, septic requirements, shoreland zoning, and subdivision law may also apply to lots.

- ~~2. A municipal ordinance that allows more than one accessory dwelling unit or that allows accessory dwelling units to be established in relation to duplex, triplex, quadplex, and other multi-unit buildings shall be considered consistent with the goals of 30 A.M.R.S. §§ 4364 to 4364 B.~~
2. A municipality may not categorically prohibit accessory dwelling units in the shoreland zone that would otherwise meet the shoreland zoning requirements established by the Department of Environmental Protection, Title 28, Chapter 3, and municipal shoreland zoning ordinances.
3. Municipalities must comply with the requirements of this Section by July 1, 2026, for municipalities for which ordinances may be enacted by the municipal officers without further action or approval by the voters of the municipality and July 1, 2027, for all other municipalities. Further action or approval by the voters of the municipality means municipalities that have a town meeting form of government.

## B. REQUIREMENTS

### 1. Accessory Dwelling Unit Allowance

An accessory dwelling unit may be constructed only:

- a) Within ~~an existing dwelling unit~~ a single-family dwelling unit or multi-unit residential structure on the lot;
- b) Attached to or sharing a wall with a single-family dwelling unit or multi-unit residential structure; or
- c) As a new structure on the lot for the primary purpose of creating an accessory dwelling unit.

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

### 2. Zoning

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

- a) At least one (1) accessory dwelling unit must be allowed on any lot where a single-family dwelling unit or multi-unit residential structure is the principal structure; and
- ~~b) If more than one accessory dwelling unit has been constructed on a lot as a result of the allowance pursuant to this Section, the lot is not eligible for any additional units or increases in density, except as allowed by the~~

~~municipality. Municipalities have the discretion to determine if a dwelling unit or accessory dwelling unit has been constructed on a lot for purposes of this provision; and~~

- e)b) An accessory dwelling unit ~~is~~must be 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 cause further deviation from the dimensional standard(s) creating the nonconformity, excluding lot area.

### 3. ~~Other~~General Requirements

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

- a) A municipality must exempt ~~one (1) an~~ accessory dwelling unit on a lot 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 or attached to a single-family dwelling unit or a multi-unit residential structure, ~~the same structure as a single family dwelling unit or attached to a single family dwelling unit~~, the dimensional requirements, excluding lot area 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 the implementation date, the required setback requirements in local ordinance of the existing accessory or secondary building apply.
- c) A municipality may establish more permissive dimensional requirements ~~and setback requirements~~ for an accessory dwelling unit.
- d) An accessory dwelling unit may not be subject to any additional motor vehicle parking requirements beyond the parking requirements of the single-family dwelling unit or multi-unit residential structure on the lot where the accessory dwelling unit is located.
- e) An accessory dwelling unit that was not built with municipal approval must be allowed if the accessory dwelling unit otherwise meets the requirements for accessory dwelling units of the municipality and under this Section.
- e)f) A municipality must allow the construction of an accessory dwelling unit on a lot even if the owner where the accessory dwelling unit is located does not reside in any dwelling unit on that lot.

### 4. Size

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

## 5. Water and Wastewater

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

- a) If an accessory dwelling unit is connected to a public, special district or other comparable sewer system, ~~written verification includes~~ 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, written verification includes 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. If the local plumbing inspector determines that a septic system is adequate, a municipality may not require additional review or documentation related to adequacy of wastewater disposal prior to certifying for occupancy or similar type of approval process. 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, written verification includes 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, written verification includes 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. A municipality may not establish require planning board approval for four (4) or fewer residential dwelling units within one single structure. A municipality must apply the same review process for a single-family dwelling unit to a duplex, a triplex, a quadplex, or an accessory dwelling unit. - an application and permitting process for accessory dwelling units that does not require planning board approval. Planning board approval does not mean code enforcement officer review, site plan review, or other municipal staff review.
2. A municipality may impose fines for violations of building, zoning and utility requirements for accessory dwelling units; and
3. A municipality may 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).

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NOTE: To address any inconsistencies about accessory dwelling unit municipal review and approval between 30-A M.R.S. § 4364-A(5-A) and 30-A M.R.S. § 4364-B(8)(A), the Office applied the newest statutory language in 30-A M.R.S. 4364-A(5-A) to Section 4(C)(1).

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#### **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.

### **SECTION 5. PARKING REQUIREMENTS FOR RESIDENTIAL DEVELOPMENTS**

This Section applies to all municipalities, with or without zoning.

#### **A. GENERAL PARKING SPACE REQUIREMENTS IN DESIGNATED GROWTH AREAS**

1. A municipality may not require more than one (1) off-street motor vehicle parking space per dwelling unit for a residential development within a designated growth area of a municipality. Residential developments, for purposes of this Section, may include any structures containing residential uses. This Section does not apply to affordable housing developments as described by Section 2 or accessory dwelling units as described in Section 4.
2. A municipality may establish alternative maximum parking space requirements in designated growth areas, as long as those requirements do not require more than one (1) off-street motor vehicle parking space per dwelling unit.
3. A municipality may require additional motor vehicle parking spaces for residential developments outside of designated growth areas.

**B. PARKING DEMAND STRATEGIES IN DESIGNATED GROWTH AREAS**

1. A municipality may require parking demand management strategies in designated growth areas, as long as those strategies do not require more than one (1) off -street motor vehicle parking space per dwelling unit.
2. Parking demand management strategies may include, but are not limited to, timed spots or metered parking, shared parking, or shared vehicle access.

**C. OFF-SITE PARKING AGREEMENTS WITHIN OR OUTSIDE DESIGNATED GROWTH AREAS FOR RESIDENTIAL DEVELOPMENTS**

1. A municipality must allow a developer to satisfy municipal parking requirements through off-site parking agreements with existing parking facilities located with 0.25 miles of a residential development site located both within and outside of designated growth areas.
2. A developer engaged in an off-site parking agreement shall provide to the municipality documentation demonstrating the availability of sufficient capacity at the off-site parking facility, as determined by a professional parking study or similar evidence acceptable to the municipality. A municipality may not impose additional barriers to the approval of such parking agreements beyond verifying the adequacy of the parking supply.

**SECTION 6. RESIDENTIAL UNITS IN AREAS ZONED FOR COMMERCIAL USE**

This Section applies to all municipalities that have zoning. Municipalities must comply with the requirements of this Section by July 1, 2027.

**A. GENERAL**

1. A municipality shall allow residential units within structures located in areas zoned for commercial use. This includes, but is not limited to, permitting residential units in structures that are vacant or partially vacant retail property. For purposes of this Section, a municipality may permit residential uses in areas exclusively zoned for industrial uses.
2. This Section does not override health or safety requirements applicable to residential units located in a municipality. Health and safety requirements may include local land use regulations, Maine Uniform Building and Energy Code regulations, National Fire Prevention Association State Adopted Standards, and state water and wastewater rules.

**B. MUNICIPAL IMPLEMENTATION**

1. A municipality may regulate the following in local ordinance:

- a) Determine that flooding or other natural hazards in the commercial zone makes a building located in an area zoned for commercial use unfit for residential use;
- b) Establish standards that prohibit residential units on the ground floor of a building in an area zoned for commercial use; and
- c) Regulate the siting and design of a residential or mixed-use development established in an area zoned for commercial if the siting and design requirements do not create unreasonable costs or delays. Fees related to municipal administrative costs do not constitute unreasonable costs for purposes of this Section.
- d) Establish requirements that limit the number of residential units in a commercial development.

2. A municipality may not establish requirements in local ordinance in commercial zones that are more stringent than the requirements contained in Sections 2, 3, and 4.

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STATUTORY AUTHORITY:

PL 2021 Ch. 672, PL 2023 Ch. 192, ~~and~~ PL 2023, Ch. 264, - PL 2025, Ch. 364, PL 2025, Ch. 374, PL 2025, 385, codified at 30-A M.R.S. §§ 4364, 4364-A, 4364-B, 4364-D.

EFFECTIVE DATE:

April 18, 2023 – filing 2023-056

AMENDED

October 1, 2023—filing 2023-181

AMENDED

## 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<br>Office of Water<br>Drinking Water Hotline<br>1-800-426-4791  |
| 10-144 C.M.R. Ch. 231, Rules Relating to Drinking Water, May 9, 2016  | Maine Department of Health & Human Services<br>Maine Center for Disease Control & Prevention<br>11 State House Station<br>Augusta, Maine 04333<br>207-287-8016   |
| Resolve 2021, Ch. 82, Resolve, To Protect Consumers of Public Drinking Water by Establishing Maximum Contaminant Levels for Certain Substances and Contaminants | Maine State Legislature<br>Legislative Information Office- Document Room<br>100 State House Station<br>Augusta, ME 04333<br>207-287-1408<br><a href="mailto:webmaster_house@legislature.maine.gov">webmaster_house@legislature.maine.gov</a> |
| 01-672 C.M.R. Ch. 10, Land Use Districts and Standards, <del>December 30, 2022</del> <u>May 13, 2025</u>  | Maine Department of Agriculture, Conservation & Forestry<br>Bureau of Resource Information and Land Use Planning<br>Land Use Planning Commission<br>22 State House Station<br>Augusta, Maine 04333<br>207-287-2631                           |
| 10-144 C.M.R. Ch. 241, Subsurface Wastewater Disposal Rules, <del>August 3, 2015</del> <u>September 23, 2023</u>  | Maine Department of Health & Human Services<br>Maine Center for Disease Control & Prevention<br>11 State House Station<br>Augusta, Maine 04333<br>207-287-8016   |