

PL 2021, ch. 672 (LD 2003) and the Housing Opportunity Program

April 10, 2024



LD 2003 Overview



- Signed by Gov. Mills in April 2022 to increase housing opportunities in Maine by requiring municipalities to amend or create new zoning ordinances.
- Broadly, LD 2003 allows:
 - For additional density for affordable housing developments;
 - The addition of between 2 and 4 dwelling units per lot where residential uses are permitted;
 - Accessory dwelling units on the same lot as a single-family home.
- Includes requirements that the
 - State establish housing production goals; and
 - Municipalities align ordinances with the federal Fair Housing Act and Maine Human Rights Act.
- Established the Housing Opportunity Program in DECD

Why does LD 2003 matter?

- The recently published 2023 Maine Housing Production Needs Study estimated that Maine needs 38,500 units to meet current demands, as well as 38,000+ units to meet future needs.

<i>Region</i>	<i>Historic Underproduction</i>	<i>Future Need (2021 - 2030)</i>	<i>Total</i>
<i>Coastal</i>	21,200	24,200 - 28,000	45,400 - 49,200
<i>Central Western</i>	13,000	9,700 - 11,700	22,700 - 24,700
<i>Northeastern</i>	4,300	4,000 - 6,100	8,300 - 10,400
<i>Maine</i>	38,500	37,900 - 45,800	76,400 - 84,300

- LD 2003 removes regulatory barriers to creating additional housing, while allowing municipalities to:
 - Create land use plans to protect sensitive environmental resources;
 - Regulate housing development based on documented water/wastewater capacity;
 - Enforce shoreland zoning;
 - Create rate of growth ordinances.

What is LD 2003?

Affordable Housing Density Bonus

30-A M.R.S. 4364

Density bonus for affordable housing developments of 2.5x base density; requirement of 2 parking spaces for every 3 units.

To qualify for bonus:

- ✓ 51% or more of the units must be affordable;
- ✓ Development must be located in an area with zoning and multi-family housing; and
- ✓ Development must be located in a designated growth area or served by water/sewer or a comparable system.

Up to Four Dwelling Units

30-A M.R.S. 4364-A

Allows between 2-4 dwelling units on residential lots.

- ✓ Lots without an existing unit:
 - Up to 2 units allowed
 - Exception: up to 4 units if lot is in designated growth area or has water/sewer in a municipality without a comprehensive plan.
- ✓ Lots with 1 existing dwelling unit:
 - Up to 2 units allowed (within, detached, or attached)

Accessory Dwelling Unit

30-A M.R.S. 4364-B

Allows 1 ADU on a lot with an existing single-family home within home, attached to it, or detached.

- ✓ Exempt from zoning density requirements and rate of growth ordinances.
- ✓ No additional parking
- ✓ 190 square feet min; max can be set by municipality

Affordable Housing Density Bonus

30-A M.R.S.
§ 4364

- Creates an automatic density bonus for certain “affordable housing developments.”
- To qualify for bonus, development must
 - ✓ Be approved on or after a municipality's implementation date;
 - ✓ Designate more than 51% of the units in the development as affordable;
 - ✓ Be in a designated growth area as defined by Maine law or served by public water and sewer or a comparable system;
 - ✓ Be in an area in which multifamily dwellings are allowed;
 - ✓ Meet shoreland zoning requirements, meet minimum lots sizes if using subsurface waste disposal, and prove that water and sewer capacity is adequate for the development.

Affordable Housing Density Bonus

30-A M.R.S.
§ 4364

- What is a designated growth area?
 - An area designated in a municipality's comprehensive plan that is suitable for development, especially over the next 10 years.
- If eligibility requirements are met, the affordable housing development qualifies for the following exceptions to zoning requirements:
 - The number of units allowed will be 2.5 times greater than the number allowed for a development not designated as affordable (**base density**).
 - The off-street parking requirements may not exceed 2 spaces for every 3 units.

What does “affordable” mean?

- For rentals: a household with an income at no more than 80% of the area median income for the community, as defined by HUD, must be able to afford at least 51% of the units in the development.
- For homeowners: a household with an income at more than 120% of the area median income for the community, as defined by HUD, must be able to afford at least 51% of the units in the development.
- Affordable units must be restricted through a restrictive covenant for at least 30 years.

Area Median Income:

- updated annually by HUD
- AMI data available on MaineHousing’s website

30-A M.R.S. § 4364-A- Residential Areas; Up to 4 Dwelling Units

- Requires municipalities to allow between 2-4 dwelling units on lots where residential uses are allowed, with evidence of sufficient water and wastewater capacity.
- 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 minimum lot area per dwelling unit can be required, as long as the lot area required is not less for the first unit than for subsequent units.



Number of Units

General Rule: Up to 2 Units

- Generally, a municipality must allow up to 2 dwelling units per lot if that lot does not contain an existing dwelling unit.
- A lot with an existing dwelling unit may have up to two additional dwelling units either attached, detached, or one of each.

Exception: Up to 4 Units

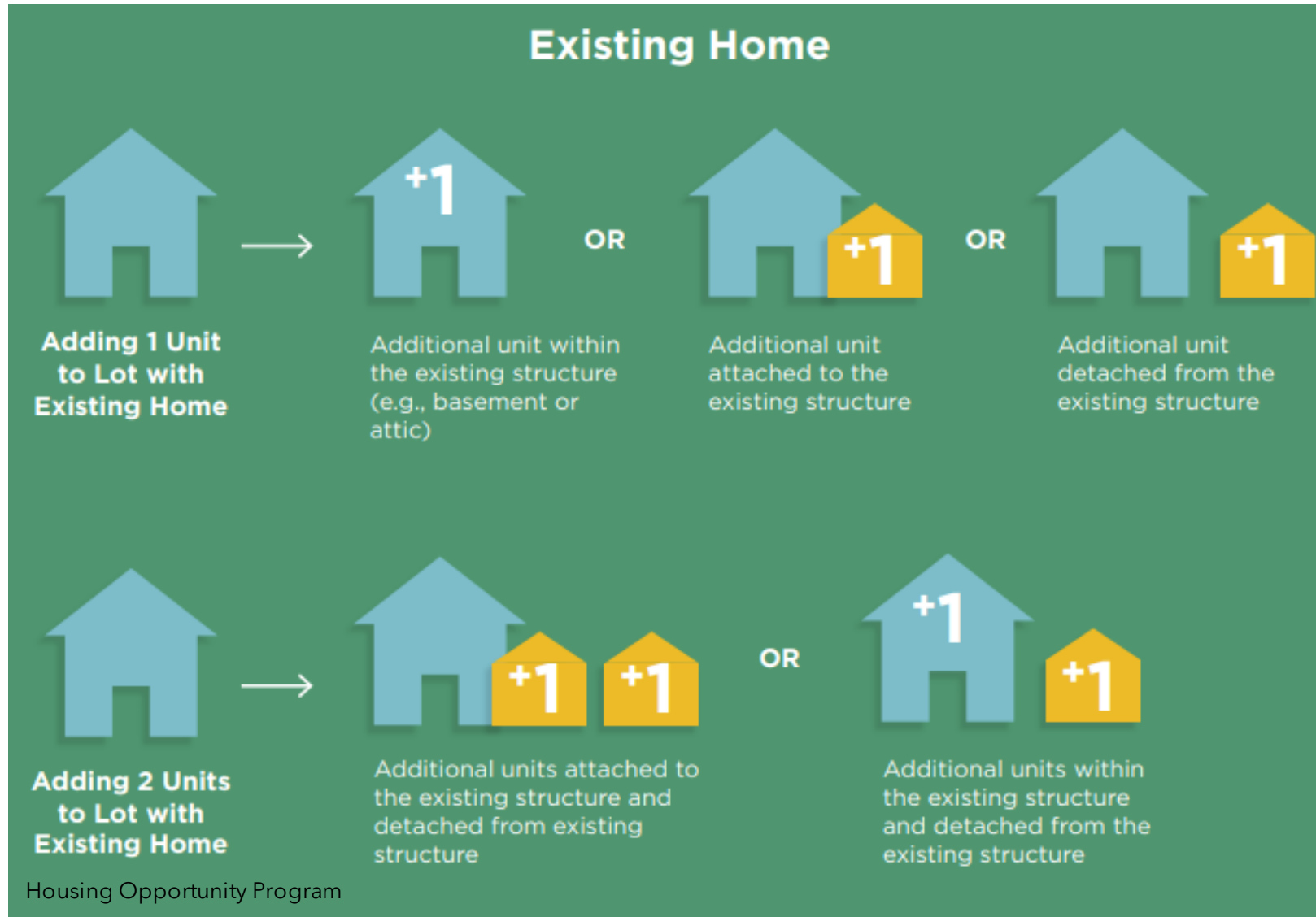
- A municipality must allow up to 4 units on a lot that permits residential uses if the lot does not contain an existing unit and:
 - Is located within a designated growth area; or
 - Is served by public water and sewer (or a comparable designation) in a municipality without a comprehensive plan.

Municipalities may allow more than the minimum number of units described above.

Example 1: Empty Lot*



Example 2: Existing Home



Note: Orange units in diagram are intended to be dwelling units, not accessory dwelling units. 30-A M.R.S. 4364-A **ONLY** governs dwelling units, not accessory dwelling units.

Municipalities can define dwelling unit and accessory dwelling unit in local ordinance to differentiate between the two structures.

ADUs

30-A

M.R.S.

§ 4364-B

- This section allows a lot with a single-family dwelling in an area where residential uses are allowed, including as a conditional use, to have one accessory dwelling unit.
- The ADU can be:
 - Within the existing home;
 - Attached to it; or
 - A new structure.
- An ADU is exempt from zoning density requirements but the dimensional requirements, including setback requirements, for a single-family home continue to apply unless the municipality makes them more permissive.

ADUs

30-A

M.R.S.

§ 4364-B

- A municipality cannot require additional parking for the addition of an ADU (except those allowed for the single-family unit).
- ADUs must be at least 190 square feet in size. Municipalities can set a maximum size.
- Municipalities may establish an application and permitting process for ADUs that does not require planning board approval.
- An ADU is permitted on a lot that does not conform to the municipal zoning ordinance if the accessory structure does not further increase the nonconformity.
- Municipalities may regulate short term rentals in local ordinance.

Other land use standards to consider

- Valid and enforceable easements, covenants, deed restrictions and other agreements or instructions between private parties still apply, as long as the agreement does not restrict constitutional rights.
- Subdivision law may still apply to lots .
- Shoreland zoning still applies to lots located within the shoreland zone.
 - Municipalities cannot categorically prohibit ADUs in the shoreland zone but municipal shoreland zoning ordinances *may* restrict the addition of an ADU.
- Developments must comply with minimum lot size requirements in accordance with Title 12, chapter 423-A, as applicable.
- All units must be connected to adequate water and wastewater services before the municipality may certify the development for occupancy.

LD 1706, An Act to Clarify Statewide Laws Regarding Affordable Housing and ADUs

- This legislation changed the implementation date for municipal compliance to the following:
 - **January 1, 2024**, for municipalities that do not use town meeting to adopt ordinances; and
 - **July 1, 2024**, for all other municipalities
- In addition, the legislation clarified the following:
 - A municipality can't prohibit an ADU in the shoreland zone but shoreland zoning may restrict ADU development on a lot;
 - ADUs are allowed on nonconforming lots if the ADU does not further increase the nonconformity;
 - Illegal ADUs must be allowed if the ADU otherwise meets the municipal requirements in ordinance;
 - ADUs and additional dwelling units are permitted on lots where residential uses are allowed, including as a conditional use; and
 - 51% or more of the units in an affordable housing development must be affordable for a developer to take advantage of the density bonus



What parts of LD 2003 apply to my municipality?

Affordable Housing Density Bonus

30-A M.R.S. 4364

Applies to municipalities with zoning with:

- (1) Adopted density requirements and multi-family housing; and
- (2) Designated growth areas OR public water/sewer

Up to Four Dwelling Units

30-A M.R.S. 4364-A

Applies to all municipalities.

Number of allowed units on a lot will depend on whether:

- (1) a lot is within a designated growth area OR
- (2) a lot has public water/sewer in a municipality without a comprehensive plan

ADU

30-A M.R.S. 4364-B

Applies to all municipalities

LD 2003 Municipal Payments

- Municipalities with and without zoning are eligible to request funding for LD 2003 compliance costs, but municipalities without zoning must provide DECD with a letter explaining why funding is requested along with any applicable land use documents.
- Payment amount:
 - Municipalities that have designated growth areas or public water/sewer are eligible for up to \$10,000.
 - Municipalities that do not have designated growth areas or public water/sewer are eligible for up to \$5,000.
- Towns can ask for payments before or after costs are incurred
- Qualifying expenses include:
 - Legal fees;
 - Staff and volunteer time spent on ordinance development; and
 - Costs associated with conducting public meetings
- DECD has not set a deadline for payment requests as of now

Questions?

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<https://www.maine.gov/decd/housingopportunityprogram>