

# DrummondWoodsum

ATTORNEYS AT LAW

## LEGAL UPDATE 2024

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15<sup>th</sup> Annual Maine Code  
Conference

Sugarloaf Mountain Resort  
May 21, 2024

# MAINE'S NEW HOUSING LAW

# An Overview of Maine's New Housing Law (LD 2003)

## **Maine LD 2003:**

“An Act To Implement to Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restriction”

## **LD 2003 addresses four main areas:**




1. The Additional Dwelling Units Allowance
2. The Accessory Dwelling Units Allowance
3. The Affordable Housing Density Bonus
4. Municipal Role in Fair Housing and Housing Production Goals

# The Additional Dwelling Units Allowance

Statutory Reference:

[30-A M.R.S. § 4364-A](#)

For any area where housing is allowed, a municipality must allow a certain density of dwelling units on a given lot.

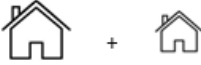





	Lots in the Designated Growth Area	Lots outside of the Designated Growth Area
<p><u>Residentially Vacant Lots:</u></p> <p>Does the lot <u>not</u> contain an existing dwelling unit?</p>		
<p><u>Single-Family Dwelling Lots:</u></p> <p>Is the lot developed with <u>one</u> existing dwelling unit?</p>	 <p>(Up to 2 extra dwelling units—1 within or attached to existing structure, 1 detached dwelling unit, or one of each)</p>	

# The Accessory Dwelling Units (“ADU”) Allowance

Statutory Reference:

[30-A M.R.S. § 4364-B](#)

In any area where housing is allowed, a municipality must allow an accessory dwelling unit (“ADU”) to be located on the same lot as a single-family dwelling unit.

	Lots in any land use district where housing is allowed
Is the lot developed with <u>one</u> single-family dwelling unit (which is the principal structure)?	 +  (at least 1 ADU must be allowed)
Is the lot developed with <u>two</u> single-family dwelling units?	 +  (at least 1 ADU must be allowed)
Is the lot developed with <u>one</u> single-family dwelling unit <u>and</u> an accessory dwelling unit that predates LD 2003?	 +  ? (unclear)
Is the lot vacant or developed with only non-residential structures?	No allowance.

# The Affordable Housing Density (“AHD”) Bonus

Statutory Reference:

[30-A M.R.S. § 4364](#)

In any area where multi-family dwellings are allowed, a municipality must allow an “affordable housing development” (“AHD”) to have a dwelling unit density of at least 2.5 times the “base density” that is otherwise allowed in that location.

	Lots in the Designated Growth Area	Lots outside if the DGA that are served by public water and sewer	Lots outside of the DGA that are <u>not</u> served by public water and sewer
Is the AHD Bonus allowed?	Yes	Yes	No

# Municipal Role in Fair Housing and Production Goals

Statutory Reference:

[30-A M.R.S. § 4364-C](#)

Maine municipalities are required to “ensure that ordinances and regulations are designed to affirmatively further the federal Fair Housing Act, 42 United States Code, Chapter 45, as amended, and the Maine Human Rights Act to achieve the statewide or regional housing production goal,” and in furthering those goals may regulate short-term rentals.

# Municipal Tools to Address LD 2003 Challenges and Opportunities

- Definitions
- Nonconformities
- Labeling
- AHD Bonus Calculation
- Enforcing Affordability Covenants
- Deadlines
- Comprehensive Plan
- Definitions
- Schedule of Land Uses
- Dimensional and Setback Standards
- Performance Standards
- Review Procedures
- Rate of Growth Ordinance
- Private Restrictions
- Short-Term Rentals



# RECENT LEGISLATIVE CHANGES TO THE HOUSING LAW

# Legislative Changes to Housing Law (LD 1706, LD 1473)

- **Additional Dwelling Units**

- Municipal ordinance may not establish dimensional requirements “including, but not limited to setback requirements” for additional dwelling units (clarifies that dimensional requirements include setback requirements)

- **Accessory Dwelling Units**

- On Nonconforming Lots: An ADU is allowed on a lot that does not conform to the municipal zoning ordinance if the ADU “does not further increase the nonconformity”
- In Shoreland Zone: An ADU must comply with shoreland zoning “except that a municipality may not categorically prohibit [ADUs] in the shoreland zone that would otherwise meet requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.”
- Illegal ADUs are ... legal?: An ADU that was not built with municipal approvals must be allowed if the ADU otherwise meets the requirements for ADUs of the municipality and under Section 4364-B.
- A municipality may establish an application and permitting process for ADUs “that does not require planning board approval.”

- **Affordable Housing Development**

- Definition: 51% or more of units in the development must be affordable (no longer tied to the units that the “developer designates as affordable”)
- Long-term affordability covenant, timing of: “Before granting final approval of an affordable housing development, including but not limited to issuing an occupancy permit,” a municipality must require execution and recording of restrictive covenant for long-term affordability.

# Legislative Changes to Housing Law (LD 1706, LD 1473)

- **Miscellaneous**

- **Housing:** Now means “where residential uses are allowed, including as a conditional use” (i.e., ADUs and affordable housing must be allowed in these areas).
- **Subdivision:** Clarifies that additional dwelling units, ADUs, and affordable housing developments are not exempt from subdivision requirements.
- **Special Treatment for Untreated Lewiston & Auburn Drinking Water Sources:** “This section [concerning Additional Dwellings, ADUs, and Affordable Housing] does not apply to a lot or portion of a lot that is within the watershed of a water source that is located in the City of Lewiston or the City of Auburn and that is used to provide drinking water by a water utility that has received a waiver from filtration pursuant to 40 Code of Federal Regulations, Sections 141.70 to 141.76, as determined by the Department of Health and Human Services.”
- **Implementation Date:**
  - » January 1, 2024 for municipalities with town or city council forms of government.
  - » July 1, 2024 for all other municipalities.

# MAINE'S (OLD AND NEW) FOOD SOVEREIGNTY LAWS

# Maine's Food Sovereignty Laws

## The Maine Agriculture Protection Act

[7 M.R.S. §§ 151, et seq.](#)

A municipality must provide the DACF commissioner with a copy of any proposed ordinance that affects farm operations or agricultural composting operations at least 90 days prior to the meeting of the legislative body or public hearing at which adoption of the ordinance will be considered. The commissioner shall review the proposed ordinance and advise the municipality as to whether the proposed ordinance restricts or prohibits the use of best management practices. This section does not affect municipal authority to enact ordinances.

# Maine's Food Sovereignty Laws (Cont'd)

## The Maine Food Sovereignty Act

[7 M.R.S. §§ 281, et seq.](#)

Pursuant to the home rule authority granted to municipalities . . . and notwithstanding any provision of law regulating food in this Title [7] or Title 22 to the contrary, except as contained in section 285, a municipality . . . may adopt ordinances regarding direct producer-to-consumer transactions and the State shall recognize such ordinances by not enforcing those laws or implementing rules with respect to those direct producer-to-consumer transactions that are governed by the ordinance.

# Maine's Food Sovereignty Laws (Cont'd)

## Constitutional Right to Food

### [Me. Const. Art. I, Sec. 25](#)

All individuals have a natural, inherent and unalienable right to food, including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well being, as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food.

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## THANK YOU



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