

## New Affordable Housing Law; Summary for Municipalities

### MMA Legal Services

June 22, 2022

On April 27, 2022, Governor Mills signed new affordable housing legislation into law. (P.L. 2021, c. 672, entitled, *An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions*).

The law (Chapter 672) aims to increase affordable housing in Maine by:

- (1) establishing state-wide and regional housing production goals and the municipal role in achieving those goals;
- (2) imposing density and other requirements for affordable housing developments that preempt inconsistent municipal regulations;
- (3) requiring municipalities to allow up to two, three, or four dwelling units on each lot where housing is allowed, depending on the location of the lot and whether it contains an existing dwelling unit; and
- (4) requiring municipalities to allow an accessory dwelling unit (ADU) on the same lot as a single-family dwelling unit in any area where housing is permitted and to comply with certain requirements pertaining to ADUs.

The requirements of the law are briefly summarized below. **This summary is not intended to be a complete analysis of the law and its requirements.** MMA Legal Services is currently analyzing the provisions in the new law and anticipates releasing more comprehensive guidance in the upcoming months based on guidance to be issued by the state.

Chapter 672 does not go into effect until August 8, 2022, and municipalities are not required to comply with many provisions in the law until July 1, 2023.

### State-wide and Regional Housing Production Goals

Chapter 672 requires the state Department of Economic and Community Development (DECD) to establish state-wide and regional “housing production goals” aimed at increasing the availability of affordable housing in the state. 5 M.R.S. § 13056(9). The DECD must establish measurable standards and benchmarks of success to achieve those housing production goals. The DECD is required to consider information submitted by municipalities concerning current or prospective housing developments and permits issued for the construction of housing when establishing housing production goals. Municipalities that have this information readily available are encouraged to submit it to the DECD, as it may help DECD establish realistic housing production goals for your region.

The law requires municipalities to ensure that local ordinances and regulations are designed to affirmatively further the purposes of the federal Fair Housing Act and the Maine

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Human Rights Act. 30-A M.R.S. § 4364-C. Municipalities may also establish and enforce short-term rental regulations to achieve the state housing production goals. At this time, it is not clear what specific actions a municipality must take to “affirmatively further” these laws beyond reviewing local ordinances and regulations to ensure that they do not discriminate against a protected class of individuals. Further guidance may be issued by the DECD regulations establishing state-wide housing production goals.

This portion of the law will go into effect August 8, 2022.

### **Density Bonus for Affordable Housing Developments (30-A M.R.S. § 4364)**

Chapter 672 overrides local density requirements for new affordable housing developments. Specifically, any municipality that has adopted residential “density requirements,” must allow a “density bonus” for any “affordable housing development” approved on or after July 1, 2023. Municipalities must also comply with additional requirements listed in the law. 30-A M.R.S. § 4364. Note that the law does not define local “density requirement” for purposes of § 4364; DECD regulations may provide further guidance on how to implement this requirement.

To be eligible for a “density bonus,” the development must (1) meet the definition of “affordable housing” in 30-A M.R.S. § 4364, (2) must be located in any area where multifamily dwellings are allowed, and (3) must be located in a “designated growth area” (as defined by the law) or be served by a public, special district or other centrally managed water system and a public, special district, or other comparable sewer system. The development must also meet several requirements listed in § 4364 and the state subsurface wastewater disposal system minimum lot size requirements (12 M.R.S. Ch. 423-A).

If eligible, an affordable housing development must be granted a “density bonus,” or a dwelling unit density of at least 2.5 times the base density that is otherwise allowed by municipal ordinance in that location.

This section applies to affordable housing developments approved on or after July 1, 2023.

### **Dwelling Units Allowed; Dwelling Unit Density Bonus (30-A M.R.S. § 4364-A)**

Chapter 672 overrides local dwelling unit restrictions beginning July 1, 2023. This section has requirements both for lots that do not already contain a dwelling unit and for lots that contain an existing dwelling unit. Note that the law does not define “dwelling unit” for purposes of § 4364-A; regulations issued by the DECD may clarify applicable requirements.

Lots without a dwelling unit. A municipality must allow structures with up to 2 dwelling units per lot, on any lot located in an area where dwelling units are allowed, provided that the lot does not contain an existing dwelling unit and meets the state subsurface wastewater

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disposal system minimum lot size requirements. However, if the lot is located in a designated growth area or connected to public water and sewer, a municipality is required to allow structures with up to 4 dwelling units per lot. 30-A M.R.S. § 4364-A(1).

Lots with an existing dwelling unit. On lots with an existing dwelling unit, a municipality must allow the addition of up to 2 dwelling units per lot. The additional units may consist of one additional dwelling unit attached to an existing structure or one additional detached dwelling unit, or one of each.

Municipalities must ensure that local land use ordinances and regulations meet the additional requirements stated in § 4364-A with respect to dwelling units allowed under § 4364-A, including dimensional and setback requirements and parking requirements.

Compliance with this portion of the law is required by July 1, 2023.

### **Accessory Dwelling Units Density Bonus (30-A M.R.S. § 4364-B)**

Chapter 672 also overrides local accessory dwelling unit (ADU) restrictions. Effective July 1, 2023, municipalities must allow one ADU to be constructed on the same lot as a single-family dwelling unit in any area of the municipality where housing is permitted, unless prohibited by the state subsurface wastewater disposal system minimum lot size statute. 30-A M.R.S. § 4364-B. Note that the law does not define “accessory dwelling unit” or “single-family dwelling unit” for purposes of § 4364-B; regulations issued by the DECD may clarify applicable requirements.

An eligible ADU must be constructed (1) within an existing dwelling unit on the lot; (2) attached to or sharing a wall with a single-family dwelling unit; or (3) as a new structure on a lot for the primary purpose of creating an ADU.

Municipal land use ordinances and regulations must conform with additional requirements in the law with respect to ADUs, including dimensional and setback requirements for ADUs, parking requirements, and exemptions from density requirements and rate of growth calculations.

Municipalities must comply with this portion of the law by July 1, 2023.

### **What should municipal officials do now?**

**As noted above, the law takes effect August 8, 2022, but municipalities are not required to comply with most of the new requirements until July 1, 2023.**

Now: Because statutory provisions requiring state-wide and regional housing production goals take effect August 8<sup>th</sup>, municipalities should focus on compliance with these sections first. At this time, we suggest that:

- Municipalities review land use regulations for consistency with the federal Fair Housing Act and Maine Human Rights Act prohibitions on housing discrimination based on race,

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color, religion, national origin, ancestry, sex, sexual orientation or gender identity, disability, familial status, receipt of a permanent protection order, or receipt of public assistance.

- Municipalities should also consider evaluating local land use regulations to determine how they affirmatively further affordable housing in the municipality. For example, an existing municipal comprehensive plan may address affordable housing and the municipality may have adopted ordinance provisions implementing the plan's affordable housing goals. In municipalities without a comprehensive plan or extensive land use regulations, the municipality might determine that the lack of land use regulations on multi-family housing, lot size, etc., allows for unlimited affordable housing development options throughout the municipality.
- Municipalities should document any actions they take to review ordinances (i.e., recording minutes of a workshop dedicated to ordinance review, or making express written findings of an official, board, or committee) in the event that the law is later determined to require municipalities to demonstrate they took steps to "ensure that local ordinances and regulations are designed to affirmatively further the purposes of the federal Fair Housing Act and the Maine Human Rights Act" as required by 30-A M.R.S. § 4364-C.

Longer term: Over the course of the next year, each municipality will need to review its ordinances and regulations to ensure that those ordinances or regulations will comply with the affordable housing density requirements, dwelling unit requirements, and accessory dwelling unit requirements contained in Chapter 672 by July 1, 2023. At this time, we suggest that municipalities:

- Identify whether local charters, ordinances, or regulations may need to be amended to comply with Chapter 672, identify the process for amending those documents, and estimate the time required to accomplish any necessary amendments.
- Determine which municipal officials will oversee drafting any necessary amendments, and ensure that the official, board, or committee has the required authority and funding to accomplish this task. Consider working with a professional who is knowledgeable in land use planning when developing ordinance language appropriate for your municipality.
- Consult the municipality's attorney for review of any proposed ordinance amendments.

Funding: Note that the Maine Legislature created the Housing Opportunity Program and Housing Opportunity Fund in separate legislation (PL 2021, c. 635) this spring. Through this



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Program and Fund, the DECD is required to provide technical and financial assistance to support communities implementing zoning and land use related policies necessary to support increased housing development, including model ordinance development. We anticipate compiling information on financial and technical resources available to municipalities as these resources become available.

### **Maine Municipal Association Legal Services**

**1-800-452-8786**

**[legal@memun.org](mailto:legal@memun.org)**

**[www.memun.org](http://www.memun.org)**

