



December 1, 2023

L.D. 2003 Updated Final Rule & Outline of Items to Consider When Amending Land Use Ordinances to Incorporate L.D. 2003

As you are likely aware, the State amended the Adopted Final Rule for L.D. 2003 (*An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions*), now 30-A M.R.S. §4364, with the amendment taking effect on October 1, 2023. The updated Adopted Final Rule can be found on the Department of Economic and Community Development's (DECD) website:

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

To summarize, **the amended final rule clarifies the following:**

- It changes the implementation date to January 1, 2024 for towns with council form of government and to **July 1, 2024 for towns with a town-meeting form of government.**
- Non-conforming lots will be allowed to add an ADU, so long as other dimensional requirements (i.e., setbacks, height, etc.) are met and adequate water and sanitary disposal are provided.
- So called 'illegal ADUs' built prior to the law will need to be legalized by towns. For clarity, the 'use' will need to be legalized. If the structure was built in the incorrect location (i.e. doesn't comply with setbacks), built too tall (i.e. doesn't comply with height), or does not meet another dimensional requirement, the ADU itself would not automatically be legalized as these issues would need to be rectified at the town's discretion.
- Shoreland zoning cannot outright prohibit an ADU. It must be given due consideration. Maine Department of Environmental Protection (MDEP) released a memo in December 2022 describing how ADUs are to be handled in the shoreland zone. Below is a link to the MDEP guidance:
https://content.govdelivery.com/accounts/MEDEP/bulletins/33ff36b#link_1389911176617
- Certain definitions have been updated and should be reviewed by local planning boards, select boards, and/or town legal counsel.

Some Lincoln County towns have requested **a summary sheet of the questions they should consider when incorporating L.D. 2003 into their local ordinances.** Below, please find guiding questions for municipalities to consider as they work to incorporate L.D. 2003 into their land use ordinances.

The guiding questions are organized by the three (3) main regulatory topics in L.D. 2003: Accessory Dwelling Units (ADUs); Additional Dwelling Units; and Affordable Housing Developments. A 'general considerations' section is also provided for those questions which apply to all aspects of L.D. 2003.

With respect to **Accessory Dwelling Units (ADUs):**

- Does the municipality want an ADU to count toward the 'subdivision count' (3 units in 5 years)?
- What does the town want the approval process for an ADU to look like? A permit from the CEO? Planning Board site plan review?
- The minimum size of an ADU is 190 sq. ft. per L.D. 2003. A municipality can set a maximum size should they choose to do so.
- Does the municipality want to allow more than one (1) ADU per lot? L.D. 2003 allows one per lot but authorizes towns to allow more than one if they choose to do so.

With respect to **Additional Dwelling Units:**

- L.D. 2003 states that if a lot does not contain an existing dwelling unit, up to four (4) units shall be allowed so long as the lot is located within the Town's designated growth area and meets other requirements (such as adequate sanitary and potable water, as well as dimensional requirements of the Town). **A municipality can decide whether the four (4) units must be contained within a single building (i.e., a quadplex) or if the property owner can build them as separate building units.**
- L.D. 2003 notes municipalities may establish a prohibition or an allowance for lots where a dwelling unit in existence after the implementation date is torn down, resulting in an empty lot. Meaning, the town can decide whether the lot becomes 'vacant' or if the preexisting residential use remains in effect (i.e., the lot is still considered 'developed' when counting the number of additional dwelling units permitted).

For **Affordable Housing Developments** requirements:

- L.D. 2003 grants a density bonus for long-term affordable developments of 2.5 times the base density. A municipality can decide whether the applicant should round down or up to the nearest whole number when a fractional result occurs when calculating the density bonus.
- Similar to the density bonus, when calculating the reduction in required parking the municipality can decide whether the applicant should round up or down to the nearest whole number when a fractional result occurs when calculating the parking reduction.

General Considerations:

- Do you want to allow property owners to ‘double-dip’ or set up an ‘either/or’ option when it comes to ADUs and Additional Dwelling Units? Meaning, property owners can construct both an ADU and an additional dwelling unit or would you prefer they could only build either an ADU or an additional dwelling unit but not both.
- Do you want to regulate short-term rentals? This nuanced topic should be discussed at the local level between the select board, planning board, and code enforcement officer.
- For tiny homes being proposed as ADUs, the Town can consider what sanitary disposal and water mechanisms are acceptable to meet health and safety requirements. For example, other towns have discussed whether compostable toilets and cisterns are acceptable or if a traditional septic and well should be required for a tiny home.
- Some municipalities have asked whether ADUs can be permitted on a property containing a primary commercial use. The ADU requirements under L.D. 2003 apply to lots containing a single-family dwelling. A town can decide whether to allow ADUs on properties containing other uses (such as commercial uses).

Please use this memo for preliminary planning purposes as you work to incorporate L.D. 2003 into your ordinance. If you have questions or would like the LCRPC to come speak with your municipality about L.D. 2003 specifics, please contact Emily Rabbe (erabbe@lcrpc.org).