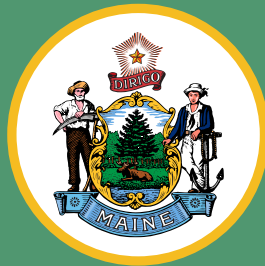


# LD 2003 Guidance



MAINE DEPARTMENT OF  
ECONOMIC AND COMMUNITY  
DEVELOPMENT

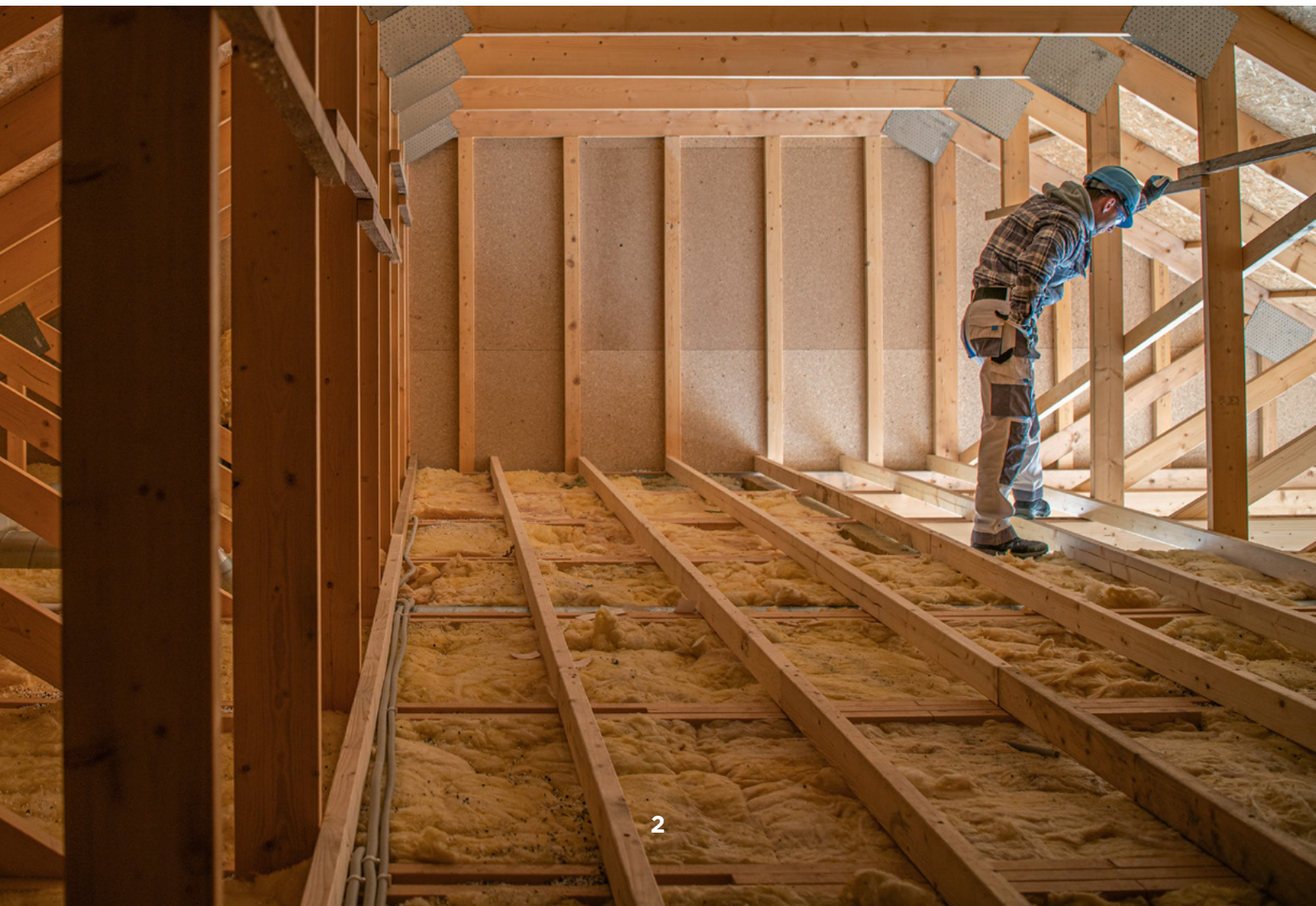
# LD 2003 Guidance

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“An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions,” generally referred to by its legislative tracking name of LD 2003, was signed into law by Governor Mills on April 27, 2022. This law is designed to remove unnecessary

regulatory barriers to housing production in Maine, while preserving local ability to create land use plans and protect sensitive environmental resources. LD 2003 is based on the recommendations of the legislative commission named in the title, though not all those recommendations are included in the enacted legislation.

This guidance is the result of a collaborative effort by the Department of Economic and Community Development, the Governor’s Office of Policy Innovation and the Future, the Department of Agriculture, Conservation and Forestry; legislative staff, and several municipal lawyers and community planners. It is intended to provide information for local authorities to use in determining how LD 2003 affects their local zoning and land use codes, as well as what steps they can take if they wish to tailor their ordinances to avoid conflicts with state laws. While it is not legally binding or intended to serve as a substitute for the language of LD 2003 or the rules that will be adopted under the law, this guidance represents the interpretation of LD 2003 and its requirements by the state agencies that are responsible for its implementation.





LD 2003 has the following sections that are relevant to municipal government. The amended sections of state law are shown in the chart below. Among other things:

1. Section 4 allows for additional density for “affordable housing developments” in certain areas.
2. Section 5 generally requires that municipalities allow between two and four housing units per lot where housing is permitted.
3. Section 6 requires that municipalities allow accessory dwelling units to be located on the same lot as a single-family home, under certain conditions.
4. Sections 3 and 7 require that the state establish statewide and regional housing production goals and set forth ways in which local governments can coordinate with that goal.

**WHILE LD 2003 WENT INTO EFFECT ON AUGUST 8, 2022, SOME ELEMENTS OF THE LAW ARE NOT REQUIRED TO BE APPLIED UNTIL JULY 1, 2023**

LD 2003 in Brief			
<p>Effective Aug. 8, 2022</p> <p><b>Statewide Housing Production Goals</b></p> <p>(5 MRSA §13056, sub-§9)</p>	<p>Effective Aug. 8, 2022</p> <p><b>Municipal Role in Fair Housing/ Short Term Rentals</b></p> <p>(7 30-A MRSA §4364-C)</p>	<p>Effective July 1, 2023</p> <p><b>Accessory Dwelling Units</b></p> <p>(6 30 A MRSA §4364-B)</p>	
	<p>Effective July 1, 2023</p> <p><b>Affordable Housing Density in Growth Areas Bonus</b></p> <p>(4 30-A MRSA §4364)</p>	<p>Effective July 1, 2023</p> <p><b>Two to Four Units</b></p> <p>(5 30-A MRSA §4364-A)</p>	

## **IN GENERAL, AS LONG AS THESE ACTIONS ARE CONSISTENT WITH LD 2003, MUNICIPALITIES MAY:**

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**CONTINUE** to develop Growth Management programs, including comprehensive plans and zoning consistent with those plans

**ENFORCE** local shoreland zoning ordinances consistent with state shoreland zoning law

**REGULATE** how many square feet of land are needed for each dwelling unit (other than accessory dwelling units)

**CONDUCT** site plan review, if authorized by local ordinances, of any residential development

**REGULATE** the maximum size of accessory dwelling units

**REGULATE** short-term rentals in their community

**CREATE** rate of growth ordinances so long as they do not limit the number of accessory dwelling units outlined in Section 6

**CREATE** local ordinances that are more permissive for residential housing development than the requirements of LD 2003

**REGULATE** housing development based on documented water and wastewater capacity constraints

## **IN GENERAL, UNDER THIS LAW, LOCAL GOVERNMENTS MAY NOT:**

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**ENACT** local ordinances that allow housing but limit it to one unit per lot

**PROHIBIT** one accessory dwelling unit per lot or count those units towards a rate of growth ordinance

**LIMIT** the affordable housing density bonuses allowed in LD 2003 in growth areas as defined in state law

# Affordable Housing Density Bonus

## 30-A MRSA §4364

This section creates an automatic density bonus for certain affordable housing developments. To qualify for this bonus, the development must:

1. Be approved after June 30, 2023
2. Include a certain number of rent or sales price restricted affordable housing units
3. Be in a growth area under section 4349-A, subsection 1, paragraph A or B, or served by water and sewer
4. Be in an area in which multifamily dwellings are allowed
5. Meet shoreland zoning requirements, meet minimum lot sizes if using subsurface waste disposal, and verify that water and sewer capacity is adequate for the development

### **BONUSES FOR AN AFFORDABLE HOUSING DEVELOPMENT**

To take advantage of this density bonus, a development must qualify as “affordable” (as defined below). If eligible, the affordable housing development qualifies for the following exceptions to the zoning requirements in the community:

1. The number of units allowed will be 2.5 times the number allowed for a development not designated affordable
2. The off-street parking requirements may not exceed two spaces for every three units

So, for example, if a developer can build up to six units on a site under local rules, and designates the development as affordable, the developer would be eligible to build 15 units ( $6 \times 2.5$ ). The local off-street parking requirement for this development could not exceed ten spaces ( $15 \times \frac{2}{3}$ ). In cases of fractional results, the number of units would generally be rounded down, but the number of spaces would generally be rounded up.



## WHAT REQUIREMENTS DO AFFORDABLE HOUSING DEVELOPMENTS HAVE TO MEET TO RECEIVE THE DENSITY BONUS??

For rentals, a household with an income at no more than 80% of the area median income for the community, as defined by the U.S. Department of Housing & Urban Development, must be able to afford more than half of the units in the development. That means that rent and certain other housing expenses will not require more than 30% of the household's income.

For homeownership projects, a household with an income at no more than 120% of the area median income for the community, as defined by the U.S. Department of Housing & Urban Development, must be able to afford more than half of the units in the development. That means that mortgage payments (including mortgage insurance) and certain other housing expenses will not require more than 30% of the household's income.

The units that will be affordable at these levels must be restricted through a restrictive covenant that is enforceable by a party acceptable to the municipality (which could be the municipality) for at least 30 years, and that states that the units must be restricted in rent or sales prices accordingly. Often these developments will be getting funding through MaineHousing, which typically requires a comparable covenant.

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Information on Area Median Incomes is updated annually by the U.S. Department of Housing & Urban Development. For reference, MaineHousing maintains updated 80% of area median income and 120% of area median income data on their website.

[View AMI data on MaineHousing.org](#)

# QUESTIONS AND ANSWERS ON AFFORDABLE HOUSING DENSITY BONUS

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## What is meant by “multifamily dwellings?”

“Multifamily dwellings” will be defined in rulemaking, but in planning practice generally applies to three units or more.

## What is a “base density that is otherwise allowed?”

Under a local zoning code, the “base density that is otherwise allowed” is the number of dwelling units that might be allowed in a list of uses, and/or the maximum number of units allowed based on dimensional requirements, such as lot area per dwelling unit.

## If lot area per dwelling unit can be used as a measure of number of units permitted, do the limits on lot area per dwelling unit requirements in Section 5 apply?

This will be addressed in rulemaking.

## How does this density bonus interact with any local density bonus that might exist?

This will be addressed in rulemaking.

## What if a household exceeds the maximum income after living in the unit?

LD 2003 specifies that the income eligibility is based on household income “at the time of initial occupancy,” meaning that a household could be allowed to remain in an “affordable” unit if their income goes up after they occupy the unit. MaineHousing has experience with this issue, as do communities that manage their own affordable housing programs, so there may be best practices that can be adopted locally. The restrictive covenants should outline how this would work.

## What happens when a restricted affordable home ownership unit is sold?

The restrictive covenants should outline how this would work. MaineHousing has experience with this issue, as do communities that manage their own affordable housing programs, so there may be best practices that can be adopted locally.



# Residential Areas, Generally; Up to 4 Dwelling Units

## 30-A MRSA §4364-A

This section requires municipalities to allow multiple dwelling units on parcels where housing is allowed, provided evidence of sufficient water and wastewater capacity exists, beginning on July 1, 2023. 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 they may require a minimum lot area per dwelling unit. However, if the municipality chooses to require a minimum lot area per dwelling unit, the lot area required may not be less for the first unit than for subsequent units.

The number of units allowed under this section depends on a few factors:

- A lot without a dwelling unit already on it can have two units if it is not within a designated growth area under section 4349-A, subsection 1, paragraph A or B, served by water system and sewer in a municipality without a comprehensive plan.
- A lot with an existing dwelling unit may have up to two additional dwelling units, either one additional attached dwelling unit, one additional detached dwelling unit, or one of each.

- A lot without a dwelling unit already on it can have four units if it is either:
  - Within a designated growth area under section 4349-A, subsection 1, paragraph A or B, or
  - Served by water system and sewer in a municipality without a comprehensive plan.

Municipalities may allow more than the minimum number required to be allowed on all lots that allow housing, if they wish. In addition, private parties are permitted to restrict the number of housing units on a lot in a private easement, covenant, deed restriction or other agreement provided the agreement does not violate State or Federal rights such as equal protection.

Finally, a municipality may determine in local ordinance that if a property owner tears down an existing dwelling unit, the lot may be treated under this section as if the dwelling unit were still in existence.





# Lot Area per Dwelling Unit

Additional units may not require more land area per unit than the first unit

## NOT PERMITTED



One Unit Requires  
10,000 sq ft



Two Units Require  
30,000 sq ft



Three Units Require  
50,000 sq ft

## PERMITTED



One Unit  
Requires  
10,000 sq ft



Two Units  
May Require Up  
To 20,000 sq ft



Three Units  
May Require Up  
To 30,000 sq ft

# QUESTIONS AND ANSWERS ON RESIDENTIAL AREAS, GENERALLY UP TO 4 DWELLING UNITS

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**Subsection 2 (“Zoning Requirements”) says that municipal zoning ordinances “must” comply with certain conditions, but subsection B. says that they “may” regulate how this section applies to a lot where a dwelling unit is torn down. Is this a “must” or a “may”?**

Municipalities have the option of taking the actions in subsection B but do not have to do so, in which case a lot where a dwelling unit was torn down would be viewed as a vacant lot.

**Subsection 4 says that verification must be provided to “the municipality” of water and wastewater services. Who should that verification be provided to?**

These capacity issues should be reviewed by the municipal staff or board that would normally review these issues as part of any housing development.

**What if a municipality does not use Certificates of Occupancy?**

Subsection 4 says that the municipality will “certify [a] structure for occupancy.” This requirement should be met for new housing developments under this section the same way they would be for any other housing.

**What is meant by “potable” water?**

This will be addressed in rulemaking.

**What if housing is allowed in an area but only as a conditional use?**

Housing would be considered allowed in that area for the purposes of subsection 1. This will be further addressed in rulemaking.

**What does “attached to an existing structure” mean?**

Local ordinance can define “attached” but it would generally mean having physically connected finished spaces, not just connected via a common porch, breezeway or foundation.

**Does the language in subsection 1 mean that if a lot is served by water and sewer in a municipality without a comprehensive plan that it does not need to be vacant to allow up to 4 units?**

No, that language still requires the lot not “contain an existing dwelling unit.”



# Residential Areas

## Empty Lot Where Housing Is Already Allowed

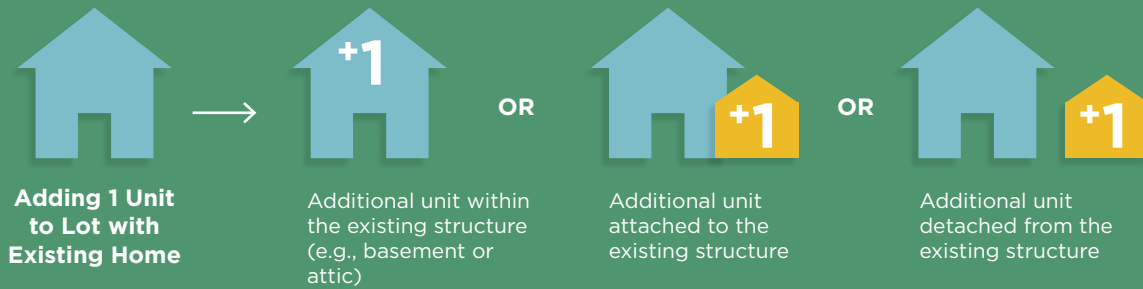


**NOTE:** The three and four units can be within one structure or multiple structures.

**THREE AND FOUR UNITS ALLOWED IF:**

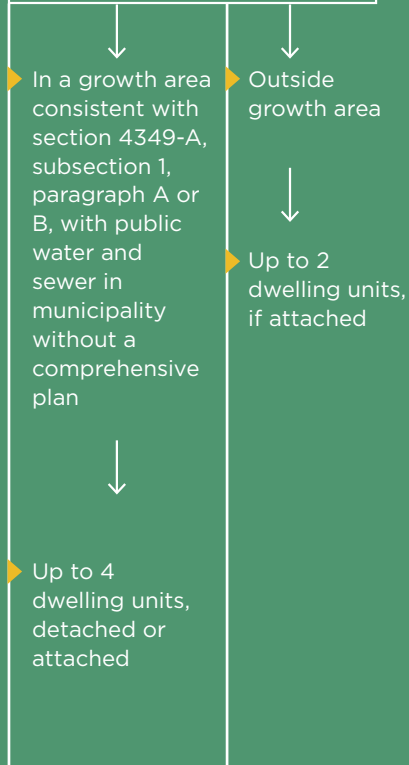
- Located in "growth area" consistent with section 4349-A, subsection 1, paragraph A or B.
- Located in area with existing water/sewer capabilities in towns without comprehensive plans.

## Existing Home



## What Can Be Built On This Lot?

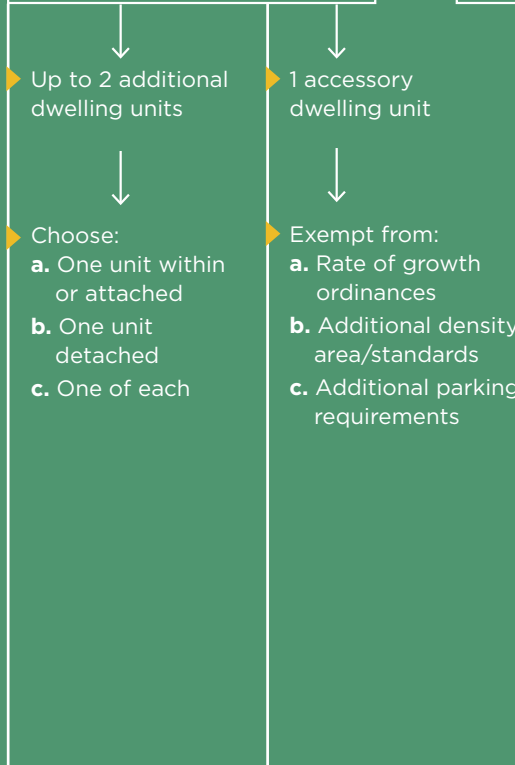
### ON LAND WITH ZERO EXISTING UNITS



#### PRIVATE, STATE OR LOCAL STANDARDS SUCH AS THESE MAY APPLY:

- Home Owners Association regulations
- Deed restrictions
- Lot size, set back, density (not greater than single family)
- Septic requirements
- Minimum Lot Size
- Additional Parking requirement
- Growth ordinance permits
- Shoreland Zoning
- Subdivision Law

### ON LAND WITH ONE EXISTING UNIT



#### PRIVATE, STATE OR LOCAL STANDARDS SUCH AS THESE MAY APPLY:

- Home Owners Association regulations
- Deed restrictions
- Lot size or set back requirements (not greater than single family/existing accessory structure)
- Septic requirements
- Shoreland Zoning
- Other locally determined ADU standards (e.g. maximum size, rules regarding short term rental, etc.)

### ON LAND WITH TWO EXISTING UNITS



# Accessory Dwelling Units

## 30-A MRSA §4364-B

This section essentially allows any lot with a single-family dwelling in an area where housing is permitted to have one accessory dwelling unit (ADU) as well, effective July 1, 2023. That ADU can be within the existing home, attached to it, or in a new structure. Municipalities may also allow existing accessory structures to be converted into an ADU.

An ADU allowed under this law is exempt from zoning density requirements. In reviewing an ADU, the setback and dimensional requirements for a single-family home continue to apply unless the municipality makes them more permissive for an ADU. For ADUs in an accessory structure, the setback and dimensional requirements for such a structure apply.

### **ACCESSORY DWELLING UNIT PARKING**

Additional parking requirements for the ADU beyond those required for the single-family dwelling are not permitted.

### **ACCESSORY DWELLING UNIT SIZE**

ADUs must be at least 190 square feet in size. Municipalities may set a maximum size for ADUs in local ordinance.

### **OTHER MUNICIPAL POWERS**

Municipalities may establish an application and permitting process for ADUs provided it is consistent with in this section. Municipalities may also define ADUs, as long as the definition is consistent with state law in Title 30-A, §4301. 1-C. In addition, municipalities may establish requirements for ADUs that are less restrictive than those in this section, such as allowing more than one ADU on a lot or allowing an ADU for two-family or multifamily dwellings.

## **SIMILARITIES AND DIFFERENCES FROM OTHER SECTIONS**

**LIKE SECTIONS 4 AND 5**, shoreland zoning still applies, as do requirements to verify adequate water and wastewater capacity.

**LIKE SECTION 5**, private parties are permitted to restrict the number of housing units on a lot, including ADUs, in a private easement, covenant, deed restriction or other agreement provided the agreement does not violate State or Federal rights such as equal protection.

**UNLIKE SECTION 5**, one ADU for each single-family dwelling does not count towards any rate of growth ordinance as described in §4360.

**UNLIKE SECTIONS 4 & 5**, additional parking cannot be required for an ADU.

# QUESTIONS AND ANSWERS ON ACCESSORY DWELLING UNITS

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## How is an ADU defined?

The law does not define ADUs. There is a definition in 30-A MRSA §4301 and many communities define them in local ordinances. Rulemaking will clarify which definition to use.

## Can an ADU be larger than a primary structure?

Yes, unless the municipality limits the maximum size of an ADU.

## Can a previously illegal ADU be legalized under this section?

This will be addressed in rulemaking.

## If a pre-existing single-family dwelling is on a non-conforming lot (with respect to size, frontage, or similar characteristics) can an ADU be built on that lot?

This will be addressed in rulemaking.

## Subsection 7 says that verification must be provided to “the municipality” of water and wastewater services. Who should that verification be provided to?

These capacity issues should be reviewed by the municipal staff or board that would normally review these issues as part of any housing development.

## What if a community does not use Certificates of Occupancy?

Subsection 4 says that the municipality will “certify [a] structure for occupancy.” This requirement should be met for new housing developments under this section the same way they would be for any other housing, whether through a formal Certificate of Occupancy or otherwise.

## What is meant by “potable” water?

This will be addressed in rulemaking.

## What if housing is allowed in an area but only as a conditional use?

Housing would be considered allowed in that area for the purposes of subsection 1. This will be further addressed in rulemaking.

## What does “attached to an existing structure” mean?

Local ordinance can define “attached” but it would generally mean having physically connected finished spaces, not just connected via a common porch, breezeway or foundation.

## If a parcel has an existing two-unit structure, does subsection 1 allow an ADU to be built?

No, though a municipality would have the ability to allow that.



# Parking for ADUs

## Example Parking Requirement

### NOT PERMITTED



Single Family Home  
2 spaces minimum



Single Family Home + ADU  
3 spaces minimum



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### PERMITTED



Single Family Home  
2 spaces minimum



Single Family Home + ADU  
2 spaces minimum



This example applies to towns with minimum parking requirements.  
For towns without parking restrictions, no additional restrictions would be imposed.

# Housing Goals & Fair Housing

MRSA §13056, sub-§9 AND 30-A MRSA §4364-C

Section 3 directs the Department of Economic & Community Development, in coordination with Maine-Housing, to develop a statewide housing production goal and regional production goals based on that statewide goal. In doing so, the section instructs the Department to set benchmarks for meeting those goals, as well as to consider information provided by municipalities on current and potential housing development and permits.

Section 7 outlines ways municipalities can play a role in achieving those state and regional goals. It states that municipalities must ensure that local ordinances and regulations are designed to affirmatively further the purposes of the Federal Fair Housing Act, as well as the Maine Human Rights Act, as part of meeting the housing goals. It also explicitly authorizes municipalities to establish and enforce regulations related to short-term rentals to help meet those goals.

## QUESTIONS AND ANSWERS ON SECTIONS 3 & 7

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### What obligations do the affirmatively furthering fair housing provisions put on municipalities that didn't already exist before LD 2003 passed?

Until recently, the link between land use regulation and fair housing was often not recognized. Section 7 clarifies that municipalities must ensure that zoning and land use ordinances and regulations are designed to affirmatively further the purposes of these state and federal laws.

### What happens if local, regional or statewide housing goals are not met?

These sections do not set forth any specific penalties for not meeting these goals.

### How does this relate to local Growth Management programs and comprehensive plans?

Local comprehensive plans, while not regulatory documents, should not conflict with these sections. The regulations for comprehensive plans under Chapter 208 state that communities should “[s]eek to achieve a level of at least 10% of new residential development built or placed during the next decade be affordable.”

### Do municipalities have to regulate short term rentals?

No.





## GENERAL QUESTIONS

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### **What happens if a municipality does not act to update local ordinances, or tries to act and the updates are not approved by the local legislative body?**

LD 2003 is an express preemption on municipal home rule authority. Therefore, any ordinance or regulation that is not consistent with the law may be challenged as invalid. Municipalities are encouraged to contact legal counsel to discuss how the law will affect the enforcement of existing ordinances and regulations.

### **If a town does not have growth areas as defined by section 4349-A, subsection 1, paragraph A or B, and does not have any areas served by water or sewer, does it need to comply with LD 2003?**

These communities would not be subject to the affordable housing density provisions in Section 4, and would not have areas that are required to allow up to four units on a residential lot as per Section 5. Other sections of LD 2003 would apply.

### **How will LD 2003's requirements be related to municipal comprehensive plans?**

Comprehensive plans seeking a finding of consistency under the regulations in Chapter 208 should meet those requirements. Since a comprehensive plan is not a regulatory document, LD 2003 would not create any additional requirements. However, zoning ordinances adopted in a municipality would have to be consistent with both a local comprehensive plan and LD 2003.

### **Is LD 2003 a model ordinance for use in local zoning?**

LD 2003 is not a model ordinance. Communities will be able to seek funding from the Housing Opportunity Program to develop new ordinances. In addition, the Department of Economic & Community Development will be hiring staff to provide technical assistance to communities.

### **Can developers “double count” bonuses from various sections?**

This issue is outlined in §4364-A Section 2.A. and §4364-B Section 3.B. It will be further addressed for applicability to §4364 in rulemaking.

### **Sections 4, 5, and 6 require written verification of “adequate water and wastewater services.” What about a municipal concern that while a specific housing development may not immediately threaten water quality, the cumulative impact of new development may do so in a way that it did not prior to LD 2003?**

As was true prior to the passage of LD 2003, communities are free to take regulatory actions as appropriate for protection of natural resources or existing water systems. These can include changes to zoning districts to limit where housing is permitted; changes to lot size requirements; or the creation of an impact fee system consistent with state law to fund environmental or water quality protection.

### **What does section 4349-A, subsection 1, paragraph A or B say?**

It directs the State to make growth-related capital investments only in:

*A. A locally designated growth area, as identified in a comprehensive plan adopted pursuant to and consistent with the procedures, goals and guidelines of this subchapter or as identified in a growth management program certified under section 4347A;*

or

*B. In the absence of a consistent comprehensive plan, 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 Title 23, section 754; or [PL 1999, c. 776, §10 (NEW).]*

Growth areas are defined in section 4301, subsection 6-C as:

*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 combinations of those types of development, and into which most development projected over 10 years is directed.*



### **RULEMAKING PROCESSES**

Sections 4, 5 and 6 authorize rulemaking to be led by the Department of Economic & Community Development, in consultation with the Department of Agriculture, Conservation & Forestry. These rules are considered “technical” – meaning they “establish standards of practice or procedure for the conduct of business with or before an agency” and can be approved administratively. Rulemaking is expected to begin in the fall of 2022.

### **FUNDING FOR TECHNICAL ASSISTANCE**

While not part of LD 2003, the supplemental budget for Fiscal Years 2022 and 2023 included Section U-1. 5 MRSA §13056-J, providing funding for a new “Housing Opportunity Program.” That program will “encourage and support the development of additional housing units in Maine, including housing units that are affordable for low and moderate income people and housing units targeted to community workforce housing needs” by supporting “regional approaches, municipal model ordinance development, and ... policy that supports increased housing density where feasible to protect working and natural lands.”

The Housing Opportunity Program will consist of three general areas. “Service Provider grants” will be awarded to experienced service providers to support municipal ordinance development, technical assistance, and public process and community engagement support, and may encourage regional coordination. Community Housing Incentive Program grants will be funded to municipalities directly in two categories:

- Community housing planning grants to be awarded through a competitive process to municipalities to support the creation of housing development plans, and ordinance and policy amendments to support those plans. The grants will be awarded for a period of up to three years, with progress reports each year.
- Community housing implementation grants to be awarded through a competitive process to support the implementation of community housing priorities.

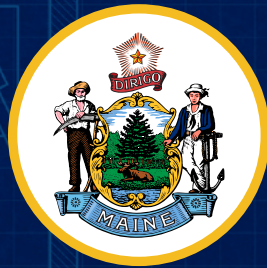
Finally, the Department of Economic and Community Development will be adding staff to provide direct technical assistance to communities.

The Housing Opportunity Program is currently undergoing internal development and is expected to be launched in the coming months.

**Still have questions?  
Need more information?**



**VISIT: [MAINE.GOV/DECD/HOUSING-LEGISLATION](https://www.maine.gov/decd/housing-legislation)**



**MAINE DEPARTMENT OF  
ECONOMIC AND COMMUNITY  
DEVELOPMENT**



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## **LD-2003 related amendments to Kittery's Land Use and Development Code (Title 16)**

*LD-2003 is a three-part ordinance. The first part deals with affordable housing and the associated density bonus, the second part focuses on allowing more density where housing is currently allowed in zoning districts (affordability not a requirement) and the third part addresses Accessory Dwelling Units (ADUs), requiring that all communities allow them without adherence to land area per dwelling unit requirements and parking requirements.*

Part 1. According to LD-2003, to utilize the 2.5x affordable housing density bonus, the development must:

- designate greater than 50% of the dwelling units proposed as affordable (defined as below 80% AMI for rental and 120% AMI for owned)
- be zoned for multifamily as of July 1, 2023
- be in a growth area as defined by a community's comprehensive plan or be zoned for public utilities, special utility district etc.
- meet the State's minimum lot size requirements (basically 20,000 sf for septic)
- meet water and wastewater verification requirements
- meet the long-term affordability requirements

1. Growth areas as identified by Kittery's Comprehensive Plan's Future Land Use Map
  - a. Business-Local Zone (B-L)
  - b. Business-Local-1 Zone (B-L1)
  - c. Business-Park Zone (B-PK, formerly MU-N, Neighborhood Mixed-Use Zone)
  - d. Commercial-1 Zone (C-1)
  - e. Commercial-2 Zone (C-2)
  - f. Commercial-3 Zone (C-3)
  - g. Mixed-Use (MU-BI)
  - h. Mixed-Use Zone (M-U)
  - i. Residential-Rural (R-RL – but only a small portion between Rt 236 and Wilson Road)
  - j. Residential-Suburban (R-S)
  - k. Residential-Urban (R-U)
2. Of those zones, only these allow multifamily currently:
  - a. Business-Local Zone (B-L)
  - b. Business-Local-1 Zone (B-L1)
  - c. Commercial-1 Zone (C-1)
  - d. Commercial-3 Zone (C-3)
  - e. Mixed-Use Zone (M-U)
  - f. Residential-Suburban (R-S)
  - g. Residential-Urban (R-U)

Part 2. According to LD-2003's dwelling unit allowance section, a municipality must allow:

1. 4 dwelling units per undeveloped lot if the lot is in a zone that allows housing and is in a growth area as defined by a community's comprehensive plan or served by public utilities, special utility district etc.
2. 2 dwelling units per undeveloped lot if the lot doesn't meet the requirements of #1 above, but the lot is in a zone that allows housing and the lot meets the State lot size requirements (20,000 sf for septic)
3. Two additional dwelling units if a lot already has one dwelling unit.

No more restrictive setbacks than those for a single-family dwelling are allowed and the land area per dwelling unit may not be more than that for a single-family dwelling unit. There are also sewer/septic and drinking water verification requirements. Affordability as defined by LD-2003 is not a requirement.

4. The following zones allow housing and are in the growth area as defined by the Town's comprehensive plan:
  - a. Business-Local Zone (B-L) \*
  - b. Business-Local-1 Zone (B-L1) \*
  - c. Business Park Zone (B-PK, formerly MU-N, Neighborhood Mixed-Use)\*
  - d. Commercial-1 Zone (C-1) \*
  - e. Commercial-3 Zone (C-3) \*
  - f. Mixed-Use Zone (M-U) \*
  - g. Residential-Rural Zone (R-RL) (only portion between Rt 236 and Wilson Road)
  - h. Residential-Suburban Zone (R-S) \*
  - i. Residential-Urban Zone (R-U) \*

\*All or part of the zone has public utilities or access to them

5. These zones also allow housing but are not in the growth area designated by the comprehensive plan:
  - a. Mixed-Use-Kittery Foreside (MU-KF)
  - b. Residential-Kittery Point Village Zone (R-KPV)
  - c. Residential-Rural (R-RL, the majority of it)
  - d. Residential-Rural Conservation Zone (R-RC)
  - e. Residential-Village Zone (R-V)

Of these zones, the Residential-Village Zone (R-V) and the Mixed-Use-Kittery Foreside (MU-KF) have public water and sewer. These two zones have few, if any, undeveloped lots so the 2 units per lot with an existing residence would apply, provided other requirements are met.

The Residential-Kittery Point Village Zone (R-KPV) and the Residential-Rural Conservation Zone (R-RC) have no sewer but do have public water for the most part, while the R-RL zone has limited public water and no sewer. There are undeveloped (vacant) lots in all three of these zones so the two units per vacant lot would apply. For lots that have an existing residence, the two additional units per lot would apply provided other requirements are met.

Part 3. According to LD-2003, Accessory Dwelling Units (ADUs) must be allowed in all zones where housing is allowed.

It appears that Kittery's ADU ordinance is nearly in full compliance with this portion of LD-2003 except for parking.

***Conclusion: LD-2003's affordable housing and/or density allowances apply to 14 of Kittery's 18 zoning districts because they include housing as a permitted use. The ADU provisions in LD-2003 apply to those 14 zones as well as the C-2 zone that doesn't allow new housing because there are existing "grandfathered" dwelling units in that zone.***

1 **TITLE 16**  
 2 **AMENDMENTS TO CONFORM WITH LD 2003:**  
 3 **AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE COMMISSION**  
 4 **TO INCREASE HOUSING OPPORTUNITIES IN MAINE**  
 5  
 6

7 **1. AMEND § 16.3.2 Definitions as follows:**

8 ~~**DWELLING, ATTACHED SINGLE-FAMILY**~~

9 ~~A dwelling unit, located on its own lot that shares one or more common or abutting~~  
10 ~~walls with one or more dwelling units. The common or abutting wall must be shared for~~  
11 ~~at least 25% of the length of the side of the dwelling.~~

12 **DWELLING, MULTIFAMILY**

13 A structure that contains ~~three~~ **five** or more dwelling units that share common walls or  
14 floors/ceilings with one or more units. The land underneath the structure is not divided  
15 into separate lots.

16 **DWELLINGS, MULTIFAMILY 2-4 (“Limited”)**

17 **A residential development comprised of 2, 3, or 4 primary units on the same lot**  
18 **that are attached within the same structure or detached in separate structures in**  
19 **any combination.**

20 **LOT AREA**

21 The area of land enclosed within the boundary lines of a lot, minus:  
22 A. Land below the normal high-water line of a water body or upland edge of a coastal  
23 wetland;  
24 B. Areas beneath Planning-Board-approved right-of-way; and  
25 C. Land within public street rights-of-way.

26  
27 **LOT AREA PER DWELLING UNIT**

28 **The number of dwelling units in a development per lot area as defined in this code.**  
29 **Calculations which result in a fraction of .5 or greater shall be rounded up to the**  
30 **nearest whole number. Calculations which result in a fraction less than 0.5 shall be**  
31 **rounded down.**

32 ~~**MINIMUM LAND AREA PER DWELLING UNIT**~~

33 ~~The gross area of a parcel not subject to subdivision regulations minus the land area~~  
34 ~~listed below. Where land areas to be subtracted overlap, the area therein shall be~~  
35 ~~subtracted once. For land area subject to subdivision, see "net residential acreage."~~

36 ~~A. All land located below the highest annual tide elevation as published in the Maine DEP~~  
37 ~~Highest Annual Tide (HAT) levels for the most current year.~~

38 ~~B. All wetlands as defined in the definition of "wetland," as well as vernal pools, ponds,~~  
39 ~~streams and other water bodies.~~



- 40 C. ~~All land located on filled tidal lands, per the definition of "tidal land, filled."~~
- 41 D. ~~All land located within existing rights of way and other existing easements wherein~~
- 42 ~~dwelling units cannot be built.~~

43 **NET RESIDENTIAL ACREAGE**

44 The total area of the parcel(s) of record subject to development land area subject to

45 subdivision that is identified for regulatory purposes as developable and is the gross

46 available acreage minus land area identified in § 16.5.18, Net residential acreage, unless

47 otherwise exempt in § 16.5.18D, Exemptions to net residential acreage calculations.

48 **NET RESIDENTIAL DENSITY**

49 The number of dwelling units in a subdivision development per net residential acre.

50 This is calculated by dividing the net residential acreage by the square feet specified as

51 minimum land area per dwelling unit in the dimensional standards in § 16.4 for the

52 relevant base zone or overlay zone(s) where applicable. Net residential density

53 calculations which result in a fraction shall be rounded down to the nearest whole

54 number.

55 **2. Amend § 16.4.10 Residential — Rural (R-RL) zoning as follows:**

56 B. Permitted uses. The following uses are permitted in the R-RL Zone:

- 57 (1) Accessory dwelling unit.
- 58 (2) Conservation subdivision. [Amended 10-24-2022]
- 59 (3) Dwelling, manufactured housing.
- 60 (4) Dwelling, single-family.
- 61 (5) **Dwelling, multifamily 2-4 “Limited”, as follows:**

	<u>Total maximum # of units allowed on lot (attached or detached)</u>	
<u># of Existing Units</u>	<u>Public Sewer and Water Available</u>	<u>Public sewer and water not available</u>
<u>0</u>	<u>4</u>	<u>2</u>
<u>1</u>	<u>3</u>	<u>3</u>
<u>2</u>	<u>2</u>	<u>2</u>

62

63 E. Shoreland Overlay Zone OZ-SL — Residential — Rural Zone (R-RL).

- 64 (1) Permitted uses.
  - 65 (a) Accessory buildings, structures, and uses.
  - 66 (b) Agriculture.

67 (c) Dwelling, single family, if located farther than 100 feet from the normal high-  
68 water line of any water bodies, or the upland edge of a wetland individual private  
69 campsite.

70 [~~1~~] ~~Dwelling, single family.~~

71

72 **3. Amend § 16.4.11 Residential — Suburban (R-RS) zoning as follows:**

73 B. Permitted uses. The following uses are permitted in the R-S Zone:

74 (1) Accessory dwelling unit.

75 (2) Conservation Subdivision.

76 ~~(3) Dwelling, attached single family.~~

77 (4) Dwelling, multifamily ~~(not more than four units per building)~~ 2-4 “Limited”

78 (5) Dwelling, single-family.

79 ~~(6) Dwelling, two family.~~

80

81 D.Standards. The following standards must be met unless modified per §**16.8.10**,  
82 Conservation Subdivision:

83 (1) Design and performance standards. The design and performance standards of  
84 Chapters **16.5**, **16.7** and **16.8** must be met. The Design Handbook provides examples  
85 of appropriate design for nonresidential and multiunit residential projects.

86 (2) Dimensional standards.

87 (a) Minimum ~~land~~ **Lot** area per dwelling unit ~~(note: as per Chapter 16.3 definition~~  
88 ~~of "minimum land area per dwelling unit,"~~ except to exempt properties which  
89 are unable to meet the square feet required for a single-family dwelling unit,  
90 provided the lot was conforming prior to October 25, 2012):

91 [1] Without public sewage disposal: 40,000 square feet.

92 [2] With public sewage disposal: 30,000 square feet unless reduced in  
93 accordance with Note A.

94 [3] When more than 50% of the dwelling units proposed will be  
95 affordable as defined by this Code and have public sewer: 12,000  
96 square feet

97 (b) Minimum lot size:

98 [1] Without public sewage disposal: 40,000 square feet.

99 [2] With public sewage disposal: 30,000 square feet unless reduced in  
100 accordance with Note A.

101 (c) Minimum street frontage: 150 feet unless reduced in accordance with Note A.

102 (d) Minimum front yard: 40 feet.

103 (e) Maximum building coverage: 20%.

104 (f) Minimum rear and side yards: 15 feet.

105 (Note: Buildings higher than 40 actual feet must have side and rear yards not  
106 less than 50% of the building height.)

107 (g) Maximum building height: 35 feet.

- 108 (Note: Minimum distance between principal buildings on the same lot is the  
109 height equivalent to the taller building.)  
110 (h) Minimum water body setback for functionally water-dependent uses: zero feet.  
111 (i) Minimum setback from streams, water bodies and wetlands: in accordance with  
112 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

Note A:

The required minimum ~~land~~ **Lot** area per dwelling unit and/or minimum lot size for residential uses that are served by public sewage disposal and that are located outside of areas subject to shoreland zoning may be less than 30,000 square feet per lot/unit if the established average density of development in the immediate area of the use as determined below is less than 30,000 square feet.

If the average of the lot sizes and/or ~~land~~ **Lot** area per dwelling unit of the developed residential lots that are located on the same street and within 500 feet of the parcel is less than 30,000 square feet, the required minimum lot size or required minimum ~~land~~ **Lot** area per dwelling unit is the calculated average lot size or average ~~land~~ **Lot** area per dwelling unit but not less than 20,000 square feet.

If the required minimum lot size is reduced, the required minimum street frontage for new residential uses served by public sewerage may also be reduced to the average of the lot frontage of existing developed residential lots that are located on the same street and within 500 feet of the parcel but in no case to less than 100 feet.

- 113  
114 (3) Subdivision types and standards. ~~Subject to net residential acreage and net~~  
115 ~~residential density per Chapter 16.3.~~  
116 (a) Conservation Subdivision. In a conservation subdivision, the above standards  
117 may be modified in accordance with special provisions of §16.8.10, including  
118 that there is no minimum lot size, and with the conditions that:  
119 [1] Minimum principal building separation as required by the Fire Chief, but  
120 not less than 15 feet.  
121 (b) Subdivision development (per special exception uses, §16.4.11C). In a  
122 subdivision development, standards in §16.4.11D(1) and (2) apply and include:  
123 [1] Minimum percentage of common open space: 15%.  
124 (4) Mobile homes. Mobile homes must meet the standards of §16.5.17.  
125 **(5) Parking. When more than 50% of the dwelling units provided while be**  
126 **affordable as defined by this code: two parking spaces per three dwelling units.**  
127 **(6) Affordable housing requirements:**  
128 **(a) All requirements in §16.5.4 Affordable Housing must be met.**  
129 **(b) Density incentives outlined above in subsection D.(2).(a).[3] may be applied**  
130 **to projects that create affordable housing units, as defined by this code. No**  
131 **proportional payment-in-lieu is required if the affordable dwelling unit**  
132 **requirements for the density incentives are met.**  
133

- 134 E. Shoreland Overlay Zone OZ-SL — Residential — Suburban Zone (R-S).  
135 (1) Permitted uses.

- 136 (a) Day-care facility.  
137 (b) Dwellings if located farther than 100 feet from the normal high-water line of any  
138 water bodies, or the upland edge of a wetland.  
139 [1] Dwelling, attached single-family.  
140 [2] Dwelling, multifamily (not more than four units per building).  
141 [3] Dwelling, single-family.  
142 [4] Dwelling, two-family.  
143

144 **4. Amend § 16.4.12 Residential — Kittery Point Village (R-KPV) zoning as follows:**

145 B. Permitted uses. The following uses are permitted in the R-KPV Zone:

- 146 (1) Accessory dwelling units.  
147 (2) Conservation subdivision.  
148 ~~(3) Dwelling, attached single-family.~~  
149 (4) Dwelling, multifamily (not more than four units per building). 2-4 "Limited"  
150 (5) Dwelling, single-family.  
151 ~~(6) Dwelling, two-family.~~  
152

153 D. Standards. The following standards must be met unless modified per § 16.8.10,  
154 Conservation subdivision.

- 155 (1) Design and performance standards in Chapters 16.5, 16.7 and 16.8. The Design  
156 Handbook provides examples of appropriate design for nonresidential and multiunit  
157 residential projects.  
158 (2) Dimensional standards.  
159 (a) Minimum ~~land~~ lot area per dwelling unit: 40,000 square feet. (Note: As per  
160 Chapter 16.3 definition of "minimum land area per dwelling unit," except to  
161 exempt properties which are unable to meet the square feet required for a  
162 single-family dwelling unit, provided the lot was conforming prior to October  
163 25, 2012).  
164 (b) Minimum lot size: 40,000 square feet.  
165 (c) Minimum street frontage: 150 feet unless reduced in accordance with Note A.  
166 (d) Minimum front yard: 40 feet.  
167 (e) Maximum building coverage: 20%.  
168 (f) Minimum rear and side yards: 15 feet. (Note: Buildings higher than 40 actual  
169 feet must have side and rear yards not less than 50% of the building height.)  
170 (g) Maximum building height: 35 feet. (Note: Minimum distance between principal  
171 buildings on the same lot is the height equivalent to the taller building.)  
172 (h) Minimum water body setback for functionally water-dependent uses: zero feet.  
173 (i) Minimum setback from streams, water bodies and wetlands: in accordance with  
174 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules. Subdivision types  
175 and standards.  
176 ~~(3) Subject to net residential acreage and net residential density per Chapter 16.3.~~

- 177  
178 E. Shoreland Overlay Zone OZ-SL — Residential — Kittery Point Village (R-KPV).  
179 (1) Permitted uses.  
180 (a) Agriculture.  
181 (b) Accessory buildings, structures, and uses.  
182 (c) Day-care facility.  
183 (d) Dwellings if located farther than 100 feet from the normal high-water line of  
184 any water bodies, or the upland edge of a wetland.  
185 [1] Dwelling, attached single-family.  
186 [2] Dwelling, multifamily (not more than four units per building): Two-  
187 family  
188

189 **5. Amend § 16.4.13 Residential — Urban (R-U) zoning as follows:**

- 190 B. Permitted uses. The following uses are permitted in the R-U Zone:  
191 (1) Accessory dwelling units.  
192 (2) Conservation subdivision.  
193 ~~(3) Dwelling, attached single family.~~  
194 (4) Dwelling, manufactured housing.  
195 (5) Dwelling, multifamily.  
196 (6) Dwelling, single-family.  
197 (7) Dwelling, ~~two-family.~~ multifamily 2-4 “Limited”  
198  
199 D. Standards. The following standards must be met unless modified per §16.8.10  
200 Conservation Subdivision:  
201 (1) The design and performance standards in Chapters 16.5, 16.7 and 16.8.  
202 (2) Dimensional standards:  
203 (a) Minimum ~~land~~ lot area per dwelling unit: 20,000 square feet. ~~(Note: As per~~  
204 ~~Chapter 16.3 definition of “minimum land area per dwelling unit,”~~ except to  
205 exempt properties which are unable to meet the square feet required for a  
206 single-family dwelling unit, provided the lot was conforming prior to  
207 October 25, 2012.)  
208 (b) When more than 50% of the dwelling units proposed will be affordable  
209 as defined by this code and have public sewer: 8,000 square feet  
210 (b) Minimum lot size: 20,000 square feet.  
211 (c) Minimum street frontage: 100 feet.  
212 (d) Minimum front yard, all buildings: 30 feet.  
213 (e) Minimum rear and side yards, all buildings: 15 feet.  
214 (Note: Buildings higher than 40 actual feet must have side and rear yards not  
215 less than 50% of building height.)  
216 (f) Maximum building height: 35 feet.  
217 (Note: Minimum distance between principal buildings on the same lot is the  
218 height equivalent to the taller building.)

- 219 (g) Maximum building coverage: 20%.
- 220 (h) Minimum water body setback for functionally water-dependent uses: zero
- 221 feet.
- 222 (i) Minimum setback from streams, water bodies and wetlands: in accordance
- 223 with Table 16.5.30 § 16.4.28 and Appendix A, Fee Schedules.
- 224 (3) Subdivision types and standards. ~~Subject to net residential acreage and net~~
- 225 ~~residential density per Chapter 16.3.~~
- 226 (a) Conservation Subdivision. In a subdivision, the above standards may be
- 227 modified in accordance with special provisions of §16.8.10, including that
- 228 there is no minimum lot size, and with the conditions that:
- 229 [1] Minimum principal building separation as required by the Fire Chief,
- 230 but not less than 15 feet.
- 231 (b) Subdivision development (special exception uses, §16.4.13C). In a
- 232 subdivision development, standards in §16.4.13D(1) and (2) apply and
- 233 include:
- 234 [1] Minimum percentage of common open space: 15%.
- 235 (4) Age-restricted housing. In the case of age-restricted housing, the above standards
- 236 may be modified in accordance with the special provisions of §16.5.15 and with
- 237 the condition that:
- 238 (a) Municipal sewerage and water must be provided.
- 239 (b) A minimum land area of three acres must be provided.
- 240 (c) The maximum net density may not exceed four dwelling units per net
- 241 residential acre. In no event may the Planning Board authorize a departure
- 242 which increases the total number of dwelling units greater than that specified
- 243 under the applicable zoning ordinance.
- 244 (d) A single-bedroom unit may not be less than 550 square feet and a two-
- 245 bedroom unit not less than 650 square feet.
- 246 (5) Manufactured housing. Manufactured housing must meet standards of §16.5.15.
- 247 **(6) Parking. When more than 50% of the dwelling units provided while be**
- 248 **affordable as defined by this code: two parking spaces per three dwelling units.**
- 249 **(7) Affordable housing requirements:**
- 250 **(a) All requirements in §16.5.4 Affordable Housing must be met.**
- 251 **(b) Density incentives outlined above in subsection D.(2).(a).[3] may be**
- 252 **applied to projects that create affordable housing units, as defined by this**
- 253 **code. No proportional payment-in-lieu is required if the affordable**
- 254 **dwelling unit requirements for the density incentives are met.**

255

256 E. Shoreland Overlay Zone OZ-SL — Residential — Urban Zone (R-U).

- 257 (1) Permitted uses.
- 258 (a) Accessory buildings, structures, and uses.
- 259 (b) Day-care facility.
- 260 (c) Dwellings if located farther than 100 feet from the normal high-water line
- 261 of any water bodies, or the upland edge of a wetland.

- 262 [1] ~~Dwelling, attached single-family.~~
- 263 [2] Dwelling, manufactured housing.
- 264 [3] ~~Dwelling, multifamily.~~
- 265 [4] Dwelling, single-family.
- 266 [5] Dwelling, two-family.

267  
268 **6. Amend § 16.4.14 Residential — Village (R-V) zoning as follows:**

269 B. Permitted uses. The following uses are permitted in the R-V Zone:

- 270 (1) Accessory dwelling unit.
- 271 (2) Dwelling, ~~attached single-family.~~ multifamily 2-4 “Limited”
- 272 (3) Dwelling, manufactured housing.
- 273 (4) Dwelling, single-family.
- 274 ~~(5) Dwelling, two-family.~~

275  
276 D. Standards. All development and the use of land in the R-V Zone must meet the  
277 following standards. In addition, the design and performance standards of Chapters  
278 **16.5, 16.7** and **16.8** must be met. The Design Handbook provides examples of  
279 appropriate design for nonresidential and multiunit residential projects.

- 280 (1) The following space standards apply:
  - 281 (a) Minimum ~~land~~ **lot** area per dwelling unit: 4,000 square feet. (~~Note: As per~~  
282 ~~Chapter 16.3 definition of "minimum land area per dwelling unit,"~~ except to  
283 exempt properties which are unable to meet the square feet required for a  
284 single-family dwelling unit, provided the lot was conforming prior to October  
285 25, 2012.)

286  
287 E. Shoreland Overlay Zone OZ-SL — Residential — Village Zone (R-V).

- 288 (1) Permitted uses.
  - 289 (a) Accessory buildings, structures, and uses.
  - 290 (b) Dwellings if located farther than 100 feet from the normal high-water line of  
291 any water bodies, or the upland edge of a wetland Public Facility.
    - 292 ~~[1] Dwelling, attached single-family.~~
    - 293 [2] Dwelling, manufactured housing.
    - 294 [3] Dwelling, single-family.
    - 295 [4] Dwelling, two-family.

296  
297 **7. Amend §16.4.15 Residential — Rural Conservation (R-RC) zoning as follows:**

298 B. Permitted use. The following uses are permitted in the R-RC Zone:

- 299 (1) Accessory dwelling units.
- 300 (2) Conservation subdivision.
- 301 (3) Dwelling, manufactured housing.

302 (4) Dwelling, single-family.

303 **(5) Dwelling, multifamily 2-4 as follows**

	<u>Total maximum # of units allowed on lot (attached or detached)</u>	
<u># of Existing Units</u>	<u>Public Sewer and Water Available</u>	<u>Public sewer and water not available</u>
<u>0</u>	<u>4</u>	<u>2</u>
<u>1</u>	<u>3</u>	<u>3</u>
<u>2</u>	<u>2</u>	<u>2</u>

304

305 D. Standards. The following standards must be met unless modified per §16.8.10,  
306 Conservation Subdivision:

307 (1) The design and performance standards of Chapters 16.5, 16.7 and 16.8 must be  
308 met.

309 (2) The following dimensional standards apply:

310 (a) Minimum ~~land area~~ net residential acreage per dwelling unit: 80,000 square  
311 feet. (~~Note: As per Chapter 16.3 definition of "minimum land area per~~  
312 ~~dwelling unit,"~~ except to exempt properties which are unable to meet the  
313 square feet required for a single-family dwelling unit, provided the lot was  
314 conforming prior to October 25, 2012.)

315

316 **8. Amend §16.4.17 Business — Local (B-L) zoning as follows:**

317 B. Permitted uses. The following uses are permitted in the B-L Zone:

318 (1) Accessory dwelling unit.

319 (2) Dwelling, ~~attached single family.~~ multifamily 2-4

320 (3) Dwelling, manufactured housing.

321 (4) Dwelling, multifamily.

322 ~~(a) Development proposing three or four dwelling units is permitted through~~  
323 ~~minor site plan review;~~

324 ~~(b) Development proposing five or more dwelling units is permitted through~~  
325 ~~major site plan review;~~

326 (5) Dwelling, single-family.

327 ~~(6) Dwellings, two-family.~~

328 (7) Dwelling units as part of a mixed-use building.

329

330 D. Standards. All development and the use of land in the B-L Zone must meet the following  
331 standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the



332 design and performance standards of Chapters 16.5, 16.7 and 16.8 must be met. [Amended 9-12-  
333 2022]

334 (1) The following space and dimensional standards apply:

335 (a) Minimum ~~land~~ lot area per dwelling unit:

336 [1] If served by on-site sewage disposal: 20,000 square feet;

337 [2] If served by the public sewerage system and:

338 [a] When no frontage on State Road or Route 1 Bypass exists: 3,000 square  
339 feet;

340 [b] When less than five dwelling units are proposed at minimum, one  
341 nonresidential use must be located on the first floor facing State Road or  
342 Route 1 Bypass such that the use will be visible from the street: 3,000  
343 square feet. Such a nonresidential use or uses need not occupy the entire  
344 first floor but must be an independent nonresidential use, e.g., not a  
345 home office marketed with a dwelling unit as a work/live unit;

346 [c] When five or more dwelling units are proposed at minimum, one  
347 nonresidential use must be located on the first floor facing State Road or  
348 Route 1 Bypass such that the use will be visible from the street: 2,500  
349 square feet. Such a nonresidential use or uses need not occupy the entire  
350 first floor but must be an independent nonresidential use, e.g., not a  
351 home office marketed with a dwelling unit as a work/live unit; or

352 [d] 25% or more of the dwelling units will be affordable housing units as  
353 defined by this code: 1,000 square feet.

354 Note: Except as otherwise required by the buffer provisions of this title.

355 (b) Parking. Parking requirements are to be met on site. If meeting the parking  
356 requirements is not possible, the parking demand may be satisfied off site or  
357 through joint-use agreements as specified herein. Notwithstanding the off-street  
358 parking requirements in § 16.7.11F(4), minimum parking requirements for the  
359 uses below are modified as specified:

360 [1] Dwelling units: 1.5 parking spaces per dwelling unit; unless:

361 [a] Affordable housing as defined by this code is proposed, in which case  
362 the parking requirements may be reduced to one parking space per  
363 dwelling unit at the Planning Board's discretion; and/or

364 [b] Some or all of the proposed dwelling units are one-bedroom or  
365 studio-type units, in which case parking requirements for these types  
366 of units may be reduced to one parking space for each unit so  
367 described.

368 [c] More than 50% of the dwelling units proposed will be affordable  
369 as defined by this code in which case parking is reduced to two  
370 spaces per three dwelling units.

371

372 E. Shoreland Overlay Zone OZ-SL — Business — Local Zone (B-L).

373 (1) Permitted uses.

374 (a) Accessory buildings, structures, and uses.

375 (b) Dwellings if located farther than 100 feet from the normal high-water line of

- 376 any water bodies, or the upland edge of a wetland.
- 377 ~~[1] Dwelling, attached single-family.~~
- 378 [2] Dwelling, manufactured housing.
- 379 ~~[3] Dwelling, multifamily.~~
- 380 [4] Dwelling, single-family.
- 381 [5] Dwellings two-family.

382  
383 **9. Amend §16.4.18 Business — Local 1 (B-L1) zoning as follows:**

384 B. Permitted uses. The following uses are permitted in the B-L1 Zone:

- 385 (1) Accessory dwelling unit.
- 386 (2) Dwelling, ~~attached single-family.~~ multifamily 2-4 “Limited”
- 387 (3) Dwelling, manufactured housing.
- 388 (4) Dwelling, multifamily. **[Amended 9-12-2022]**
  - 389 ~~(a) Development proposing three or four dwelling units is permitted through~~
  - 390 ~~minor site plan review;~~
  - 391 ~~(b) Development proposing five or more dwelling units is permitted through~~
  - 392 ~~major site plan review;~~
- 393 (5) Dwelling, single-family.
- 394 ~~(6) Dwelling, two family.~~

395  
396 D. Standards. All development and the use of land in the B-L1 Zone must meet the  
397 following standards. Kittery's Design Handbook illustrates how these standards can be  
398 met. In addition, the design and performance standards of Chapter **16.5** must be met.  
399 **[Amended 9-12-2022]**

- 400 (1) The following space and dimensional standards apply:
  - 401 (a) Minimum ~~land~~ (lot) area per dwelling unit:
    - 402 [1] When no frontage on State Road or Shapleigh Road: 2,500 square feet.
    - 403 [2] When less than five dwelling units are proposed with, at minimum, one
    - 404 nonresidential use must be located on the first floor facing State Road or
    - 405 Shapleigh Road such that the use will be visible from the street: 2,500
    - 406 square feet. Such a nonresidential use or uses need not occupy the entire
    - 407 first floor but must be an independent nonresidential use, e.g., not a home
    - 408 office marketed with a dwelling unit as a work/live unit.
    - 409 [3] When five or more dwelling units are proposed with, at minimum, one
    - 410 nonresidential use must be located on the first floor facing State Road or
    - 411 Shapleigh Road such that the use will be visible from the street: 2,000
    - 412 square feet. Such a nonresidential use or uses need not occupy the entire
    - 413 first floor but must be an independent nonresidential use, e.g., not a home
    - 414 office marketed with a dwelling unit as a work/live unit.
    - 415 [4] When 25% or more of the dwelling units will be affordable housing units
    - 416 as defined by this code, the minimum land area per dwelling unit is 1,500
    - 417 square feet.

**[5] When 50% or more of the dwelling units will be affordable housing units as defined by this code, the minimum land area per dwelling unit is 1,000 square feet.**

- (b) Minimum lot size: none.  
(Note: Except that all screening, open space, buffering and landscaping requirements must be met; or in instances where the Planning Board may approve modifications to such requirements, such modifications must be found satisfactory by the Board.
- (c) Minimum street frontage per lot: 50 feet.
- (d) Maximum front setback: 20 feet.  
(Note: This area must be designed to promote a pedestrian public space, which includes, but is not limited to, landscaping, sidewalks and sitting areas. The Planning Board may, at its discretion, allow a greater setback when public amenities such as pocket parks, outdoor dining or seating areas are proposed within the front setback. Pocket parks must be at least 200 square feet with a minimum of three trees and a bench for sitting required. Park must be vegetated with ground cover, except for walkways. Outdoor dining areas must meet any additional requirements specific to that use. Outdoor storage is prohibited anywhere in the front yard of the structure, except for seasonal sales items. Parking is also prohibited in the front setback, except as allowed in Subsection **D(2)(e)** below.
- (e) Minimum rear and side setbacks: 10 feet.  
(Note: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear setbacks abut a residential zone or single-family use; in which case a minimum of 15 feet or 50% of the building height, whichever is greater, is required.)
- (f) Maximum building height: 40 feet. Solar apparatus is excluded from height determinations.
- (g) The maximum impervious surface is:
- [1] Seventy percent; or
  - [2] The Planning Board may, at its discretion, allow greater than 70% if:
    - [i] Additional landscaped or natural areas are proposed or preserved and such areas are integrated into the site design in an environmentally conscious way utilizing LID to provide stormwater filtration and/or water quality improvements. Such areas must exceed the requirement that 15% of the lot be landscaped or natural. See Subsection **D(4)**, Landscaping/Site improvements. When granting such a concession, the Board must find that the proposed additional landscaping and/or natural areas and the site design provide enough benefit to outweigh the impact of greater impervious surface; or
    - [ii] Affordable housing to be built, rather than a payment-in-lieu, is proposed.

Note: If using either option above, the stormwater requirements in Subsection **D(1)(i)** below may not be modified.

- 463 (h) Stormwater. All new development must use LID (low-impact development)  
464 and BMP (best management practices), based on Maine DEP's Maine  
465 Stormwater Best Management Practices Manual Volumes I through III, as  
466 amended from time to time, to manage 100% of the total stormwater  
467 generated on-site. The stormwater report and plan demonstrating that this  
468 requirement is met must be included with the application at the time of  
469 submission. A request for a modification may be submitted to the Planning  
470 Board, but it is incumbent on the applicant to prove to the Planning Board's  
471 satisfaction that such a modification is necessary. The Town reserves the  
472 right to submit such modification requests for independent engineering  
473 review at the applicant's expense. The Board may also require additional  
474 landscaping/plannings and/or LID features when granting such concessions.  
475 (i) Minimum area dedicated to landscaped or natural areas: 15%.  
476 [1] For the purposes of this zone, a natural area is an area that is not  
477 regularly mowed, and contains trees and/or shrubs which may not have  
478 been deliberately planted. Invasive plants, as defined by the State of  
479 Maine, must be removed.  
480 [2] For multifamily dwelling, mixed-use buildings with dwelling units and  
481 attached single-family dwellings, in cases where the property cannot  
482 meet the 15% requirement due to existing development (including  
483 parking areas), and where redevelopment will remain at the same or a  
484 lower percentage of the lot, the Planning Board may, at its discretion,  
485 allow a smaller percentage of landscaped and/or natural area. In  
486 granting this concession, the Board may require more intensive  
487 landscape plantings and/or LID-designed features.  
488 (j) Hours of operation must be noted on the final site plan and are determined by  
489 the Planning Board on a case-by-case basis. All lighting other than  
490 designated security lighting must be extinguished outside of noted hours of  
491 operation.  
492 (k) Minimum setback for functionally water-dependent uses: zero feet.  
493 (l) Minimum setback from streams, water bodies and wetlands: in accordance  
494 with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

495 (2) Parking design:

496 **Parking requirements are to be met on-site. If meeting the parking**  
497 **requirements is not possible, the parking demand may be satisfied off-site or**  
498 **through joint-use agreements as specified in 16.4.17.D.(1).(c) -**  
499 **16.4.17.D.(1).(e) under the B-L Zone. Notwithstanding the off-street parking**  
500 **requirements in 16.7.11.F.(4), minimum parking requirements for the uses**  
501 **below are modified as specified:**

502 **[1] Dwelling units: 1.5 parking spaces per dwelling unit; unless:**

503 **[i] Affordable housing as defined by this code is proposed in which case the**  
504 **parking requirements may be reduced to a minimum of 1/2 spaces per**  
505 **dwelling unit at the Planning Board's discretion; and/or**

506 [ii] Housing is proposed within 1/4 mile of a public transit stop, in  
507 which case the parking requirements may be reduced to a minimum of 1/2  
508 spaces per dwelling unit at the Planning Board's discretion; and/or

509 [iii] Some or all of the proposed dwelling units are one-bedroom or  
510 studio type units in which case parking requirements for these types of units  
511 are reduced to one parking space for each unit so described.

512 [iv] More than 50% of the dwelling units proposed will be affordable as  
513 defined by this code in which case parking is reduced to two spaces per three  
514 dwelling units.

515 [2] For multifamily dwellings, if more than ten parking spaces are  
516 required, up to 20% of the parking may be designated for compact cars. See  
517 16.7.11.F.(4) Off-Street Parking Standards.

518 (b) [3] Electric car charging stations are allowed and encouraged in parking  
519 lots but must not interfere with pedestrian movement on sidewalks.

520 **10. Amend §16.4.19 Commercial 1, Route 1 Commercial Zone (C-1) as follows:**

521 E. Standards.

522 (1) C Zone standards. All development and the use of land in the C Zone must meet  
523 the following standards. Kittery's Design Handbook illustrates how these standards can  
524 be met. In addition, the design and performance standards of Chapters **16.5**, **16.7** and **16.8**  
525 must be met unless noted otherwise below.

526 (2) The following space standards apply in the C-1 Zones:

527 (a) Minimum lot size or density:

**C-1 Zone**

Cottage cluster	16 units per acre unless 25% of units are
Dwelling, attached single-family	affordable housing units as defined by this
Dwelling, multifamily	Code, in which case 20 units per acres
Dwelling, two-family	allowed*
Dwelling units as part of a mixed-use	<u>40 units per acre when over 50% of the</u>
building	<u>units are affordable housing units as</u>
	<u>defined by this Code*.</u>

All other uses

40,000 square feet

NOTES:

\* These uses are exempt from net residential acreage calculations but are subject to  
minimum land area per dwelling unit requirement as described in §16.5.18D,  
Exemptions to net residential acreage calculations.

529 (4)(c) Parking standards. The following minimum off-street parking requirements must  
530 be provided and maintained in case of new construction, alterations, and changes of  
531 use:

532 [1] Parking requirements must be met on site unless an existing building covers so  
533 much of the lot as to make the provision of parking impractical in whole or in  
534 part. If meeting the parking requirements is not practical, then the parking demand  
535 may be satisfied off site or through joint-use agreements as specified herein.  
536 Notwithstanding the off-street parking requirements in §16.7.11F, minimum  
537 parking requirements for the uses below are modified as specified:

538 [a] Dwelling units: one parking space per dwelling unit.

539 [b] For multifamily dwellings, if more than 10 parking spaces are required, up to  
540 20% of the parking may be designated for compact cars. See §16.7.11F, Off-  
541 street parking standards.

542 [c] When more than 50% of the dwelling units proposed are affordable as  
543 defined by this Code, two parking spaces for every three dwelling units.  
544

545 **11. Amend §16.4.21 Commercial 3, Bypass/ Old Post Road Commercial Zone (C-3) as**  
546 **follows:**

547 E. Standards.

548 (1) C Zone standards. All development and the use of land in the C Zone must meet  
549 the following standards. Kittery's Design Handbook illustrates how these standards can  
550 be met. In addition, the design and performance standards of Chapters 16.5, 16.7 and 16.8  
551 must be met unless noted otherwise below.

552 (2) The following space standards apply in the C-3 Zones:

553 (a) Minimum lot size or density:

**C-1 Zone**

Cottage cluster	16 units per acre unless 25% of units are
Dwelling, attached single-family	affordable housing units as defined by this
Dwelling, multifamily	Code, in which case 20 units per acres
Dwelling, two-family	allowed*
Dwelling units as part of a mixed-use building	<u>40 units per acre when over 50% of the units are affordable housing units as defined by this Code*.</u>

All other uses

40,000 square feet

NOTES:

\* These uses are exempt from net residential acreage calculations but are subject to  
minimum land area per dwelling unit requirement as described in §16.5.18D,  
Exemptions to net residential acreage calculations.

- 555 (4)(c) Parking standards. The following minimum off-street parking requirements must be  
556 provided and maintained in case of new construction, alterations, and changes of use:
- 557 [1] Parking requirements must be met on site unless an existing building covers so much  
558 of the lot as to make the provision of parking impractical in whole or in part. If  
559 meeting the parking requirements is not practical, then the parking demand may be  
560 satisfied off site or through joint-use agreements as specified herein. Notwithstanding  
561 the off-street parking requirements in Article **IX** of Chapter **16.8**, minimum parking  
562 requirements for the uses below are modified as specified:
- 563 [a] Dwelling units: one parking space per dwelling unit.
- 564 [b] For multifamily dwellings, if more than 10 parking spaces are required, up to 20%  
565 of the parking may be designated for compact cars. See §16.7.11.F, Off-street  
566 parking standards.
- 567 **[c] When more than 50% of the dwelling units proposed are affordable as**  
568 **defined by this Code, two parking spaces for every three dwelling units.**  
569

570 **12. Amend §16.4.23 Mixed Use Zone (MU) as follows:**

571 B. Permitted uses.

- 572 (1) Accessory dwelling units.
- 573 (2) Dwelling, single-family (limited to lots of record as of April 1, 2004).
- 574 (3) Dwellings, multifamily (limited to the upper floors of mixed-use building that is  
575 served by public sewerage).
- 576 **(4) Dwelling multifamily 2-4 “Limited”**

577

578 D. Standards.

579 (2)

580 Note 1: For single-family dwellings, **and vacant lots of record**, one dwelling unit is  
581 allowed for each 200,000 square feet of land area. A lot of record having a land area  
582 of more than 200,000 square feet that was improved with a single-family dwelling as  
583 of April 1, 2004, may:

- 584 **a. Be ~~be~~ divided into two lots ~~with a single-family dwelling on each lot~~ provided**  
585 **that each of the lots contains at least 40,000 square feet of land area and meets the**  
586 **other dimensional standards of the zone. Section ~~16.4.10D(1)~~ and ~~(2)~~ as set forth**  
587 **in the Residential - Rural Zone apply and no further subdivision is allowed.**

588 Note 2: For dwelling units that are part of a mixed-use building **or a multifamily**  
589 **building** and are connected to the public sewerage system, one dwelling unit is  
590 allowed for each 10,000 square feet of **buildable land lot** area. **Where over 50% of**  
591 **such dwelling units described above will be affordable as defined by this code;**  
592 **4,000 square feet of buildable land area. [NOTE: multifamily dwellings are not**  
593 **allowed in either Resource Protection or Shoreland Overlay Zones] ~~Within the~~**  
594 **Resource Protection and Shoreland Overlay Zones, one dwelling unit is allowed**

595 ~~for each 40,000 square feet of land area within these zones.~~ If the parking for the  
596 residential units is encompassed within the building, the minimum required buildable  
597 land area per dwelling unit is reduced to 7,500 square feet. Where over 50% of the  
598 dwelling units will be affordable as defined by this code and parking is  
599 encompassed within the building: 3,000 square feet of buildable land area. ~~except~~  
600 ~~in the Resource Protection and Shoreland Overlay Zones where the area per dwelling~~  
601 ~~unit remains 40,000 square feet.~~ In addition, for those developments where more  
602 than 50% of the dwelling units will be affordable, parking requirements are  
603 reduced to two parking spaces per three dwelling units.

604 (10) Affordable housing requirements: [Added 10-24-2022]

- 605 (a) All requirements in §16.5.4, Affordable housing, must be met.  
606 (b) Density incentives detailed in 16.4.23.D Note 2 may be applied to  
607 projects that create affordable housing units, as defined by this code.  
608 No proportional payment-in-lieu is required if the affordable dwelling  
609 unit requirements for the density incentives are met.  
610

611 E. Shoreland Overlay Zone OZ-SL — Mixed-Use Zone (MU).

- 612 (1) Permitted uses.  
613 (a) Agriculture.  
614 (b) Art studio or gallery.  
615 (c) Dwellings, limited to the following:  
616 [1] Dwellings on lots of record as of April 1, 2004, if located farther than  
617 100 feet from the normal high-water line of any water bodies, or the  
618 upland edge of a wetland.  
619 [2] ~~Dwelling units on the upper floors of a mixed-use building is~~  
620 ~~served by public sewerage if located farther than 100 feet from the normal~~  
621 ~~high-water line of any water bodies, or the upland edge of a wetland.~~

622  
623 **13. Amend §16.4.24 Mixed-Use — Badger Island (MU-BI) as follows:**

624 B. Permitted uses. The following uses are permitted in the MU-BI Zone:

- 625 (1) Accessory dwelling units.  
626 (2) Dwellings, ~~attached single-family.~~ multifamily 2-4 “Limited”  
627 (3) Dwellings, manufactured housing.  
628 (4) Dwelling, multifamily.  
629 (5) Dwellings, single-family.

630  
631 D. Standards.

- 632 (1) The following space standards apply:  
633 (a) Minimum land area per dwelling unit: 3,000 square feet.  
634 [1] ~~For each of the first two dwelling units and thereafter: 6,000 square feet.~~ If  
635 more than 50% of the dwelling units will be affordable housing units as



- 636 defined by this code: 1,200 square feet.
- 637 (4) Special parking standards.
- 638 (a) Revised off-street parking standards. Off-street parking must be provided in
- 639 accordance with § 16.7.11F unless modified below for the following uses:
- 640 [1] Dwellings: 1 1/2 parking space for each dwelling unit;
- 641 Except for residential developments where more than 50% of the
- 642 dwelling units will be affordable as defined by this code, parking
- 643 requirements are reduced to two parking spaces per three dwelling
- 644 units.
- 645
- 646

647 **14. Amend §16.4.25 Mixed-Use – Kittery Foreside Zone (MU-KF) as follows:**

648 B. Permitted uses. The following uses are permitted in the MU-KF Zone:

- 649 (1) Accessory dwelling units.
- 650 (2) Dwelling, ~~attached single family.~~ multifamily 2-4 “Limited”
- 651 (3) Dwellings, single-family.
- 652 (4) Dwellings, two-family.
- 653 (5) Dwellings, multifamily ~~(up to 12 units per lot).~~
- 654

655 D. Standards.

- 656 (1) The design and performance standards of Chapters 16.7 and 16.8 must be met,
- 657 except where specifically altered in this subsection.
- 658 (2) Dimensional standards. The following space standards apply:
- 659 (a) Minimum land area per dwelling unit: 5,000 square feet.
- 660 (a) – 1. If more than 50% of the dwelling units will be affordable housing
- 661 units as defined by this code: 2,000 square feet.
- 662 (7) Revised off-street parking standards. Insofar as practical, parking requirements are
- 663 to be met on site unless an existing building covers so much of the lot as to make the
- 664 provision of parking impractical in whole or in part. If meeting the parking
- 665 requirements is not practical, then the parking demand may be satisfied off site or
- 666 through joint-use agreements as specified herein. Notwithstanding the off-street
- 667 parking requirements in § 16.7.11F(3), minimum parking requirements for the uses
- 668 below are modified as specified herein:
- 669 (a) Dwelling units in buildings that existed as of April 1, 2005, including the
- 670 replacement of units destroyed by accidental or natural causes regardless of
- 671 how configured: one parking space per dwelling unit;
- 672 (b) Dwelling units in new buildings, including the replacement of existing
- 673 buildings other than the replacement of units destroyed by accidental or natural
- 674 causes: 1 1/2 parking spaces per dwelling unit;
- 675 (c) Dwelling units in buildings where more than 50% of the dwelling units
- 676 proposed will be affordable as defined by this code: two spaces per three
- 677 dwelling units.

678

679 **15. Amend §16.4.28 Shoreland Overlay Zone (OZ-SL) as follows:**

680 E. Standards.

681 (1) Minimum lot standards.

682 (a) Minimum lot size by base zone, within the:

683 [1] Residential-Village (R-V) Zone: 8,000 square feet.

684 [2] Residential-Urban (R-U) Zone: 20,000 square feet.

685 [3] Residential-Rural (R-RL), Residential-Suburban (R-S) and  
686 Residential-Kittery Point Village (R-KPV) Zones: 40,000 square feet.

687 [4] Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-  
688 L) and Business-Local 1 (B-L1) Zones: 60,000 square feet.

689 [5] Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.

690 [6] Business-Park (B-PK) Zone: 120,000 square feet.

691 [7] Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet.

692 [8] Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.

693 (b) Minimum ~~land area per dwelling unit~~ net residential density by base  
694 zone, within the:

695 [1] Residential-Village (R-V) Zone: 8,000 square feet.

696 [2] Business-Park (B-PK) Zone: 10,000 square feet.

697 [3] Residential-Urban (R-U), Business-Local (B-L) and Business-  
698 Local 1 (B-L1) Zones: 20,000 square feet.

699 [4] Mixed-Use (M-U), Residential-Rural (R-RL), Residential-  
700 Suburban (R-S) and Residential-Kittery Point Village (R-KPV) Zones:  
701 40,000 square feet.

702 [5] Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.

703 [6] Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet.

704 [NOTE: 3,000 square feet for the first two dwelling units.]

705 [7] Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.

706

707 **16. Amend §16.5.3 Accessory dwelling units as follows:**

708 B. Applicability.

709 (1) An accessory dwelling unit is allowed in all zoning districts where the use is  
710 permitted in Chapter 16.4. The unit must be located:

711 (a) Within an existing structure, either principal or accessory on the property;  
712 or

713 (b) Attached to the existing principal structure, sharing a common wall; or

714 (c) Within a new accessory structure constructed for this purpose on the  
715 property.

716 (d) Outside of the shoreland overlay zone, as defined in Chapter 16.4.

717 (2) Accessory dwelling units that have a valid certificate of occupancy or have vested  
718 rights in the permitting process with an active building permit as of April 28, 2020, are  
719 exempted from the use standard, § 16.5.3D(3).

720  
721 D. Accessory dwelling unit standards.

722 (1) Lot standards.

- 723 (a) ~~Legal lot/residence. An accessory dwelling unit is allowed only on lots within the~~  
724 ~~Town that contain one legal single family residence as the primary unit.~~
- 725 (b) Number of accessory dwelling units per lot. No more than one accessory dwelling  
726 unit is permitted on a lot that is located in a limited growth area as depicted in  
727 Kittery's Comprehensive Plan. Up to two accessory dwelling units are  
728 permitted on a lot that is located in a targeted growth area.
- 729 (c) Zone lot size and unit density. The property on which an accessory dwelling unit is  
730 located must meet the size required by the applicable zoning standards for the  
731 principal residence, except in the case of legally nonconforming lots. However, an  
732 accessory dwelling unit is exempt from the density requirements of the zone in  
733 which it is located.
- 734 (d) Setbacks and coverage. Yard setbacks for the zone must be met. However, for  
735 legally nonconforming lots where ~~an proposed~~ accessory dwelling unit ~~will be~~  
736 ~~attached to a principal dwelling unit and~~ cannot meet the zone's side and rear yard  
737 setbacks, the percentage by which a lot is smaller than the required lot size for the  
738 zone will dictate the required setback for that lot. For example, a 30,000 square foot  
739 legally nonconforming lot in a zone that requires 40,000 square feet would require  
740 side and rear yard setbacks that are 75% of the zone's side and rear yard setbacks.  
741 Building coverage requirements will remain as required by the zone.
- 742 (e) Utility connections. Accessory dwelling units must be connected to adequate water  
743 and wastewater services.
- 744 [1] Public sewer.
- 745 [a] Service: written verification must be provided of adequate service to support the  
746 additional flow from the Superintendent of Wastewater Treatment Facilities.
- 747 [b] Fees. Payment of appropriate fees for connection to the municipal sewer system is  
748 required prior to obtaining the certificate of occupancy.
- 749 [2] Septic systems. Verification of adequate sewage disposal for subsurface waste  
750 disposal is required. The septic system, existing or proposed, must be verified as  
751 adequate or reconstructed as required, pursuant to 30-A M.R.S. §4221. Plans for  
752 subsurface waste disposal must be prepared by a Maine-licensed site evaluator in  
753 full compliance with the State of Maine Subsurface Wastewater Disposal Rules, 10-  
754 144 CMR Ch. 241.
- 755 [3] Public water. Verification, in writing, is required from the Kittery water district for  
756 volume and supply.
- 757 [4] Wells. Verification of the potable water supply for private wells is required. Tests of  
758 the existing well or proposed well, if applicable, must indicate that the water supply  
759 is potable and acceptable for domestic use and must conform to the  
760 recommendations included in 01-672 C.M.R. ch. 10, section 10.25(J), Land Use

761 Districts and Standards, the "Manual for Evaluating Public Drinking Water  
762 Supplies, Public Health Service No. 1180 (1969)."

- 763 (f) ~~Parking. Each accessory dwelling unit must have one on-site parking space in~~  
764 ~~addition to the parking for the primary dwelling unit. Tandem parking is permitted.~~

765 No additional parking space is required for the accessory dwelling unit but the  
766 primary dwelling unit must have on-site parking.

- 767 (g) Private road or right-of-way access. Where an applicant seeks to locate an accessory  
768 dwelling unit on a privately maintained road or right-of-way the following applies:

- 769 [1] Applicant must submit written consent from the road or homeowner's association or  
770 owner and parties responsible for street maintenance.

771 (2) Unit standards.

- 772 (a) Unit size. The size of an accessory dwelling unit must meet the minimum size for a  
773 dwelling unit as set by building code standards adopted and amended from time to  
774 time by ~~Maine's Bureau of Building Codes and Standards~~ Technical Building code  
775 and Standards Board, pursuant to 10 M.R.S. § 9722, and be no larger than 1,000  
776 square feet. For principal dwelling units 1,000 square feet or smaller, an accessory  
777 dwelling unit may be no greater than 80% of the size of the principal dwelling unit,  
778 as measured in square feet. An accessory dwelling unit may have no more than two  
779 bedrooms.

- 780 (b) Unit location.

- 781 [1] An accessory dwelling unit must meet one or more of the following conditions:

- 782 [a] Be fully constructed within the existing footprint of any legal residence or accessory  
783 building; or

- 784 [b] Share a common wall with the principal residence, providing yard setbacks per  
785 § 16.5.3D(2)(a); or

- 786 [c] Be constructed as a new accessory building containing an accessory dwelling unit,  
787 providing yard setbacks can be met for the zone.

- 788 [2] Accessory dwelling units will be allowed to be fully constructed within the principal  
789 residence even if the building does not meet yard setbacks.

- 790 [3] Accessory dwelling units will not be allowed in accessory buildings encroaching on  
791 yard setbacks.

- 792 (3) Use standards. The accessory dwelling unit may not be rented to the same person or  
793 party for less than a thirty-day period.

- 794 (4) Development standards. Should an accessory dwelling unit fail to meet the  
795 applicable unit standards listed in this article, the accessory dwelling unit may still  
796 be allowed if the applicant obtains approval from the Board of Appeals under the  
797 provisions of a miscellaneous variation request, as outlines in § 16.2.12. The Board  
798 of Appeals shall review any appeal decision in conformance with § 16.2.12F, Basis  
799 for decision.

- 800 (5) Violations. A violation of the use standard § 16.5.3D(3) will lose the certificate of  
801 occupancy for the unit for no less than 30 days, and be assessed a penalty of \$500.

802  
803 **17. Amend §16.5.18 Net residential acreage as follows:**

804 A. Purpose. Net residential acreage is used to determine the maximum number of dwelling  
805 units allowed on a parcel that is ~~subject to subdivision~~ **located in a limited growth area**  
806 **identified in the Comprehensive Plan**. The total number of dwelling units allowed is  
807 equal to the net residential acreage divided by the minimum land area per dwelling unit  
808 for a given land use zone.

809 **B. Applicability. Applies to development of land located in limited growth areas as**  
810 **designated in the Comprehensive Plan. Development of parcels located in targeted**  
811 **growth areas is subject to provisions for lot area as defined in Chapter 16.3 for**  
812 **calculating lot area, lot coverage, or unit density.**

813 ~~B.~~ **C.** Net residential acreage calculation. To calculate net residential acreage, the land  
814 area listed below must be subtracted from a parcel's gross area. Where land areas to be  
815 subtracted overlap, the area therein is subtracted once.

- 816 (1) All land located below the highest annual tide elevation as published in the Maine DEP  
817 Highest Annual Tide (HAT) levels for the most-current year.
- 818 (2) All land located within the floodplain as defined in the definition of "flood, 100-year" in  
819 Chapter **16.3**.
- 820 (3) All wetlands as defined in the definition of "wetland" in Chapter **16.3**, as well as vernal  
821 pools, ponds, lakes, streams and other water bodies, including 50% of the associated  
822 setbacks described in other buildings and structures, Table 16.5.30, Chapter **16.5** of this  
823 title.
- 824 (4) All land located on filled tidal lands, per the definition of "tidal land, filled" in Chapter  
825 **16.3**.
- 826 (5) All land located within existing rights-of-way and other existing easements wherein  
827 dwelling units cannot be built.
- 828 (6) All land located within proposed rights-of-way, including parking and travel ways.  
829 Driveways are excluded.
- 830 (7) All land isolated from the principal location for development on the parcel by a  
831 road/street, existing land uses, or any physical feature, natural or man-made, such that it  
832 creates a barrier to the central development of the site and no means of access is  
833 proposed nor likely to be provided in the future. However, to demonstrate that identified  
834 isolated land may be considered developable for the purpose of this calculation, the  
835 applicant must submit a plan and supporting documentation for the Board's  
836 consideration.
- 837 ~~(8) All land zoned commercial (C 1, C 2, or C 3).~~
- 838 (9) All land one acre or more of contiguous area with sustained slopes of 20% or greater.
- 839 (10) All land identified as exposed bedrock, and soils with a drainage class of "poorly  
840 drained" and/or "very poorly drained" as defined in the definition of "soils" in Chapter  
841 **16.3**.
- 842 (11) Fifty percent of all land characterized as drainage class of "somewhat poorly drained,"  
843 unless public sewer is used, in which case no land area is subtracted.
- 844 (12) All land area within a cemetery and burying ground as defined in Chapter **16.3**,  
845 including associated setback per 13 M.R.S.A. § 1371-A, Limitations on construction  
846 and excavation near burial sites.
- 847 (13) All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource

848 Protection Overlay Zone not included in Subsection **B(12)** above.

849 C. Documentation. The net residential acreage calculation must be supported by verifiable  
850 information and accurate data and be shown on the subdivision plan or other plan when  
851 applicable.

852 ~~D. Exemptions to net residential acreage calculations.~~

853 ~~(1) The maximum number of dwelling units for residential development not subject to~~  
854 ~~subdivision is based on minimum land area per dwelling unit defined in Chapter 16.3,~~  
855 ~~Definitions, of this title.~~

856 ~~(2) The creation of dwelling units subject to subdivision within existing buildings that are~~  
857 ~~connected to Town sewer and are located in the Mixed Use Kittery Foreside, Mixed~~  
858 ~~Use Badgers Island, Residential Village, Business Local, or Business Local 1 Zones~~  
859 ~~are exempt from the net residential acreage calculations in § 16.5.18A. The total number~~  
860 ~~of dwelling units permitted is determined by dividing the gross lot area by the minimum~~  
861 ~~land area per dwelling unit allowed in the zone. The exemption is allowed in the above~~  
862 ~~base zones when subject to the Shoreland Overlay Zone.~~

863 ~~(3) The Mixed Use Neighborhood Zone (MU N) and certain residential uses in the C-1 and~~  
864 ~~C-3 Zones as noted in §§ 16.4.19 and 16.4.21 are exempt from § 16.5.18, Net residential~~  
865 ~~acreage calculation, but are subject to the minimum land area per dwelling unit as~~  
866 ~~defined in Chapter 16.3, Definitions, except that 50% of all wetlands may be subtracted,~~  
867 ~~rather than 100%.~~

868

869

870 **13. Amend §16.7.2 Applicability (Site Plan Review) as follows:**

871 A. A person who has right, title, or interest in a parcel of land shall obtain site plan approval  
872 prior to commencing any of the following activities on the parcel, including contracting or  
873 offering for the conveyance regulated activity permit for any structure within the  
874 development is issues, or undertaking work on any improvements, including installation of  
875 roads or utilities or land clearing.

876 (1) The construction or placement of any new building or structure for a nonresidential  
877 use, including accessory buildings and structures, if such buildings or structures have a  
878 total area for all floors of all structures of 1,000 square feet or more measured  
879 cumulatively over a five-year period.

880 (2) The expansion of an existing nonresidential building or structure, including accessory  
881 buildings, if the enlargement increases the total area for all floors within a five-year  
882 period by more than 20% of the existing total floor area or 1,000 square feet,  
883 whichever is greater.

884 (3) The conversion of an existing building in which 1,000 or more square feet of total floor  
885 area are converted from residential to nonresidential use.

886 (4) The establishment of a new nonresidential use even if no buildings or structures are  
887 proposed, that involves the development of more than 25,000 square feet of land. This  
888 includes uses such as gravel pits, cemeteries, golf courses, and other nonstructural  
889 nonresidential uses.

890 (5) The conversion of an existing nonresidential use, in whole or in part, to another  
891 nonresidential use if the new use changes the basic nature of the existing use such that

- 892 it increases the intensity of on- or off-site impacts of the use subject to the standards  
893 and criteria of site plan review described in this chapter.
- 894 (6) The construction of a residential ~~building~~ **development** containing three or more  
895 dwelling units **on the same legal parcel.**
- 896 **(a) Development proposing three or four dwelling units is permitted through**  
897 **minor site plan review;**
- 898 **(b) Development proposing five or more dwelling units is permitted through**  
899 **major site plan review;**
- 900 (7) The modification or expansion of an existing residential structure that increases the  
901 number of dwelling units in the structure by three or more in any five-year period.
- 902 (8) The conversion of an existing nonresidential building or structure, in whole or in part,  
903 into three or more dwelling units within a five-year period.
- 904 **(a) Development proposing three or four dwelling units is permitted through**  
905 **minor site plan review;**
- 906 **(b) Development proposing five or more dwelling units is permitted through**  
907 **major site plan review;**
- 908 (9) The cumulative development of an area equal to, or greater than, one acre within any  
909 five-year period. The applicability of this chapter does not include the construction of  
910 streets that are reviewed as part of a subdivision application.
- 911 (10) Marijuana businesses and medical marijuana registered caregiver home establishments.
- 912 B. Other development review. Unless subject to a shoreland development plan review or right-  
913 of-way plan per § **16.7.3A**, the following do not require Planning Board approval:
- 914 (1) Single and duplex family dwellings.
- 915 (2) Division of land into lots (i.e., two lots), which division is not otherwise subject to  
916 Planning Board review as a subdivision.
- 917 (3) Business use as provided in § 16.4.26C(13).
- 918 (4) Small-scale ground-mounted solar energy systems below or equal to 1,000 square feet  
919 in area. **[Added 4-11-2022]**
- 920 **(5) Multifamily 2-4 “Limited” dwellings (attached or detached)**

**Chapter 5: 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; and (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit in any area where housing is permitted.

**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; and (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit in any area where housing is permitted. Municipalities must adopt ordinances that are consistent with and no more restrictive than the requirements of P.L. 2021, ch. 672, codified at 30-A M.R.S. §§ 4364, 4364-A, 4364-B, and this Chapter.
2. 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, or 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; or
  - d) Abrogate or annul minimum lot size requirements under Title 12, Chapter 423-A.

**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 must adopt



definitions that are consistent with and no more restrictive, than the definitions outlined below. The following terms shall have the definitions hereinafter set forth:

**Accessory dwelling unit.** "Accessory dwelling unit" means a self-contained dwelling unit located within, attached to or detached from a single-family dwelling unit 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 a majority of the units that the developer designates as affordable 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 a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs.
3. For purposes of this definition, "majority" means more than half.
4. For purposes of this definition, "housing costs" means:
  - 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.

**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.

**Certificate of occupancy.** "Certificate of occupancy" means the municipal approval for occupancy granted pursuant to 25 M.R.S. § 2357-A or the Maine Uniform Building and Energy Code adopted pursuant to Title 10, chapter 1103. Certificate of occupancy may also be referred to as issuance of certificate of occupancy or other terms with a similar intent.

**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.

**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 multimunicipal 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.

**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.

**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.

**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 described in a deed or other legal instrument.

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

**Potable.** "Potable" means safe for drinking as defined by the U.S. Environmental Protection Agency's (EPA) Drinking Water Standards and Health Advisories Table.

**Principal structure.** "Principal structure" means a building or structure in which the main or primary use of the structure is conducted.

**Restrictive covenant.** "Restrictive covenant" means a provision in a deed 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.

**Single-family dwelling unit.** "Single-family dwelling unit" means a building containing one (1) dwelling unit.

**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).

**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**

This Section requires municipalities to allow an automatic density bonus for certain affordable housing developments approved on or after July 1, 2023, as outlined below. If a municipality has not adopted density requirements, this section applies only if the development meets the requirements listed in Section 2(B)(1)(a)-(e).

### **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 a majority of the units are affordable;
  - b) Is in a designated growth area pursuant to 30-A M.R.S. § 4349-A(1)(A) 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 as of July 1, 2023;
  - d) Complies with minimum lot size requirements in accordance with Title 12, chapter 423-A [*KRC: 20,000 sf and 100-foot setback from shoreland septic rules*]; and
  - e) Owner provides written verification that each unit of the housing development is 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 unit is connected to a public, special district or other comparable sewer system, 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, 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. 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, 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 unit is connected to a well, 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 a certificate of occupancy or other final approval of an affordable housing development, 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. 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. 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

This section requires municipalities to allow multiple dwelling units on lots where housing is allowed beginning on July 1, 2023, subject to the requirements below.

### B. REQUIREMENTS

## 1. Dwelling Unit Allowance

- a) 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 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.
- b) 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. 4230-A are met. The two (2) dwelling units may be (1) within one structure; or (2) separate structures.
- c) If a lot contains one existing dwelling unit, a municipality must allow the addition of up to two (2) additional dwelling units. The additional dwelling unit(s) may be:
  - i. Within the existing structure or attached to the existing structure;
  - ii. Detached from the existing structure; or
  - iii. One of each.
- d) If a lot contains two existing dwelling units, no additional dwelling units may be built on the lot unless allowed under local municipal ordinance.
- e) A municipality may allow more units than the minimum number of units required to be allowed on all lots that allow housing.

## 2. Zoning

With respect to dwelling units allowed under this Section, municipal 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 or Section 4, the lot is not eligible for any additional increases in density requirements except as allowed by the municipality.
- b) Municipalities may establish a prohibition or an allowance for lots where a dwelling unit in existence after July 1, 2023, is torn down and an empty lot results.

## 3. Dimensional and Setback Requirements

- a) A municipal ordinance may not establish dimensional requirements or setback requirements for dwelling units allowed pursuant to this Section that are more restrictive than the dimensional requirements or setback requirements for single-family housing units.
- b) A municipality may establish requirements for a lot area per dwelling unit as long as the additional dwelling units do not require more land area per unit than the first unit.

#### 4. Water and Wastewater

- a) The municipality must require an owner of a housing structure to provide written verification that each structure is 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, 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, 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. 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, 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, 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. 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**

A municipality must allow, effective July 1, 2023, one accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which housing is allowed, subject to the requirements outlined below.

### **B. REQUIREMENTS**

#### 1. Accessory Dwelling Unit Allowance

An accessory dwelling unit may be constructed only:

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

#### 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 accessory dwelling unit must be allowed on any lot where a single-family dwelling unit 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 or Section 3, the lot is not eligible for any additional increases in density, except as allowed by the municipality.

#### 3. Other

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

- a) A municipality must exempt an accessory dwelling unit 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 the same structure as a single-family dwelling unit or attached to or sharing a wall with a single-family dwelling unit, the

dimensional 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 July 1, 2023, the required setback requirements apply.
- c) A municipality may establish more permissive dimensional requirements for an accessory dwelling unit.
- d) An accessory dwelling unit must be allowed on a lot regardless of whether the lot conforms to existing dimensional requirements of the municipality. Any new structure constructed on the lot to be an accessory dwelling unit must meet the existing dimensional requirements as required by the municipality for an accessory structure.
- e) 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 on the lot where the accessory dwelling unit is located.

#### 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 each unit of the accessory dwelling unit is 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, 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, 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. 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, 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, 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. Establish an application and permitting process for accessory dwelling units;
2. Impose fines for violations of building, zoning and utility requirements for accessory dwelling units; and
3. 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).

### **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.

**STATUTORY AUTHORITY:** P.L. 2021, ch. 672 codified at 30-A M.R.S. §§ 4364, 4364-A, 4364-B.

**EFFECTIVE DATE:**

**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 Office of Water Drinking Water Hotline 1-800-426-4791
01-672 C.M.R. ch. 10, Land Use Districts and Standards, December 30, 2022	Maine Department of Agriculture, Conservation & Forestry Bureau of Resource Information and Land Use Planning Land Use Planning Commission 22 State House Station Augusta, Maine 04333 207-287-2631
10-144 C.M.R. ch. 241, Subsurface Wastewater Disposal Rules, August 3, 2015	Maine Department of Health & Human Services Maine Center for Disease Control & Prevention 11 State House Station Augusta, Maine 04333 207-287-8016

Summary Table of Zoning Amendments Proposed for Conformance with LD 2003

Kittery Zoning Districts where Housing is Allowed													
Zoning/ Comp Plan Elements	R-RL	R-S	R-KPV	R-U	R-V	R-RC	B-L	B-L1	C-1	C-3	MU	MU-BI	MU-KF
Growth Area?	N*	Y	N	Y	N	N	Y	Y	Y	Y	Y	Y	Y
Net Residential Density Calculation	Y		Y		Y	Y							
Sewer Available?	N	Y/N	N	Y/N	Y	N	Y	Y	Y	Y	Y	Y	Y
Multifamily ≤ 4 units	N --> Y	Y	Y	Y	N --> Y	N --> Y	Y	Y	Y	Y	Y	Y	Y
Multifamily 5+ units	N	Y	N	Y	N	N	Y	Y	Y	Y	Y	Y	Y
Lot Area/ Unit (Base)	40,000	30,000	40,000	20,000	4,000	80,000	2,500	2,500	2,722	2,722	10,000	3,000	5,000
≥ 50% affordable		12,000		8,000			1,000	1,000	1,089	1,089	4,000	1,200	2,000
# of ADUs allowed per LOT	1	2	1	2	1	1	2	2	2	2	2	2	2

Green = REQUIRED PROVISIONS

BLUE = OPTIONAL PROVISIONS

## Residential Density Calculations: Comparison

Red = new/ proposed

### Zoning Definitions

	Land Area Per Dwelling Unit	Net Residential Acreage	Lot Area Per Dwelling Unit
<b>Applicability: Current rules</b>	Any residential development NOT subject to a Subdivision Application	Subdivisions not subject to Site Plan Review	
<b>Applicability: Proposed</b>	<i>To be deleted</i>	<b>All residential development in Limited Growth Areas</b>	<b>Development in Targeted Growth Areas</b>
Excludes:	Land below HAT	Land below HAT	waterbodies
	Wetlands/ water bodies	Wetlands/ water bodies	Coastal wetlands
	Filled tidal lands	Filled tidal lands	Existing public rights-of-way
	Existing rights-of-way	Existing rights-of-way	Approved rights-of-way
	Unbuildable easement areas	Unbuildable easement areas	
		Wetland setback areas	
		Land within 100-year floodplain	
		Proposed rights-or-way	
		Large (1+ acre) steep slope ( $\geq$ 20%) areas	
		All land in poorly drained soil areas	
		50% of land in "somewhat poorly drained" soil areas	
		Cemeteries and burying grounds, plus setback	
		Isolated land areas	



# TOWN OF KITTEERY

Housing Committee

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1307 Fax: 207-439-6806

**TO:** KITTEERY PLANNING BOARD AND TOWN COUNCIL  
**FROM:** HOUSING COMMITTEE  
**SUBJECT:** LD 2003 ZONING AMENDMENTS  
**DATE:** SEPTEMBER 6, 2023

## **SUMMARY:**

Maine's Governor signed LD 2003, "An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions," into law in April of 2022. This law **requires Maine municipalities to adopt or amend zoning rules** that are intended to encourage development of affordable housing via three general approaches:

1. Allowing at least one Accessory Dwelling Unit to be constructed at any residential property.
2. Allowing additional units to be constructed for projects that include affordable housing.
3. Allowing development of at least 2-4 housing units per lot where housing is permitted.

Required zoning amendments – and the types of development that must be allowed by zoning – vary depending on the location of public utilities, targeted growth areas identified in the Comprehensive Plan, and Shoreland areas. Required amendments must be adopted by January 1, 2024.

Staff drafted amendments that are necessary for Kittery's Zoning code to remain compliant with Maine law. An initial draft was reviewed by Kittery's Housing Committee on July 6, 2023. Committee members expressed an interest in provisions that would "go further" to encourage development of housing in targeted areas. The attached amendments include changes to the way residential density – the units allowed per acre of land – is calculated for development projects and increase flexibility for property owners in targeted growth areas to build ADUs. The Housing Committee reviewed these additional amendments during the September 6, 2023 meeting and all members present voted unanimously to forward a positive recommendation to Kittery's Planning Board and Town Council. Committee members believe these changes are stricter for projects in Limited Growth Areas than current rules, and more flexible for projects in Targeted Growth Areas as follows:

## **RESIDENTIAL DENSITY**

Title 16 currently contains two separate methods for calculating the number of housing units that can be developed on a parcel: "Minimum land area per dwelling unit" and "Net residential density." Minimum land area per dwelling unit excludes all wetlands, rights-of-way, easements, tidal lands, and areas located below the Highest Annual Tide from the density calculation. "Net residential density" excludes those areas PLUS floodplains, 50% of wetland setback areas, and *proposed* right-of-way and parking areas. Net residential density is therefore more restrictive than Minimum land area per dwelling unit because it subtracts more resource areas, risk areas, and future site improvement areas from the base land area calculation. Neither of these methods use gross lot area (size of the parcel minus waterbodies or roads) as the base land area to be used for the residential density calculation.

Staff and the Land Issues Committee propose the following:

1. Delete Minimum land area per dwelling unit from Title 16. This will remove the redundancy that is created by having two similar but separate methods for establishing base developable land area for residential density calculations.
2. Require Net residential density calculation for ALL residential projects located in Limited Growth and Shoreland Areas. (Residential- Kittery Point Village, Mixed-Use Badgers Island, Residential- Rural and Residential- Rural Conservation Zoning districts). Net residential density currently only applies to subdivisions; this amendment would expand its use to all residential projects. This amendment is supported by Comprehensive Plan goals which discourage growth in such areas and encourage protection of natural resources and open space because it would further limit the number of units which can be developed near wetlands and waterbodies.
3. Utilize “Lot area” for calculating residential density for projects located in Targeted Growth Areas. Projects in Mixed-Use, Mixed-Use Kittery Foreside, Commercial (1, 2, and 3), Business (B-L and B-L1), Residential- Suburban, Residential- Village, and Residential- Urban Zoning districts would therefore only exclude waterbodies and rights-of-way from the base land area used for calculating residential density. This may increase the potential for “infill” development in existing neighborhoods and commercial areas where housing is allowed. This amendment is supported by Comprehensive Plan goals which encourage steering development toward areas that are served by public utilities and close to existing amenities instead of in current open space and natural areas. *Note: wetland setbacks, zoning setbacks, and building size and height limits would remain in effect as currently written.*

#### **Accessory Dwelling Units:**

**Second:** Section 16.5.3 Accessory Dwelling Units (D.1.a) limits ADUs only to lots that “contain one legal, single-family residence as the primary unit” and specifies that only one ADU can be constructed on a lot. These limitations currently apply townwide. ADUs were devised as a separate residential unit type *because* they are generally perceived to be compatible with a wide variety of neighborhoods due to their limited size. Allowing more ADUs per lot *in targeted areas* may encourage property owners in existing neighborhoods to construct more of this affordable housing type in appropriate locations.

Staff and committee members propose amending the accessory dwelling unit regulations by allowing up to two ADUs per lot that is located in a targeted growth area as depicted in Kittery’s Comprehensive Plan. Lots located in limited growth areas will continue to be limited to one ADU.

**The Housing Committee recommends adopting those amendments that were presented by staff and discussed during the September 6, 2023 meeting in conjunction with those amendments which are required for compliance with LD 2003.**



# TOWN OF KITTERY

Land Issues Committee

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1307 Fax: 207-439-6806

**TO:** KITTERY PLANNING BOARD AND TOWN COUNCIL  
**FROM:** LAND ISSUES COMMITTEE  
**SUBJECT:** LD 2003 ZONING AMENDMENTS  
**DATE:** AUGUST 16, 2023

## **SUMMARY:**

Maine's Governor signed LD 2003, "An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions," into law in April of 2022. This law **requires Maine municipalities to adopt or amend zoning rules** that are intended to encourage development of affordable housing via three general approaches:

1. Allowing at least one Accessory Dwelling Unit to be constructed at any residential property.
2. Allowing additional units to be constructed for projects that include affordable housing.
3. Allowing development of at least 2-4 housing units per lot where housing is permitted.

Required zoning amendments – and the types of development that must be allowed by zoning – vary depending on the location of public utilities, targeted growth areas identified in the Comprehensive Plan, and Shoreland areas. Required amendments must be adopted by January 1, 2024.

Staff drafted amendments that are necessary for Kittery's Zoning code to remain compliant with Maine law. An initial draft was reviewed by Kittery's Land Issues Committee during the June 21, 2023 meeting and by the Housing Committee on July 6, 2023. Members of both committees expressed an interest in provisions that would "go further" to encourage development of housing in targeted areas. The attached amendments include changes to the way residential density – the units allowed per acre of land – is calculated for development projects. The Kittery Land Issues Committee reviewed these additional amendments during the August 16, 2023 meeting and all members present voted unanimously to forward a positive recommendation to Kittery's Planning Board and Town Council. Committee members believe these changes are stricter for projects in Limited Growth Areas than current rules, and more flexible for projects in Targeted Growth Areas as follows:

## **RESIDENTIAL DENSITY**

Title 16 currently contains two separate methods for calculating the number of housing units that can be developed on a parcel: "Minimum land area per dwelling unit" and "Net residential density." Minimum land area per dwelling unit excludes all wetlands, rights-of-way, easements, tidal lands, and areas located below the Highest Annual Tide from the density calculation. "Net residential density" excludes those areas PLUS floodplains, 50% of wetland setback areas, and *proposed* right-of-way and parking areas. Net residential density is therefore more restrictive than Minimum land area per dwelling unit because it subtracts more resource areas, risk areas, and future site improvement areas from the base land area calculation. Neither of these methods use gross lot area (size of the parcel minus waterbodies or roads) as the base land area to be used for the residential density calculation.

Staff and the Land Issues Committee propose the following:

1. Delete Minimum land area per dwelling unit from Title 16. This will remove the redundancy that is created by having two similar but separate methods for establishing base developable land area for residential density calculations.
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**The Kittery Land Issues Committee recommends adopting those amendments that were presented by staff and discussed during the August 16, 2023 meeting in conjunction with those amendments which are required for compliance with LD 2003.**