



New Horizons in Housing

What Public Law 2021, Chapter 672 (LD 2003), the “Housing Act” Means for Maine

May 11, 2022

Overview

LD 2003, signed into law by the Governor on April 27, 2022 as Public Law 2021, Chapter 672, also known as the “Housing Act,” marks a significant victory for housing advocates and the beginning of a new chapter in housing construction in Maine.

The law arose from the work of a commission formed by resolve in the First Regular Session of the 130th Legislature in 2021. The commission met throughout the summer and fall of 2021 and reported its findings to the legislature in January, 2022. The commission recommended 9 action items to help eliminate barriers to housing construction created by local land use and zoning ordinances.

In early March, those recommendations were printed in the form of LD 2003, which had a public hearing on March 7, 2022. MEREDA and most of the major business, real estate, and construction advocates all testified in support of the bill. Ultimately, the 9 recommendations proposed by the commission were winnowed down to the handful below, and the Labor and Housing Committee voted to support the bill along party lines, with Democrats supporting passage of the bill as written and Republicans opposing.

The bill did ultimately receive bipartisan support from the legislature, with 3 House Republicans and 1 Senate Republican voting in support. The Governor had a public bill signing event, demonstrating her support for the effort to create more housing, on April 27. MEREDA was very active in the lobbying effort for this bill and was asked to be a part of the bill signing. Bev Uhlenhake attended on MEREDA's behalf – thanks, Bev! And thank you to all the MEREDA members who made calls or sent texts or e-mails to your state legislators.

This is a **big** victory for housing development in Maine. The law itself will take effect on April 8, 2022, but municipalities are not required to implement the requirements of the law until **July 1, 2023**. After that date, landowners in Maine will be able to take advantage of new incentives and eased restraints on property use, to develop the much-needed housing we need to hit the ultimate mark of 25,000 new units (the unofficial number used by the legislature).

Statewide Housing Production Goals/Municipal Role in Statewide Housing Production Goals

Recognizing that Housing is a Statewide Crisis Requiring a Statewide Solution

Statewide: The Housing Act establishes the Department of Economic and Community Development (DECD) as the agency responsible for establishing statewide housing production goals. While unofficial sources believe at least 25,000 new units are needed to accommodate Maine's workforce in the coming years, DECD will be responsible for working in concert with the Maine State Housing Authority (MSHA), to establish housing production goals that increase the availability and affordability of all types of housing. These goals will serve as statewide benchmarks to drive the conversation around housing development.

Municipal: The Housing Act provides that municipalities have a role and responsibility in achieving the statewide housing production goals that will be set by DECD. Municipalities must ensure that ordinances and regulations are designed to affirmatively further the purposes of the federal Fair Housing Act to achieve the statewide or regional housing production goal.



Municipal Technical and Financial Assistance (the Housing Opportunity Program)

\$3 Million Financial Support for Municipalities to Update and Modernize Ordinances, Implement Housing Act

[The Supplemental Budget, LD 1995, Public Law 2021, Chapter 635](#), included a recommendation from the Housing Commission to establish a Housing Opportunity Program within DECD to provide technical and financial assistance to municipalities to implement the provisions of the Housing Act. Specifically, the budget provides \$3 million for municipalities to receive grants to assist with rewriting their ordinances to update and modernize their land use codes. DECD will have responsibility for developing an application for the grant funds, and municipalities seeking funding will participate in a competitive award process.

Affordable Housing Density Bonus

Leveraging Density Bonuses to Incentivize Affordable Housing

The Housing Act provides a substantial incentive for affordable housing construction in the form of a density bonus. The density bonus is permitted where multifamily housing is allowed, and the lot is located within a designated growth area under a comprehensive plan (for towns with no comprehensive plan, the lot must be served by public water and sewer.)

Base density bonus: An affordable housing project may only take advantage of 2 ½ times the density imposed on the property by ordinance (referred to as the base density), not any greater density applied to the property under other provisions of this law.

Affordable housing development: Qualifying projects will service populations earning: 80% of AMI for rental units; and 120% of AMI for owned units.

The affordable housing density bonus may only be approved after the developer executes a restrictive covenant to ensure that the property remains affordable under the above definitions for at least 30 years after the completion of construction.

Duplexes Allowed on All Residential Lots, Up to Four Units Allowed on Residential Lots in Growth Zones

The End of Single-family Zoning?

Perhaps the most discussed provisions of the Housing Act are those that will permit Maine landowners to do more with their property than may otherwise be permissive under local and municipal zoning ordinances.

- In a vacant lot generally: up to two dwelling units.
- In a lot with an existing dwelling unit: up to two additional dwelling units so long as one of the units is an accessory dwelling unit (ADU) and one is additional to the existing dwelling unit, or either one. In other words, the law prohibits an additional two dwelling units from being added to an existing unit, and prohibits both additional new dwelling units from being ADU's.
- In a vacant lot located in a *designated growth zone under a comprehensive plan*: up to four dwelling units. (In towns without a comprehensive plan, a vacant lot can up have to four dwelling units if it is served by a public water system and a public sewer system.)

While this may seem like a significant shift at first glance, it is important to note that many Maine towns have no zoning at all, and are therefore unaffected. Additionally, if a town does not have a comprehensive plan or, for towns without a comprehensive plan, is not serviced by public sewer and water, only two dwelling units will be permitted on a lot.

Additionally, town zoning ordinances can continue to define setbacks and other dimensional standards applicable to the property. The law prohibits a municipality from imposing dimensional standards which



are more onerous than they would be for single family zoning, but can match the current (or any future) standard for single family zoning.

In addition to local dimensional standards, state zoning requirements, including those related to the shoreland zone and subdivisions, will continue to apply. Finally, development on any given lot may be further limited by any covenants, conditions, or restrictions placed on the deed to the property.

This means that while Mainers will undoubtedly take advantage of this opportunity to build housing for their community, that development will need to fit within the physical limitations of the lot, comply with all other state and local land use requirements, and pencil out financially. That last one is particularly important to remember when dispelling myths about the Housing Act. If a developer doesn't see a return on his or her investment, he or she will not build the project. Accordingly, the construction of dwelling units will continue to be driven primarily by the market and market needs.

Accessory Dwelling Units

For Everyone!

In addition to the above permissive uses, any lot zoned for residential use will also be permitted to have one ADU. By and large, local zoning ordinances define what constitutes an ADU. However, the Housing Act sets a few provisions that standardized treatment of ADU's across the state. An ADU must be at least 190 square feet or the standard established by the MUBEC Board if such is greater. Additionally, a town must allow at least one ADU on any lot zoned for residential use. As with the above density bonuses, a town may not impose dimensional standards greater than would be imposed on a single-family dwelling unit. A municipality may not include ADU's as part of any growth cap calculus.

The same restrictions related to the other state and local land use restrictions will apply, including the shoreland zone. An applicant for a permit to construct an ADU must also demonstrate that the unit will be properly serviced by sewer and water.

Conclusion

The Housing Act represents a significant shift in attitude toward housing construction and development in general. While MEREDA has always known that real estate development is community development, we are finally seeing that understanding mirrored in policymaking. Unfortunately, this is just the first step toward ensuring that Maine towns and communities take the right action to capitalize on policies adopted in the Housing Act. Municipalities considering actions like inclusionary zoning, rent control, and other stringent regulatory measures to address affordable housing need to understand that these policies often have the unintended consequence of stopping housing production and modernization.

The housing crisis is a statewide issue, and it deserves statewide solutions. The Housing Act is a great first step in framing this issue as larger than a single locality, but much work remains. We look forward to coordinating with fellow stakeholders and allies to work with municipal policymakers to help them understand the best approach to the housing crisis in their community.

