

**Scarborough Housing Alliance  
Committee Meeting  
Wednesday, July 26, 2023 Hybrid Meeting**  
*[Scarborough Town Hall – 6:00pm]*

Zoom Link:

[https://scarboroughmaine.zoom.us/webinar/register/WN\\_H6MN1J-bQuG1WuMzM6wH1A](https://scarboroughmaine.zoom.us/webinar/register/WN_H6MN1J-bQuG1WuMzM6wH1A)

**AGENDA**

- **Approval of Minutes - April 26, 2023 and June 29, 2023**
  
- **Action:**                      **Request for CEA [3i/POAH Project](#)**  
  
   **ACTION:     Move to recommend to the Town Council to approve the request for a 60% CEA for the 3i/POAH Project at The Downs.**
  
- **Discussion:**                **Review Affordable Housing Agreement**
  
- **Discussion:**                **LD2003- Review handout and discuss work for SHA to perform - and appoint roles for in-between meeting work.**
  
- **Discussion:**                **Goals & Initiatives for 2023 - and Leads for Each**
  - 1. Collaboration opportunities/Relationship Building**
  - 2. Metric Tracking**
  - 3. Housing Cost Reduction Efforts**
  - 4. Alliance Recruitment**
  - 5. Other**
  
- **Public Comment**
  
- **Adjournment**

**WHY SHA EXISTS:**

The purpose of the Council in establishing the Alliance is to create a broadly-based community group to:

- ☐ Work together to develop and recommend a local housing agenda to the Town Council.
- ☐ Implement a local housing program under the guidance of the Town Council.
- ☐ Perform such other duties as may be assigned by the Town Council from time to time.

Scarborough Housing Alliance  
Meeting Minutes  
April 26, 2023, 6:00pm

Present via Zoom: Dick LaRou and Eric Boucher.

Present at Town Hall: Bill Donovan, Leroy Crockett, Micaela Sargent, and Bryan Shumway.

Excused: Bob Nadeau.

Guests: Jean-Marie Caterina, Town Council liaison (at Town Hall).

1. The meeting began at 6:07pm.
2. There were no prior meeting minutes to review.
3. The Alliance discussed the use of Affordable Housing Trust Funds for out-of-town initiatives as previously presented. This requires a change in the policy, specifically changing “within the Town” to “within Cumberland County” in paragraph B.5.a. of the policy. A motion was made by Leroy and seconded by Bill to recommend changing the text to “within Cumberland County.” All members voted in favor of the motion.
4. The developers of the 3i HOME project in The Downs have applied for \$200,000 of Affordable Housing Trust funds. The project will include 7 units of affordable housing that will not count toward the district’s required affordable units. With uncertainty as to the project’s full financing structure and whether the use of Affordable Housing Trust funds was permitted within the ordinance, the Alliance made a motion to recommend to the Town Council to grant the project \$200,000 to be provided coincidental with the receipt of all other funding necessary to complete construction only if it was permissible in the ordinance. The motion was made by Bill and seconded by Micaela, with all members voting in favor.
5. The Alliance discussed some lessons learned from the resale of 33 Gristmill (an affordable for-sale unit) in The Downs noting some confusion around the selling and final sales price. The Alliance briefly discussed changing the term to “anticipated qualifying price” and the concepts of shared appreciation and calculating an implicit value of assets for potential buyers.
6. There were no public attendees.
7. The next meeting was not scheduled.

At 6:59pm, the Alliance adjourned its meeting with a motion by Bill, second by Leroy, and all in favor.

Respectfully submitted,

Eric Boucher  
Secretary

Scarborough Housing Alliance  
Meeting Minutes  
June 29, 2023, 6:00pm

Present via Zoom: Eric Boucher.

Present at Town Hall: Bill Donovan, Bryan Shumway, and Tom Hall.

Excused: Dick LaRou, Bob Nadeau, Micaela Sargent, and Leroy Crockett.

Guests: Jean-Marie Caterina, Town Council liaison (via Zoom), Karen Martin, SEDCO (at Town Hall), and Vita Shklovsky, representing POAH (via Zoom).

1. The meeting began at 6:00pm.
2. There were no prior meeting minutes to review.
3. Projects update:
  - a. Jocelyn Place, an age restricted community owned by the South Portland Housing Authority, is 60% complete and expected to open in late fall 2023.
  - b. Village Commons, an age restricted 31 unit community owned by Avesta Housing, is 45% complete and expected to open in early winter 2023.
  - c. 3i HoME has received planning board approval, will be applying for 9% tax credits this fall, and will be seeking a credit enhancement agreement (CEA) from the Town.

Bill suggested that the Alliance tour these properties and the fall and Tom suggested drafted a press release to highlight the Town's progress in developing affordable housing.

4. Vita Shklovsky of POAH, the developers of the 3i HoME project, provided more details about the 51 unit, 100% affordable housing development, including its ADA features and anticipated development timeline. The requested CEA will represent 100% of the tax amount (40% as part of The Downs and 60% for 3i HoME) for the remaining duration of the district, currently 25 years.

Action: Bill made a motion to recommend to the Town Council to approve the request for a 60% CEA for the 3i HoME project at The Downs. Eric seconded. All members in attendance voted in favor. It was determined that the Alliance members in attendance did not represent a quorum, thus a vote was nonbinding, and Bryan planned to poll the remaining members via email.

5. The Alliance further discussed the resale of 33 Gristmill (an affordable for-sale unit) in The Downs noting that members of the Alliance met with the real estate agent to discuss the whole process and any lessons learned. As a result of the rise in interest rates, there was not an excessive windfall on this transaction. Over time, Tom plans to revise the language of the

agreements to increase clarity and improve understanding, such as using the term “anticipated qualifying price.”

6. Bryan and Tom discussed aspects of the recent Town Summit, which was followed by a discussion of goals and initiatives for the Alliance for 2023/2024. Ideas included collaboration and relationship building, metric tracking, housing cost reduction efforts, Alliance recruitment, energy efficiency and weatherization programs, and developing shared goals with the Conservation Commission.
7. Other:
  - a. Jean-Marie inquired about the status of the workforce housing ordinance that arose in response to the hotel conversion inquiry, to which Tom indicated he would determine its status and report back.
  - b. Tom mentioned LD 2003 “An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions,” which recently passed, and inquired if the Alliance should make it a focus and priority, to which Bryan responded in the affirmative.
  - c. Jean-Marie inquired about regulating short-term rentals and the development of accessory dwelling units (ADUs) and noted that Scarborough is ahead of much of the State with ADUs.
8. There were no public attendees.
9. The next meeting is scheduled for July 26, 2023.

At 7:00pm, the Alliance adjourned its meeting with a motion by Eric, second by Bill, and all in favor.

Respectfully submitted,

Eric Boucher  
Secretary

**Preliminary Application for a Credit Enhancement Agreement  
In an Existing Tax Increment Financing District**



**I. Contact**

- a. Name of Company:** Preservation of Affordable Housing, LLC
- b. Name of Company Representative:** Vitalia Shklovsky
- c. Contact Information:**
  - i.** Address: 2 Oliver Street, Suite 500 | Boston, MA 02109
  - ii.** Phone: 508-308-5097
  - iii.** Email: [vshklovsky@poah.org](mailto:vshklovsky@poah.org)

**II. Project Name and Location**

The project is named 3i HoME and will be located at the corner of Downs Road and Market Street within The Downs in Scarborough, ME.

### **III. Brief Description of Project**

#### **a. Purpose of Project:**

The purpose of 3i HoME is to provide much needed community-based, independent living options for people with mobility disabilities in a well-designed, technology-enabled development.

#### **b. Physical Description:**

**Land area:** 1.3 Acres

**Square Footage:** The building, as designed by The Architectural Team, Inc., is expected to have an approximately 16,830 SF footprint and overall have a +/- 67,845 SF of space within four stories.

**Uses within the Structures:** Within the structure of the building, there will be 51 residential units, a community lounge, administrative and support services offices, as well as a mobility demonstration area for individuals to show off and innovate on assistive technologies. The bedroom mix will include 31 one-bedroom, 16 two-bedroom, and 4 three-bedroom apartments.

#### **c. Relevant Infrastructure to be Built:**

There will be one four-story wood frame building, as well as a driveway and parking lot, and sidewalk along Downs Road.

#### **d. Phasing of the project, including the year of completion of each phase**

3i HoME will be developed in one phase with the project completing in 2025.

#### **e. Estimated Assessed Value of the Improvements to the Property, including all infrastructure, building and lot improvements**

\$14,658,139 is the value of the construction work at 3i, including the infrastructure, building, and lot. It does not include any land value or soft costs.

#### **f. Total new jobs and the types of jobs that will occur because of the Scarborough project**

The development of 3i HoME will result in hundreds of new permanent and temporary jobs. In the long-term, the building staff will include property managers, custodians, and supportive services staff. The supportive service staff will provide references to local providers of healthcare and other social services, which will augment the local existing economy. In addition to these positions, this \$15M construction project will create between 250 and 300 short-term design and construction related jobs. These positions will include structural, civil, and mechanical engineering positions, contractors, architects, electricians, plumbers, HVAC technicians, construction workers, construction inspectors, carpenters, elevator technicians, and roofers that will all help with the creation of 3i HoME.

#### **g. Timing/Phasing of the new jobs**

For any design and construction related jobs, these will be created during the construction of the building which is happening 2024-2025. For custodians, property managers, and supportive services personnel, these jobs will be created post construction and last in perpetuity.

**h. Estimated Number of Cars/Vehicles/Equipment to be registered in Scarborough (if any)**

N/A

**IV. Regional and State Impacts of Company and Role of the Scarborough Facility in the Company's Mission and Vision**

Preservation of Affordable Housing (POAH), a national nonprofit with 25 years of experience in preserving, creating, and managing affordable healthy homes, has partnered with a local nonprofit, 3i Housing of Maine, in this first project of its kind in Maine. The 3i HoME project at the Scarborough Downs is a universally designed apartment building with 51 individual homes to promote independence for people with disabilities and mobility impairments through the application of innovative smart/assistive technologies and integrated home and community-based services. Already, dozens of people with disabilities have expressed interest in this project and the parties anticipate that this unique project will become a model for replication in other municipalities throughout Maine and beyond. The Credit Enhancement Agreement would assist POAH and 3i Housing of Maine to achieve the goal of creating affordable housing consistent with their shared principles of promoting economic security, equity, and access to opportunity for all.

**V. Credit Enhancement Proposal**

**a. Requested percentage reimbursement of net new property taxes for the increased value associated with item III-c above. If the reimbursement changes over time, please include a schedule which identifies the year, the value created, and the reimbursement percentage requested**

60%

TIF Year	Year	Value	Tax Rate	Tax Revenue	60%
5	2024				
6	2025				
7	2026	\$14,658,139	15.39	\$225,589	\$135,353.26
8	2027	\$14,658,139	15.39	\$225,589	\$135,353.26
9	2028	\$14,658,139	15.39	\$225,589	\$135,353.26
10	2029	\$14,658,139	15.39	\$225,589	\$135,353.26
11	2030	\$14,658,139	15.39	\$225,589	\$135,353.26
12	2031	\$14,658,139	15.39	\$225,589	\$135,353.26
13	2032	\$14,658,139	15.39	\$225,589	\$135,353.26
14	2033	\$14,658,139	15.39	\$225,589	\$135,353.26
15	2034	\$14,658,139	15.39	\$225,589	\$135,353.26
16	2035	\$14,658,139	15.39	\$225,589	\$135,353.26

17	2036	\$14,658,139	15.39	\$225,589	\$135,353.26
18	2037	\$14,658,139	15.39	\$225,589	\$135,353.26
19	2038	\$14,658,139	15.39	\$225,589	\$135,353.26
20	2039	\$14,658,139	15.39	\$225,589	\$135,353.26
21	2040	\$14,658,139	15.39	\$225,589	\$135,353.26
22	2041	\$14,658,139	15.39	\$225,589	\$135,353.26
23	2042	\$14,658,139	15.39	\$225,589	\$135,353.26
24	2043	\$14,658,139	15.39	\$225,589	\$135,353.26
25	2044	\$14,658,139	15.39	\$225,589	\$135,353.26
26	2045	\$14,658,139	15.39	\$225,589	\$135,353.26
27	2046	\$14,658,139	15.39	\$225,589	\$135,353.26
28	2047	\$14,658,139	15.39	\$225,589	\$135,353.26
29	2048	\$14,658,139	15.39	\$225,589	\$135,353.26
30	2049	\$14,658,139	15.39	\$225,589	\$135,353.26
				<b>SUM</b>	<b>\$3,248,478.13</b>

**b. Duration of CEA**

25 years

**c. Brief Explanation of why the company is requesting a CEA. How will these funds be used to complete the project?**

Preservation of Affordable Housing is requesting the CEA to offset operating costs. In the summer of 2023, we will be submitting a funding application to MaineHousing for 9% Low Income Housing Tax Credits and other subsidy. The CEA will not only help secure a competitive score for the 9% funding round, but it will also offset operating costs to support long-term debt.

**d. Brief Explanation of any public investments in streetscape, trails, infrastructure, that will benefit others**

The development of sidewalks and vegetation along Downs Road in The Downs will help enhance the pedestrian experience in Town Center and aid in the feeling of community.

**e. What will be extraordinary about this project? Potential topics to discuss: sustainability, quality of development, architecture, landscaping, quality jobs, role in the community, etc.**

3i HoME will be the first of its kind: a 100% Affordable, 100% Accessible, and 100% Independent property. The purpose of this development is to enable people with disabilities and mobility impairments to live independently by incorporating innovative assistive technologies. This first-of-its kind, totally accessible, universally designed affordable housing development will serve as a model for future developments, as households with physical disabilities often turn to assisted living or other institutional facilities. The design of 3i HoME is a focal point of this development. 3i HoME will be designed with very high standards of



accessibility and sustainability, to ANSI 2017 standards, allowing residents to live comfortably and independently. When complete, the property will create a new model for people with disabilities to move through the world on their own terms rather than being relegated to institutional placement.

Of important note is the sense of community that this development's design will build for persons with disabilities within the larger Scarborough landscape. Its user-focused design includes a "Woonerf" edge at the entrance to the parking lot which eliminates mobility barriers (the curb), creates a seamless transition between the site and the building, and supports social space between the parking lot and the building. The location within the Town Center will enable these households to access and enjoy the many amenities and daily services that the Downs will offer, without having to deal with getting into and out of cars for those daily activities. The proximity to the Town Center will promote a sense of community for residents by prioritizing the pedestrian experience and not make them feel like second-class citizens who cannot enjoy the outdoors because of their abilities. The building's Juliet-style balconies on the ground floor will allow residents of those homes to interact with the street rather than feel closed off. Furthermore, the corner plaza at the main entrance to the building will have movable furniture, lighting, and other streetscape elements that will also enhance the pedestrian experience for residents and passers-by alike, further solidifying the sense of community. By inviting both residents and members of the public to enjoy this plaza, 3iHome will encourage the idea of building friendships and bridges among people with and without disabilities. The parking lot will accommodate cars, handicapped vehicles, and plus-size handicapped vans with subtle striping and without any glaring signage that might otherwise feel ostracizing. The sidewalks are designed with understated ramping to encourage the quiet movement of wheelchairs instead of loud bumps. 3iHome will truly create the sense of independent yet integrated living for people with disabilities.



3iHome will also aim to certify as Passive House, with no fossil fuels in its mechanical systems and high-performance, super-insulated building envelopes. The idea behind this energy efficiency is to promote inclusivity among all households, regardless of ability, to live sustainably on this planet, a lifestyle that should not be a privilege to those without means or ability. Passive House design also provides for outstanding acoustical insulation, ensuring quiet

enjoyment within the building even when the Town Center is active with concerts or other events.

## **VI. Compliance with the Town's Comprehensive Plan**

### **Diversity and Character**

One of Scarborough's core vision statements from the Comprehensive Plan is to support the diversity and character of existing and emerging neighborhoods, centers, and open spaces. 3i HoME is a part of the larger development, The Downs, which is an upcoming development that will create a community of residents, retail centers, open spaces and so much more. Targeting families and individuals with disabilities as primary residents, 3i HoME will diversify the neighborhood at The Downs.

### **Home Affordability and Availability**

3i HoME serves to enable disabled persons to live independently in a first-of-its-kind fully accessible, universally designed building where all homes will be affordable below 60% of Area Median Income. The property will feature assistive smart-home technology, community-based services, indoor and outdoor amenities, and direct access to the mixed-use Town Center at Scarborough Downs. Housing that is 100% affordable, accessible, and integrated into the new Town Center will serve an incredible need for households with physical disabilities who might otherwise have to find homes at assisted living facilities, which are costly and often require public subsidy. The affordable homes will involve 31 one-bedrooms, 16 two-bedrooms, and 4 three-bedrooms.

### **Energy, Resources, and Climate**

The Town of Scarborough has committed to long-term energy conservation and promotes the use of renewable energy. POAH has a strong track record of incorporating sustainable development practices and the 3i HoME development is no different. Designed to be Passive House Certified, one of the highest standards of sustainability, 3i HoME will not rely on fossil fuels and will include super-insulated envelopes, airtight construction, high-performance glazing, heat recovery ventilation, and other efficient development practices.

**AFFORDABLE HOUSING AGREEMENT AND OPTION TO PURCHASE**

**(Must be recorded with the deed to the property as an Exhibit)**

This AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between THE TOWN OF SCARBOROUGH, a Maine municipal corporation with a mailing address of P.O. Box 360, Scarborough, ME 04070-0360 (the "Town") and \_\_\_\_\_, whose mailing address is \_\_\_\_\_, Scarborough, ME 04074 (the "Owner").

**WITNESSETH:**

WHEREAS, the Town has established an affordable housing requirement under its land use codes that is intended to encourage production of housing for households with low and moderate income as published by the Maine State Housing Authority, in accordance with Section VI. and VII.C. of the Town's Zoning Ordinance, as amended from time to time, and to broaden opportunities for home ownership for such households; and

WHEREAS, Owner has purchased the land and buildings at \_\_\_\_\_ in the Town (the "Property"), which Property is more particularly described on **Exhibit A**, recorded herewith and made a part hereof; and

WHEREAS, in order to fulfill the provisions of the Affordable Housing Ordinance, Owner agreed and hereby agrees to certain restrictions on the resale of the Property, including restrictions on the price at which the Property may be sold, the parties who may purchase the Property, an occupancy restriction, and the grant of an option to purchase the Property to the Town, all on the terms and conditions hereinafter provided and in accordance with Maine law, including 33 M.R.S.A. Sec. 121 *et seq.*;

NOW THEREFORE, Owner and the Town, in consideration of the conveyance of the Property to Owner, and of the mutual undertakings set forth herein, hereby agree as follows:

1. **Parties' Intent.** The terms and conditions contained herein have been freely and voluntarily accepted by the parties, each with the independent and informed advice of legal counsel. The provisions and restrictions contained herein exist to further the mutual purposes and goals of Owner and the Town set forth herein to create and preserve access to decent and affordable housing and home ownership opportunities for low and moderate-income people in the Town of Scarborough. It is the express understanding and intent of the parties that the terms and conditions hereof will enhance the marketability of the Property by making the Property affordable to **MODERATE**-income families who, without such provisions, would be unable to afford property in the Town similar to the Property.

2. **Transfer to Qualified Buyer.** Except as may be set forth herein, Owner may sell, transfer, or otherwise dispose of the Property only to a Qualified Buyer, as that term is defined herein. Any purported sale, transfer or other disposition to any other person or entity done without following the procedures set forth below, or in violation of the price limitations set forth below, shall be **null and void**. For purposes hereof, the parties agree that the term

**“Qualified Buyer”** means a **MODERATE-income** person or household as defined income and family size consistent with the thresholds published by the U.S. Department of Housing and Urban Development for the Portland Metropolitan Statistical Area, and as set out in Section VI. of the Zoning Ordinance under the definition of “Affordable Housing” for an Owner-Occupied Affordable Housing Unit, as the same may be amended, modified, superseded or replaced from time to time.

3. **Transfer to Owner’s Heirs.** If the Owner should die still owning the Property, then upon receipt of notice from the personal representative of the decedent’s estate given within ninety (90) days of the death of such Owner (or the last surviving co-owner if the Property was owned in joint tenancy), the Town shall, except for good cause shown, consent to a transfer of the Property to one or more of the following:

- A. the spouse of the deceased Owner (in cases where such spouse was not a joint tenant with Owner); or
- B. the child or children of the deceased Owner; or
- C. member(s) of the deceased Owner’s household who have resided in the Property for at least three years prior to the Owner’s death.

Any subsequent transfer by a transferee under A, B, or C, above, shall be subject to the terms of this Agreement.

4. **Notice to the Town; Procedure for Sale; the Town’s Option to Purchase.**

A. In each instance that Owner intends to effect a sale, transfer or disposition of the Property to a third party, then prior to listing the Property for sale or entering into a purchase and sale agreement, or otherwise taking any steps to consummate the sale of the Property, Owner shall first give the Town written notice of such intent (the “**Notice of Intent**”) addressed to the Town at the address set forth above or at such other address as the Town shall provide to Owner by written notice.

B. Within ten (10) days of receiving the Notice of Intent, the Town shall determine (1) the qualifications and income guidelines for a Qualified Buyer hereunder, and (2) Owner’s “**Maximum Allowable Price**” as determined under Section 5, below. The Town shall communicate the results of such determinations to Owner within said ten (10) day period (the “**Notice of Determination**”).

C. Owner shall market the Property to Qualified Buyers at a price not to exceed the Maximum Allowable Price. The Town shall have the right in all cases to determine whether a proposed buyer is a Qualified Buyer, as defined herein. The Town shall have ten (10) days from the date it receives the information about a prospective buyer in which to determine if Owner’s prospective buyer is indeed a Qualified Buyer hereunder. Owner shall provide the Town with whatever reasonable information the Town requests in order to make the determinations required under this subsection. All information provided

regarding any prospective Qualified Buyer shall be kept and maintained in confidence by the Town. The Qualified Buyer shall agree to be bound by the terms and conditions of this Agreement and, as part of the purchase of the Property, shall assume, in writing, all of the obligations of the "Owner" hereunder.

D. In the event that Owner is unable to find a ready, willing and able Qualified Buyer for the Property after marketing the property for at least 180 days (such period being the "**Restricted Period**") following the Notice of Determination, then the Owner shall notify the Town that it wants to market the Property to non-qualified buyers. Owner grants to Town the option to purchase the Property after the expiration of the Restricted Period on the terms set forth below

(i) Owner must establish, to the Town's reasonable satisfaction, that Owner made good faith efforts to market the Property for the entire Restricted Period for sale to Qualified Buyers at a price not in excess of the Maximum Affordable Price;

(ii) Upon a determination by Town of such marketing efforts, which the Town shall make within ten days after the last day of the Restricted Period, the Town has thirty (30) days to decide if it will exercise its option to purchase the Property for the Maximum Allowable Price.

(iii) If the Town decides to exercise its option to purchase, it shall provide a notice of exercise of the option (the "Notice to Exercise") to the Owner. Failure to provide a Notice to Exercise within thirty (30) days of the determination that good faith efforts have been made to market the Property to Qualified Buyers shall cause the Town's option to expire.

(iv) The Town shall consummate its purchase of the Property within thirty (30) days of the date of service of the Notice to Exercise (the "Town Closing Period"). Owner shall cooperate fully with Town in Town's efforts to acquire the Property and shall take all reasonable steps necessary to clear any title defects. If the Town fails to close on the Property within the Town Closing Period for any reason other than liens voluntarily placed on the Property by Owner, then Owner shall immediately be free to sell the Property to a non-Qualified Buyer.

E. If the Town decides not to exercise its option to purchase (including as a result of a failure to give a Notice to Exercise), Owner shall be free to sell the Property to a non-Qualified Buyer at any such agreed sale price **provided however**, that to the extent the agreed sale price exceeds the Maximum Allowable Price (as determined pursuant to Section 5 below), then any amount between the actual sale price and the Maximum Allowable Price (the "**Excess**") shall be paid to the Town at the time of the closing on the sale of the Property, and such Excess is to be set aside for affordable housing purposes by the Town. Upon the payment of the Excess, if any, Owner and Owner's heirs, successors and assigns, shall thereafter be free to sell the Property free of the terms and conditions of this Agreement, which shall be deemed terminated.

F. At the request of Owner, and provided there has been full compliance by Owner with the terms of this Agreement, the Town shall execute a written statement in recordable form acknowledging such compliance, including compliance with a sale of the Property which results in the release of the Owner and the Property from the terms of this Agreement.

5. **Determination of Maximum Allowable Price.** The Maximum Allowable Price for purposes of this Agreement shall be the highest price affordable to a **MODERATE** income person or household in the Portland Metropolitan Statistical Area ("Portland MSA") as determined by the Town based on data published by the Maine State Housing Authority ("MSHA") as of the month in which the Owner signs any purchase and sale agreement with a Qualified Buyer, other buyer (as permitted under this Agreement) or the Town (pursuant to the Town's exercise of its option). If Owner wishes to challenge the Town's calculation of the highest price affordable to a **MODERATE** income person or household in the Portland MSA, Owner may propose another objective method of computing the Maximum Allowable Price, and the Town shall consider (but shall have no obligation to accept) the same.

6. **Construction and Duration.** The covenants contained herein shall run with the land and shall be perpetual. Owner covenants and agrees for himself, his heirs, personal representatives and assigns that the rights and restrictions contained herein shall be for the benefit of the Town, its successors and assigns, and shall be binding on all future purchasers of the Property. Owner and the Town agree and intend that this Agreement and the covenants contained herein are to be interpreted as "Affordable Housing Covenants" as defined by 33 M.R.S.A. Sec. 121 and satisfy the provisions of Section VI and VII.C. of the Affordable Housing Provisions of the Zoning Ordinance.

7. **Applicability of This Agreement to Mortgagees.** Notwithstanding anything to the contrary contained herein, the terms of this Agreement shall not apply to the following types of transfers of the Property:

- A. Transfers by the Owner to a mortgagee in lieu of foreclosure;
- B. Transfers by a mortgagee immediately following a transfer to such mortgagee by deed in lieu of foreclosure;
- C. Transfers by a mortgagee of Owner pursuant to and as a result of a foreclosure judgment and sale;
- D. Transfers by a mortgagee immediately following a transfer to such mortgagee as a result of a foreclosure; or
- E. Transfers by the transferee of any transfer described in subsection C above which results from a mortgage servicing relationship between a servicing lender and a governmental entity serving as a secondary market mortgage purchaser;

*provided, however*, that this Agreement shall apply in full to all subsequent transfers of the

Property not described in subsections A through E of this Section 7, and any such subsequent transferees shall own the Property as an "Owner" subject in all respects to all of the terms and conditions of this Agreement. The provisions in this paragraph shall apply in the same manner to all subsequent holders of mortgages on the Property.

8. **Other Requirements Incorporated into this Agreement.** In addition to the above restrictions, the Property shall be subject to the standards set forth in the Ordinance, including without limitation, that preference shall be given first to Town residents, and then to employees of the Town in regard to any sale of the Property; that all housing units shall be owner-occupied; and that any new dwelling on a lot be located so as to include, or if not included, allow the construction of a garage on the lot without requiring a setback variance.

9. **Disbursement of Insurance and Eminent Domain Proceeds.** In the event Owner receives proceeds as a result of a complete eminent domain taking of the Property, Owner and the Town shall share in such proceeds such that Owner shall receive an amount equal to no more than the Maximum Allowable Price as determined under Section 5 above, with the Town receiving the balance of the proceeds, if any. If there occurs a partial eminent domain taking, or if Owner receives any insurance proceeds as a result of any casualty loss to the Property, then the parties shall share in the proceeds on a pro-rata basis, with Owner receiving a percentage of the Maximum Allowable Price based on the diminution of value of the Property, with the Town receiving the balance of the proceeds, if any.

10. **Miscellaneous.** Any sale or transfer conducted contrary to the terms and conditions contained herein shall be null and void. All sales or transfers shall be subject to all terms and conditions contained herein. If any portion of this Agreement is declared unenforceable by a court of competent jurisdiction, such declaration shall not affect the validity or enforcement of the remaining provisions hereof. Notices hereunder shall be in writing and sent by first class mail, certified, return receipt requested, addressed to the recipient at the address given above. If the Town or its successors or assigns shall change addresses, it shall give notice of the new address in the manner provided in this paragraph.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

WITNESS:

THE TOWN OF SCARBOROUGH

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_

Owner

Print name:

\_\_\_\_\_

\_\_\_\_\_

Owner

Print name:

STATE OF MAINE  
CUMBERLAND, SS

Date:

Personally appeared the above-named \_\_\_\_\_, and  
acknowledged the foregoing instrument to be his/her/their free act and deed.

Before me,

\_\_\_\_\_

Notary Public/Attorney at Law

Print name:

My Commission Expires:

STATE OF MAINE  
CUMBERLAND, SS

Date:

Personally appeared the above-named \_\_\_\_\_, and  
acknowledged the foregoing instrument to be his/her/their free act and deed.

Before me,

\_\_\_\_\_

Notary Public/Attorney at Law

Print name:

My Commission Expires:



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



## 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](https://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

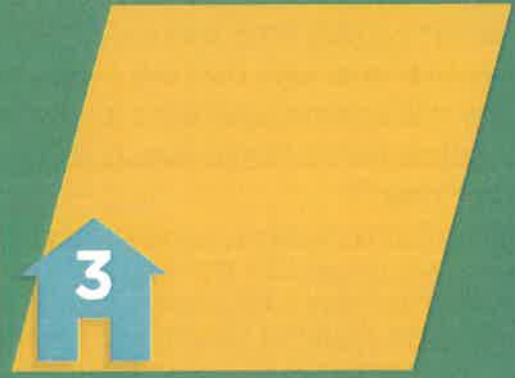
### NOT PERMITTED



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

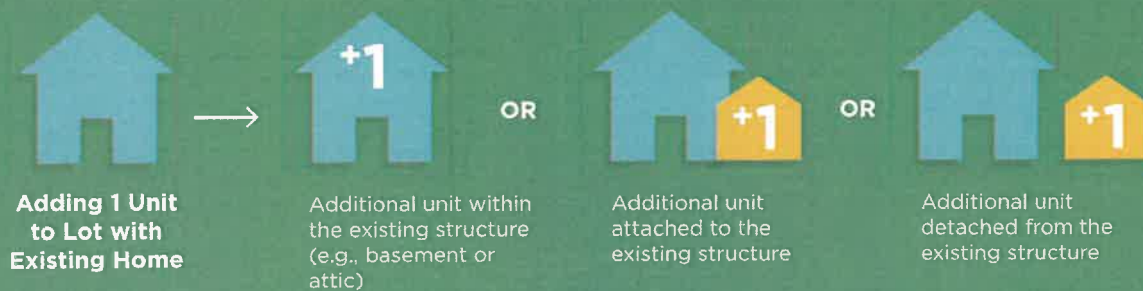


**NOTE:** The three and four units can be within one structure or multiple structures.

**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

- ▶ In a growth area consistent with section 4349-A, subsection 1, paragraph A or B, with public water and sewer in municipality without a comprehensive plan
  - ▶ Outside growth area
    - ▶ Up to 2 dwelling units, if attached
- ▶ Up to 4 dwelling units, detached or attached

#### 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

- ▶ Up to 2 additional dwelling units
  - ▶ Choose:
    - a. One unit within or attached
    - b. One unit detached
    - c. One of each
- ▶ 1 accessory dwelling unit
  - ▶ Exempt from:
    - a. Rate of growth ordinances
    - b. Additional density area/standards
    - c. Additional parking requirements

#### 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

- ▶ No new structure may be built unless allowed under local ordinance



# 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



#### 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**